ADMINISTRATIVE OFFICE OF THE COURT
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

AMY S. BORMAN
GENERAL COUNSEL

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561) 355-1927
www.15thcircuit.com
aborman@pbcgov.org

February 16, 2015

Matthew Weidner, Esquire
Weidner Law
250 Mirror Lake Drive North
St. Petersburg, Florida 33701

Re: Public Records' Request dated February 2, 2015

Dear Mr. Weidner:

Your public records request is now complete. The cost of the records request totals $29.25 (195 pages at $.15 per page). In accordance with Administrative Order 2.304, please make a check payable to the Board of County Commissioners. Upon receipt, the documents will be available for you to pick up at Court Administration located on the fifth floor of the central courthouse. Should you wish to have the documents mailed, please either provide a prepaid FedEx or UPS shipping envelope or provide and additional $2.00 for the approximate cost of postage.

Please be advised that the courthouse is closed today. Also, my office received a check from both your office and Ice Legal for the previous request. The check in the amount of $31.40 will be returned to your office.

Sincerely,

Amy S. Borman

Amy Borman

From: Amy Borman
Sent: Tuesday, January 27, 2015 1:52 PM
Cc: Jeffrey Colbath; Barbara Dawicke
Subject: comments to proposed amendment to Local Rule 4 and Proposed Local Rule 9
Attachments: Rule 4 letter.pdf; Comments to Proposed Local Rule 9.pdf; bebe.pdf; smith.pdf

Dear Judges:

Attached please find four comments that were filed by members of the local bar with regard to the proposed amendment to Local Rule 4 and Proposed Local Rule 9.

If you have comments or suggestions, please give me a call at 3-1927 or stop by my office. You can also email but be advised that any response may be deemed a public record.

In accordance with the Rules of Judicial Administration, the rules will have to be submitted to the Supreme Court no later than Friday.

Thanks,
Amy

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

Palm Beach County
Justice Association
PO BOX 3515
WEST PALM BEACH, FL 33402
561.790.5833 (P)
561.790.5886 (F)
WWW.PBCJA.ORG

January 26, 2015

The Hon. Jeffrey Colbath, Chief Judge
c/o Amy Borman, General Counsel
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401

Via E-Mail Only: ABorman@pbcgov.org

RE: Proposed Changes to Local Rule 4

Your Honor:

I am writing to you on behalf of the Palm Beach County Justice Association and our nearly 400 members to express our concerns regarding the proposed changes to Local Rule Number 4. First and foremost, we fully agree that the parties should make a reasonable effort to resolve issues set for a UMC prior to the matter being set for hearing. However, we believe the burdens imposed by the proposed revised Rule 4 are onerous and burdensome and will disproportionately negatively affect plaintiffs in personal injury cases.

Specifically, the need to make two efforts to contact defense counsel will only contribute to unnecessary delays in setting matters for hearing. To that end, we believe that one effort - be it a substantive email, phone call, or in person meeting - should be sufficient. If the issue isn't resolved within 24 hours of the initial effort we believe the party should be able to set it for hearing. Frankly, if a defense attorney is not inclined to respond to our initial email, letter or phone call, it is doubtful that they will respond to a second email, letter or phone call.

In addition, the need to clear dates with defense counsel prior to setting a UMC hearing will result in further unnecessary delay in our cases. We believe that this scheduling provision defeats the purpose of a UMC hearing which is the quick resolution of relatively smaller issues. As the Rule is proposed, all defense counsel has to do is say that they are not available on any date chosen by the Plaintiff's counsel or that the first date they have available is weeks and weeks

down the road (this happens all the time when we try to schedule depositions). Nothing in the proposed Rule deals with, prevents, or otherwise addresses that scenario.

Further, how are we to prove that we left a voicemail for defense counsel? Unfortunately it is not as uncommon as you might think for defense attorneys claim they never received a phone call. What proof can we offer other than our word that we did call? At that point UMC hearings could easily devolve into a he said/she said over whether or not two good faith efforts were made thereby complicating matters rather than simplifying them.

Again, we fully agree that an effort should be made to resolve UMC hearings prior to the hearing and we are all in favor of efforts to require defense counsel to work with us to resolve issues prior to running to the courthouse. However, we are extremely concerned that the proposed Rule 4 changes potentially create more problems than they eliminate.

I would welcome the opportunity to discuss our concerns in more detail with you. Thank you for your consideration herein.

Very truly yours,

Gregory T. Zele
President
Palm Beach County Justice Association

Amy Borman

From: Abigail Beebe [Abigail@abeebelaw.com]
Sent: Monday, January 26, 2015 5:01 PM
To: Amy Borman
Subject: proposed local rules

Chief Judge and Amy Borman,

As chair of the UFC committee for the palm beach county bar, I write to inform you that several members have commented on the local proposed rules. While I know some have submitted under separate and individual cover, I would like to state some issues

It is suggested that is these stringent coordinate rules are imposed, it should be in writing.
Most complaints are saying this is micromanagement of professionals

Abigail Beebe, Esquire
Law Office of Abigail Beebe, P.A.
P.O. Box 4467
West Palm Beach, FL 33402
Telephone: 561.370.3691
E-mail: abigail@abeebelaw.com
Website: www.abeebelaw.com

Amy Borman

From: Abigail Beebe [Abigail@abeebelaw.com]
Sent: Thursday, January 22, 2015 4:38 PM
To: Amy Borman
Cc: Dunia Martinez; Patience Burns
Subject: RE: Proposed local rule

OK.

From: Amy Borman [mailto:ABorman@pbcgov.org]
Sent: Thursday, January 22, 2015 4:35 PM
To: Abigail Beebe
Cc: Dunia Martinez; Patience Burns
Subject: Re: Proposed local rule

The rules were sent to all members of the bar as required by the rules of judicial administration. This is a proposed local rule, not an administrative order.

You can send the comments to me but address it to the chief judge.

Sent from my iPhone

On Jan 22, 2015, at 4:32 PM, "Abigail Beebe" <Abigail@abeebelaw.com> wrote:

> Amy,
>
> As Chair of the UFC committee, my group has indicated concerns with the new proposed local rules. How would you like me to get you those? Are you the right person? I usually receive correspondence from you, however, I did not regarding these rule changes and got them from Patience. Let me know...
>
> Abigail Beebe, Esquire
> Law Office of Abigail Beebe, P.A.
> P.O. Box 4467
> West Palm Beach, FL 33402
> Telephone: 561.370.3691
> E-mail: abigail@abeebelaw.com
> Website: www.abeebelaw.com
>
>

Please be advised that Florida has a broad public records law, and all correspondence to me via email may be subject to disclosure. Under Florida records law (SB80 effective 7-01-06), email addresses are public records. If you do not want your email address released in response to a public records request, do not send emails to this entity. Instead, contact this office by phone or in writing.

Amy Borman

From: Ed Garrison
Sent: Tuesday, January 27, 2015 3:48 PM
To: Amy Borman
Cc: Jeffrey Colbath; Barbara Dawicke
Subject: RE: comments to proposed amendment to Local Rule 4 and Proposed Local Rule 9

I concur with the comments raised, hence my previous negative vote on both proposals.

From: Amy Borman
Sent: Tuesday, January 27, 2015 1:52 PM
Cc: Jeffrey Colbath; Barbara Dawicke
Subject: comments to proposed amendment to Local Rule 4 and Proposed Local Rule 9

Dear Judges:

Attached please find four comments that were filed by members of the local bar with regard to the proposed amendment to Local Rule 4 and Proposed Local Rule 9.

If you have comments or suggestions, please give me a call at 3-1927 or stop by my office. You can also email but be advised that any response may be deemed a public record.

In accordance with the Rules of Judicial Administration, the rules will have to be submitted to the Supreme Court no later than Friday.

Thanks,
Amy

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

Amy Borman

From: Amy Borman
Sent: Thursday, January 29, 2015 4:31 PM
Cc: Barbara Dawicke; Jeffrey Colbath
Subject: proposed local rules - proposed revisions
Attachments: Amendment to Local Rule 4 revised.doc; Certificate of Compliance Local rule 4.doc; Local Rule 9 revised.doc

Importance: High

Dear Judges:

As a judge who participated in the voting on the amendment to Local Rule 4 and the new Proposed Local Rule 9, I am forwarding to you revised versions that incorporate suggestions from members of the judiciary and bar (these comments were forwarded to earlier in the week) along with the certificate of compliance that is an exhibit to Local Rule 4.

Please review and let me know if you disagree with the proposed edits. For anyone who voted "no" on the initial vote, please let me know if these modifications change your vote from "no" to "yes".
I will then tabulate the responses to ensure that we still have a majority of the judges approving the edited versions.

The changes include:

Proposed Amendment to Local Rule 4

- Fixing a typo from "faither" to "faith"
- Changing "serving the hearing" to "noticing the hearing"
- Cleaning up some other confusing language

Proposed Local Rule 9

- Clarifying that "abandoned" equates to "withdrawn"
- Clarifying that leave of court to extend the 90 days must be obtained prior to the 91st day
- Acknowledging that a rescheduling of the hearing by an order of the court would preclude the motion from being deemed abandoned
- Amending the "leave of court" sentence to make it clearer that a party is not precluded from refiling the motion.
- Stating that this local rule will only pertain to motions filed on or after the date the chief judge signs the order

If you have any questions, please feel free to call me on my cell today 644-0186 or at my desk tomorrow (Friday) 3-1927. You can email but please be advised that the emails may be deemed public record.

The rules are required to be submitted in January - thus I will be submitting them tomorrow afternoon. If you have questions about Local Rule 4, please speak with Judge Blanc.

Thanks,
Amy

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4

IN RE: UNIFORM MOTION CALENDAR
_____:

Pursuant to the authority conferred by rule 2.~~050(b)~~215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

1. Circuit judges in each division shall conduct a uniform motion calendar on days and at a time specified by the judges of the division.

2. Prior to setting a matter on the Uniform ~~m~~Motion ~~c~~Calendar, the ~~party or~~ attorney or *pro se* litigant noticing the motion shall attempt to resolve the matter and shall certify the good faith attempt to resolve.

3. For the Circuit Civil, County Civil and Family (domestic relations) divisions the following apply:

   a. The term "attempt to resolve the matter" in paragraph 2 requires counsel or a *pro se* litigant with full authority to resolve the matter to confer before serving the Notice of Hearing on the motion to be set on theUniform Motion Calendar.

   b. The term "confer" in paragraph 3a. requires that the parties' counsel or a *pro se* litigant engage in at least one substantive conversation, either in person or by telephone ("Conference"), in a good-faith effort to resolve the motion entirely (thus not requiring a hearing) -or otherwise narrow the issues raised in the motion ~~without the need to schedule a~~ so as to ~~streamline~~ narrow the hearing.

   c. Coordination of Conference and potential hearing date:

      1). In an effort to coordinate the Conference, counsel or a *pro se* litigant ~~serving~~noticing the hearing ("Notice Counsel") may send an email or letter to, or leave a detailed ~~voice~~ message or voice-mail with, opposing counsel (including opposing counsel's staff ~~assistant~~) or *pro se* litigant ("Responding Counsel") that proposes the timing of the Conference and the issues to be discussed. At the same time, and consistent with the Standards of Professional Courtesy and Civility -approved by the judges of

the Fifteenth Judicial Circuit, Notice Counsel shall propose a minimum of three (3) dates to be used in the event a hearing becomes necessary.

2). Responding Counsel **must** respond promptly to Notice Counsel's communications about coordinating the Conference and scheduling the hearing including acceptance of one of the three (3) proposed hearing dates or proposing three (3) alternate dates falling within the same or similar time frame.

3). After two (2) good-faith attempts to coordinate the Conference and the hearing date, including at least one attempt by phone or in person, Notice Counsel may serve a notice of hearing on the motion if Responding Counsel has not responded. Notice Counsel may set the hearing on a mutually agreed date or, if Responding Counsel has not responded to Notice Counsel's attempts to coordinate the Conference or a hearing, on any one of the three dates that Notice Counsel ~~has previously proposed~~.

d. The term "certify the good faith attempt to resolve" requires Notice Counsel to include a Certificate of Compliance (sample form attached hereto as Exhibit "A") as a separate cover sheet attached to the~~on the front page of~~ the Uniform Motion Calendar Notice of Hearing indicating that the Conference has occurred or that the good faith attempt has been made.

e. If the Conference has not occurred then,

1). Notice Counsel must identify in the Certificate of Compliance the dates and approximate times on which Notice Counsel attempted to contact Responding Counsel.

2). The Court may review the Certificate of Compliance to determine if the good faith~~er~~ attempts to confer were made.

3). The Court may review the Certificate of Compliance to determine whether Responding Counsel's failure to respond to ~~the~~ Notice Counsel's inquiries or communications was reasonable.

f. The Clerk of Court shall identify in the docket a "notice of hearing" under that title despite that a Certificate of Compliance is included on the front page of the notice of hearing.

g. In the event that, despite compliance with this O~~o~~rder, the issue or issues in the motion remain unresolved, both parties should continue to make a good faith effort to meet and confer prior to the hearing date, to narrow or resolve the issues in the motion.

h. Notice Counsel shall ensure that the Court and the Court's Judicial Assistant are aware of any narrowing of the issues or other resolution regarding the motion as a result of the conference by referencing same in the space indicated on the Certificate of Compliance.

i. The Court may award sanctions for Notice Counsel's failure to attempt to confer in good faith or for Responding Counsel's failure to respond promptly to Notice Counsel's attempts to confer.

4. Hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

5. ~~Unless the moving party makes special arrangements with the clerk's office, the court file will not be present in the hearing room during the uniform motion calendar. Therefore,~~ ~~t~~The ~~The~~ moving party must furnish the court a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all documents, pleadings and case authority which they wish the Court to consider.

6. SCHEDULING -- Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall notice opposing counsel pursuant to the applicable rules of civil procedure. Opposing counsel shall be given reasonable notice. In default and final judgment matters only, a copy of the notice of hearing and a copy of the motion shall be delivered to the clerk, marked "Attention, Uniform Motion Calendar," at least four business days before the hearing. ~~In this instance, the clerk shall deliver the file to the Court prior to the hearing.~~

7. The courtroom deputy ~~bailiff~~ shall call cases for hearing in the order in which counsel signed up on the sheet posted outside the hearing room. Failure of any party to appear at the time set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of_____, 2015.

_____
Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

(EXHIBIT A)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO:

Plaintiff,

vs.

Defendant.
_____/

CERTIFICATE OF COMPLIANCE

Option 1

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below had a substantive conversation in person or by telephone with opposing counsel in a good faith effort to resolve this motion before the motion was noticed for hearing, but the parties were unable to reach an agreement, other than as to: [specify any issues resolved]_____
_____

/S/
Counsel for party who noticed matter for hearing.

OR

Option 2

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below attempted in good faith to contact opposing counsel in writing, by telephone, or in person with at least one attempt by telephone or in person as follows:

1. (Date) _____ at (approximate time) _____; and
2. (Date) _____ at (approximate time) _____

to discuss resolution of this motion without a hearing and I or the lawyer in my firm was unable to speak with opposing counsel.

/S/
Counsel for party who noticed matter for hearing.

Dated:
West Palm Beach, FL

Respectfully submitted,

_____
, Esquire
Florida Bar No.
Address
Telephone:
Facsimile:
E-mail:

Attorneys for

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing _____ was served via electronic mail this ____ day of _____, 20__, to all parties listed on the Service List.

_____
, Esquire

SERVICE LIST

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 9

IN RE: TIMELY SETTING OF HEARINGS

Pursuant to the authority conferred by rule 2.215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

A party filing a motion in the circuit civil, county civil, family (domestic relations section), foreclosure and probate & guardianship divisions of the court, must schedule the motion for hearing and be heard on the motion within ninety (90) days of the motion's filing. Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned, thus withdrawn by the filing party, on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained before the ninety-first (91) day or the hearing is rescheduled by order of court. ~~Leave of court is granted for the~~A party ~~to~~ is not precluded from re-filinge ~~a~~the motion deemed abandoned by this rule. This rule does not apply to hearings on motions for summary judgment and motions for rehearing or reconsideration filed pursuant to Local Rule 6 nor does it apply to hearings that ~~require~~will include ~~live~~ testimonial evidence except for hearings on motions to quash service of process. This rule will apply to motions filed on or after INSERT DATE.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of January, 2015.

Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

Amy Borman

From: Meenu Sasser
Sent: Thursday, January 29, 2015 4:34 PM
To: Amy Borman
Subject: Re: proposed local rules - proposed revisions

Yes on 4
No on 9

Sent from my iPad

On Jan 29, 2015, at 4:31 PM, Amy Borman <ABorman@pbcgov.org> wrote:

> Dear Judges:
>
> As a judge who participated in the voting on the amendment to Local Rule 4 and the new Proposed Local Rule 9, I am forwarding to you revised versions that incorporate suggestions from members of the judiciary and bar (these comments were forwarded to earlier in the week) along with the certificate of compliance that is an exhibit to Local Rule 4.
>
> Please review and let me know if you disagree with the proposed edits. For anyone who voted "no" on the initial vote, please let me know if these modifications change your vote from "no" to "yes".
> I will then tabulate the responses to ensure that we still have a majority of the judges approving the edited versions.
>
> The changes include:
>
> Proposed Amendment to Local Rule 4
> - Fixing a typo from "faither" to "faith"
> - Changing "serving the hearing" to "noticing the hearing"
> - Cleaning up some other confusing language
>
> Proposed Local Rule 9
>
> - Clarifying that "abandoned" equates to "withdrawn"
> - Clarifying that leave of court to extend the 90 days must be obtained prior to the 91st day
> - Acknowledging that a rescheduling of the hearing by an order of the court would preclude the motion from being deemed abandoned
> - Amending the "leave of court" sentence to make it clearer that a party is not precluded from refiling the motion.
> - Stating that this local rule will only pertain to motions filed on or after the date the chief judge signs the order
>
> If you have any questions, please feel free to call me on my cell today 644-0186 or at my desk tomorrow (Friday) 3-1927. You can email but please be advised that the emails may be deemed public record.
>
> The rules are required to be submitted in January - thus I will be submitting them tomorrow afternoon. If you have questions about Local Rule 4, please speak with Judge Blanc.
>
> Thanks,
> Amy
> Amy S. Borman
> General Counsel
> 15th Judicial Circuit
> 205 North Dixie Highway - 5th Floor
> West Palm Beach, Florida 33401
> (561) 355-1927 (direct line)
> (561) 355-1181 (fax)
> aborman@pbcgov.org

Please be advised that Florida has a broad public records law, and all correspondence to me via email may be subject to disclosure. Under Florida records law (SB80 effective 7-01-06), email addresses are public records. If you do not want your email address released in response to a public records request, do not send emails to this entity. Instead, contact this office by phone or in writing.

<Amendment to Local Rule 4 revised.doc>

<Certificate of Compliance Local rule 4.doc>

<Local Rule 9 revised.doc>

Amy Borman

From: Ed Garrison
Sent: Thursday, January 29, 2015 4:49 PM
To: Amy Borman
Cc: Barbara Dawicke; Jeffrey Colbath
Subject: RE: proposed local rules - proposed revisions

My vote remains NO to both.

From: Amy Borman
Sent: Thursday, January 29, 2015 4:31 PM
Cc: Barbara Dawicke; Jeffrey Colbath
Subject: proposed local rules - proposed revisions
Importance: High

Dear Judges:

As a judge who participated in the voting on the amendment to Local Rule 4 and the new Proposed Local Rule 9, I am forwarding to you revised versions that incorporate suggestions from members of the judiciary and bar (these comments were forwarded to earlier in the week) along with the certificate of compliance that is an exhibit to Local Rule 4.

Please review and let me know if you disagree with the proposed edits. For anyone who voted "no" on the initial vote, please let me know if these modifications change your vote from "no" to "yes".
I will then tabulate the responses to ensure that we still have a majority of the judges approving the edited versions.

The changes include:

Proposed Amendment to Local Rule 4

- Fixing a typo from "faither" to "faith"
- Changing "serving the hearing" to "noticing the hearing"
- Cleaning up some other confusing language

Proposed Local Rule 9

- Clarifying that "abandoned" equates to "withdrawn"
- Clarifying that leave of court to extend the 90 days must be obtained prior to the 91st day
- Acknowledging that a rescheduling of the hearing by an order of the court would preclude the motion from being deemed abandoned
- Amending the "leave of court" sentence to make it clearer that a party is not precluded from refiling the motion.
- Stating that this local rule will only pertain to motions filed on or after the date the chief judge signs the order

If you have any questions, please feel free to call me on my cell today 644-0186 or at my desk tomorrow (Friday) 3-1927. You can email but please be advised that the emails may be deemed public record.

The rules are required to be submitted in January - thus I will be submitting them tomorrow afternoon. If you have questions about Local Rule 4, please speak with Judge Blanc.

Thanks,
Amy
Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

Please be advised that Florida has a broad public records law, and all correspondence to me via email may be subject to disclosure. Under Florida records law (SB80 effective 7-01-06), email addresses are public records. If you do not want your email address released in response to a public records request, do not send emails to this entity. Instead, contact this office by phone or in writing.

Amy Borman

From: Richard Oftedal L.
Sent: Thursday, January 29, 2015 6:54 PM
To: Amy Borman
Subject: Re: proposed local rules - proposed revisions

I agree with the revisions. Good work.

Sent from my iPad

On Jan 29, 2015, at 4:31 PM, Amy Borman <ABorman@pbcgov.org> wrote:

> Dear Judges:
>
> As a judge who participated in the voting on the amendment to Local Rule 4 and the new Proposed Local Rule 9, I am forwarding to you revised versions that incorporate suggestions from members of the judiciary and bar (these comments were forwarded to earlier in the week) along with the certificate of compliance that is an exhibit to Local Rule 4.
>
> Please review and let me know if you disagree with the proposed edits. For anyone who voted "no" on the initial vote, please let me know if these modifications change your vote from "no" to "yes".
> I will then tabulate the responses to ensure that we still have a majority of the judges approving the edited versions.
>
> The changes include:
>
> Proposed Amendment to Local Rule 4
> - Fixing a typo from "faither" to "faith"
> - Changing "serving the hearing" to "noticing the hearing"
> - Cleaning up some other confusing language
>
> Proposed Local Rule 9
>
> - Clarifying that "abandoned" equates to "withdrawn"
> - Clarifying that leave of court to extend the 90 days must be obtained prior to the 91st day
> - Acknowledging that a rescheduling of the hearing by an order of the court would preclude the motion from being deemed abandoned
> - Amending the "leave of court" sentence to make it clearer that a party is not precluded from refiling the motion.
> - Stating that this local rule will only pertain to motions filed on or after the date the chief judge signs the order
>
> If you have any questions, please feel free to call me on my cell today 644-0186 or at my desk tomorrow (Friday) 3-1927. You can email but please be advised that the emails may be deemed public record.
>
> The rules are required to be submitted in January - thus I will be submitting them tomorrow afternoon. If you have questions about Local Rule 4, please speak with Judge Blanc.
>
> Thanks,
> Amy
> Amy S. Borman
> General Counsel
> 15th Judicial Circuit
> 205 North Dixie Highway - 5th Floor
> West Palm Beach, Florida 33401
> (561) 355-1927 (direct line)
> (561) 355-1181 (fax)
> aborman@pbcgov.org

Please be advised that Florida has a broad public records law, and all correspondence to me via email may be subject to disclosure. Under Florida records law (SB80 effective 7-01-06), email addresses are public records. If you do not want your email address released in response to a public records request, do not send emails to this entity. Instead, contact this office by phone or in writing.

<Amendment to Local Rule 4 revised.doc>

<Certificate of Compliance Local rule 4.doc>

<Local Rule 9 revised.doc>

Amy Borman

From: Amy Borman
Sent: Friday, January 30, 2015 3:21 PM
To: 'Adam Rabin'; Dean T. Xenick (DXenick@lawclc.com); lawrence.rochefort@akerman.com; Peter Blanc
Subject: Local Rules Submission
Attachments: benton letter.pdf

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
JEFFREY J. COLBATH
CHIEF JUDGE

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561) 355-7845

January 30, 2015

The Honorable Robert T. Benton II
Chair, Supreme Court Local Rules Advisory Committee
First District Court of Appeal
Tallahassee, Florida 32399-1850
bentonb@1dca.org

Re: Submission of Proposed Amendment to Local Rule 4
Submission of Proposed Local Rule 9

Dear Judge Benton:

The Fifteenth Judicial Circuit is submitting for consideration two local rules in accordance with Florida Rule of Judicial Administration 2.215(e). The first is an Amendment to Local Rule 4 (the original rule was approved by the Florida Supreme Court in 1991) and the second is a new Proposed Local Rule 9. The current Local Rule 4, the Proposed Amendment to Local Rule 4 in legislative format, and the Proposed Local Rule 9 are attached for your review. Also attached are comments received from the members of the local bar association after publication of the rules as approved by greater than a majority of the judges in the Fifteenth Judicial Circuit in accordance with Florida Rule of Judicial Administration 2.215(e)(1). After input from the members of the local bar, revisions were made to the distributed versions of the proposed rules. These revised versions, which are attached, were approved by more than a majority of the judges. Due to time constrictions, the revised versions have not been circulated to members of the local bar for comment.

AMENDMENT TO LOCAL RULE 4

Paragraph 2 of Local Rule 4 currently requires an attorney prior to setting a motion on the Uniform Motion Calendar to "attempt to resolve the matter" and requires a certification of the "good faith attempt to resolve." Currently there is no definition of "attempt to resolve the matter" and further there is no uniform procedure to certify the "good faith attempt to resolve." Members of the local bar and *pro se* litigants are loosely defining "attempt to resolve" and perfunctorily inserting the "good faith certification" into motions and notices of hearing regardless of whether the parties have actually spoken about the issues. This is evident by the number of matters resolved outside the doors of the courtroom once the attorneys and *pro se litigants* actually communicate in person with one another.

The Fifteenth Judicial Circuit has seen a decrease in professionalism and civility amongst attorneys with neither side reaching out to resolve matters resulting in the unnecessary expenditure of limited judicial resources.[1] The proposed amendments to Local Rule 4 define "good faith attempt" and require attorneys and *pro se* litigants to make two attempts to speak about the matter prior to setting the hearing. To ensure that the certification is not simply an obligatory "add on" to the Notice of Hearing, a cover sheet is required that lists the attempts made. These proposed amendments incorporate procedures utilized by both the Ninth Judicial Circuit (*see* paragraph 6 of Administrative Order 2012-03 - Administrative Order Establishing Ninth Judicial Circuit Court Circuit Civil Court Guidelines) and the United States District Court for the Southern District of Florida (*see* local rule 7.1(a)(3)).

In the Fifteenth Judicial Circuit there is a common and growing problem of attorneys not speaking to each other prior to scheduling a hearing and prior to attending a hearing. Indeed, more than a majority of the judges in the Fifteenth Judicial Circuit believe that requiring attorneys to engage in a substantive conversation prior to a hearing, and not simply sending an e-mail, will help resolve matters. With the implementation of this rule, the number of unnecessary hearings set on Uniform Motion Calendar should decrease, allowing greater access to the court's limited hearing time. Thus, the purpose of the proposed amendment to Local Rule 4 is to foster actual communication between attorneys and *pro se* litigants so that there can be a narrowing of the issues to be heard by the judiciary resulting in more efficient administration of the courts.

The judges are also seeking to bring the Local Rule 4 into current practice. Courtroom deputies, rather than bailiffs, are now in the courtroom. Paper files are no longer delivered to the judges and copies of defaults and final judgments no longer need to be sent to the Clerk of Court prior to a hearing. Accordingly, updates were made to outdated practices currently included in Local Rule 4.

PROPOSED LOCAL RULE 9

Florida Rule of Judicial Administration 2.545 provides that judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. Florida Rule of Judicial Administration 2.515 provides that a signature of an attorney shall constitute a certificate by the attorney that to the best of the attorney's knowledge, information and belief there is good grounds to support the court filing and that the court filing is not interposed for delay. Florida Rule of Judicial Administration 2.250 provides that non-jury civil cases should take twelve (12) months from the filing to final disposition and that jury trial cases should take eighteen (18) months from the filing to final disposition. With these Rules of Judicial Administration as the cornerstone in litigation, a party should be timely bringing filed motions to the court's attention so that they may ruled upon in order for the case to judiciously move through the legal system.

Proposed Local Rule 9 follows on the path of cases such as *Bridier v. Burns*, 200 So. 355, 356 (Fla. 1941), *Weatherford v. Weatherford*, 91 So. 2d 179, 180 (Fla. 1956) and *State Dept. of*

[1] The Supreme Court of Florida is also addressing the issue of the increased lack of civility amongst attorneys with the recent amendment to the Oath of Admission for New Attorneys and mandating Professionalism Panels in each judicial circuit.

Revenue v. Kiedaisch, 670 So. 2d 1058 (Fla. 2d DCA 1996) where the courts have found that matters not brought to the attention of the court are abandoned. In *Bridier*, the court found that it was reasonable to assume that the appeals had been abandoned by counsel because they had not been brought to the court's attention, briefs had not been filed nor had a request for oral argument been made; in *Weatherford* the court found that assignments of error not argued are considered abandoned; and in *Kiedaisch* the court concluded that a supplemental petition for modification of final judgment was abandoned when party never set the petition for hearing.

A large majority of cases currently pending in the Fifteenth Judicial Circuit are not completed within the time standards set forth in the Rules of Judicial Administration. As of January 2015, there are on average 1200-1300 pending cases and 100-150 reopened cases in each of the eleven circuit civil divisions. In the one foreclosure division, there are approximately 7,800 pending cases and just over 2,100 reopened cases. In the eight county civil divisions there are on average 3,000 pending cases and 200 reopened cases. The volume of cases, along with the dearth of case managers, creates an environment where the judiciary cannot actively manage its docket. Thus, parties are able to file motions, avoid setting them for hearing, and have cases remain dormant until either the defendant or the court files a Notice of Failure to Prosecute pursuant to Florida Rule of Judicial Administration 1.420(e). Over the past five years, many more Notices of Failure to Prosecute have been filed by the judiciary than by the defendants. This dilatory practice is not what is contemplated by the Rules of Court.

Proposed Local Rule 9 would effectively give the court the authority to withdraw from consideration certain specified motions that are not set and heard within ninety (90) days. The rule is crafted to address motions that, for the most part, are scheduled on the court's uniform motion calendar. Should the motion need judicial time greater than that permitted for on uniform motion calendar and should the court be unable to schedule the hearing within ninety days, the parties simply need to obtain an order extending or excusing the ninety (90) day period. This rule would thus complement Rule of Judicial Administration 2.545 and the time standards set forth in Rule of Judicial Administration 2.250 in that motions will be timely brought to the court for resolution.

I appreciate the Committee taking the time to review the rules and I am available to answer any questions the Committee may have.

Sincerely,

Jeffrey J. Colbath
Chief Judge

Enclosed: Proposed Revised Local Rule 4, Current Local Rule 4, Proposed Local Rule 9, Comments

Amy Borman

From: Amy Borman
Sent: Friday, January 30, 2015 3:20 PM
To: 'bentonb@1dca.org'
Cc: Jeffrey Colbath; Barbara Dawicke
Subject: Local Rule Submissions - 15th Judicial Circuit
Attachments: benton letter.pdf

Dear Judge Benton:

On behalf of Chief Judge Jeffrey Colbath, attached please find two local rule submissions pursuant to Florida Rule of Judicial Administration 2.215(e). A hard copy will follow in the mail.

Should you have any questions, or need additional information, please let me know.

Thank you,

Amy Borman

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
JEFFREY J. COLBATH
CHIEF JUDGE

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561) 355-7845

January 30, 2015

The Honorable Robert T. Benton II
Chair, Supreme Court Local Rules Advisory Committee
First District Court of Appeal
Tallahassee, Florida 32399-1850
bentonb@1dca.org

Re: Submission of Proposed Amendment to Local Rule 4
Submission of Proposed Local Rule 9

Dear Judge Benton:

The Fifteenth Judicial Circuit is submitting for consideration two local rules in accordance with Florida Rule of Judicial Administration 2.215(e). The first is an Amendment to Local Rule 4 (the original rule was approved by the Florida Supreme Court in 1991) and the second is a new Proposed Local Rule 9. The current Local Rule 4, the Proposed Amendment to Local Rule 4 in legislative format, and the Proposed Local Rule 9 are attached for your review. Also attached are comments received from the members of the local bar association after publication of the rules as approved by greater than a majority of the judges in the Fifteenth Judicial Circuit in accordance with Florida Rule of Judicial Administration 2.215(e)(1). After input from the members of the local bar, revisions were made to the distributed versions of the proposed rules. These revised versions, which are attached, were approved by more than a majority of the judges. Due to time constrictions, the revised versions have not been circulated to members of the local bar for comment.

AMENDMENT TO LOCAL RULE 4

Paragraph 2 of Local Rule 4 currently requires an attorney prior to setting a motion on the Uniform Motion Calendar to "attempt to resolve the matter" and requires a certification of the "good faith attempt to resolve." Currently there is no definition of "attempt to resolve the matter" and further there is no uniform procedure to certify the "good faith attempt to resolve." Members of the local bar and *pro se* litigants are loosely defining "attempt to resolve" and perfunctorily inserting the "good faith certification" into motions and notices of hearing regardless of whether the parties have actually spoken about the issues. This is evident by the number of matters resolved outside the doors of the courtroom once the attorneys and *pro se litigants* actually communicate in person with one another.

The Fifteenth Judicial Circuit has seen a decrease in professionalism and civility amongst attorneys with neither side reaching out to resolve matters resulting in the unnecessary expenditure of limited judicial resources.[1] The proposed amendments to Local Rule 4 define "good faith attempt" and require attorneys and *pro se* litigants to make two attempts to speak about the matter prior to setting the hearing. To ensure that the certification is not simply an obligatory "add on" to the Notice of Hearing, a cover sheet is required that lists the attempts made. These proposed amendments incorporate procedures utilized by both the Ninth Judicial Circuit (*see* paragraph 6 of Administrative Order 2012-03 - Administrative Order Establishing Ninth Judicial Circuit Court Circuit Civil Court Guidelines) and the United States District Court for the Southern District of Florida (*see* local rule 7.1(a)(3)).

In the Fifteenth Judicial Circuit there is a common and growing problem of attorneys not speaking to each other prior to scheduling a hearing and prior to attending a hearing. Indeed, more than a majority of the judges in the Fifteenth Judicial Circuit believe that requiring attorneys to engage in a substantive conversation prior to a hearing, and not simply sending an e-mail, will help resolve matters. With the implementation of this rule, the number of unnecessary hearings set on Uniform Motion Calendar should decrease, allowing greater access to the court's limited hearing time. Thus, the purpose of the proposed amendment to Local Rule 4 is to foster actual communication between attorneys and *pro se* litigants so that there can be a narrowing of the issues to be heard by the judiciary resulting in more efficient administration of the courts.

The judges are also seeking to bring the Local Rule 4 into current practice. Courtroom deputies, rather than bailiffs, are now in the courtroom. Paper files are no longer delivered to the judges and copies of defaults and final judgments no longer need to be sent to the Clerk of Court prior to a hearing. Accordingly, updates were made to outdated practices currently included in Local Rule 4.

PROPOSED LOCAL RULE 9

Florida Rule of Judicial Administration 2.545 provides that judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. Florida Rule of Judicial Administration 2.515 provides that a signature of an attorney shall constitute a certificate by the attorney that to the best of the attorney's knowledge, information and belief there is good grounds to support the court filing and that the court filing is not interposed for delay. Florida Rule of Judicial Administration 2.250 provides that non-jury civil cases should take twelve (12) months from the filing to final disposition and that jury trial cases should take eighteen (18) months from the filing to final disposition. With these Rules of Judicial Administration as the cornerstone in litigation, a party should be timely bringing filed motions to the court's attention so that they may ruled upon in order for the case to judiciously move through the legal system.

Proposed Local Rule 9 follows on the path of cases such as *Bridier v. Burns*, 200 So. 355, 356 (Fla. 1941), *Weatherford v. Weatherford*, 91 So. 2d 179, 180 (Fla. 1956) and *State Dept. of*

[1] The Supreme Court of Florida is also addressing the issue of the increased lack of civility amongst attorneys with the recent amendment to the Oath of Admission for New Attorneys and mandating Professionalism Panels in each judicial circuit.

Revenue v. Kiedaisch, 670 So. 2d 1058 (Fla. 2d DCA 1996) where the courts have found that matters not brought to the attention of the court are abandoned. In *Bridier*, the court found that it was reasonable to assume that the appeals had been abandoned by counsel because they had not been brought to the court's attention, briefs had not been filed nor had a request for oral argument been made; in *Weatherford* the court found that assignments of error not argued are considered abandoned; and in *Kiedaisch* the court concluded that a supplemental petition for modification of final judgment was abandoned when party never set the petition for hearing.

A large majority of cases currently pending in the Fifteenth Judicial Circuit are not completed within the time standards set forth in the Rules of Judicial Administration. As of January 2015, there are on average 1200-1300 pending cases and 100-150 reopened cases in each of the eleven circuit civil divisions. In the one foreclosure division, there are approximately 7,800 pending cases and just over 2,100 reopened cases. In the eight county civil divisions there are on average 3,000 pending cases and 200 reopened cases. The volume of cases, along with the dearth of case managers, creates an environment where the judiciary cannot actively manage its docket. Thus, parties are able to file motions, avoid setting them for hearing, and have cases remain dormant until either the defendant or the court files a Notice of Failure to Prosecute pursuant to Florida Rule of Judicial Administration 1.420(e). Over the past five years, many more Notices of Failure to Prosecute have been filed by the judiciary than by the defendants. This dilatory practice is not what is contemplated by the Rules of Court.

Proposed Local Rule 9 would effectively give the court the authority to withdraw from consideration certain specified motions that are not set and heard within ninety (90) days. The rule is crafted to address motions that, for the most part, are scheduled on the court's uniform motion calendar. Should the motion need judicial time greater than that permitted for on uniform motion calendar and should the court be unable to schedule the hearing within ninety days, the parties simply need to obtain an order extending or excusing the ninety (90) day period. This rule would thus complement Rule of Judicial Administration 2.545 and the time standards set forth in Rule of Judicial Administration 2.250 in that motions will be timely brought to the court for resolution.

I appreciate the Committee taking the time to review the rules and I am available to answer any questions the Committee may have.

Sincerely,

Jeffrey J. Colbath
Chief Judge

Enclosed: Proposed Revised Local Rule 4, Current Local Rule 4, Proposed Local Rule 9, Comments

Amy Borman

From: Amy Borman
Sent: Friday, January 30, 2015 3:21 PM
To: 'Michael J. Gelfand'
Subject: local rules submission
Attachments: benton letter.pdf

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
JEFFREY J. COLBATH
CHIEF JUDGE

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561) 355-7845

January 30, 2015

The Honorable Robert T. Benton II
Chair, Supreme Court Local Rules Advisory Committee
First District Court of Appeal
Tallahassee, Florida 32399-1850
bentonb@1dca.org

Re: Submission of Proposed Amendment to Local Rule 4
Submission of Proposed Local Rule 9

Dear Judge Benton:

The Fifteenth Judicial Circuit is submitting for consideration two local rules in accordance with Florida Rule of Judicial Administration 2.215(e). The first is an Amendment to Local Rule 4 (the original rule was approved by the Florida Supreme Court in 1991) and the second is a new Proposed Local Rule 9. The current Local Rule 4, the Proposed Amendment to Local Rule 4 in legislative format, and the Proposed Local Rule 9 are attached for your review. Also attached are comments received from the members of the local bar association after publication of the rules as approved by greater than a majority of the judges in the Fifteenth Judicial Circuit in accordance with Florida Rule of Judicial Administration 2.215(e)(1). After input from the members of the local bar, revisions were made to the distributed versions of the proposed rules. These revised versions, which are attached, were approved by more than a majority of the judges. Due to time constrictions, the revised versions have not been circulated to members of the local bar for comment.

AMENDMENT TO LOCAL RULE 4

Paragraph 2 of Local Rule 4 currently requires an attorney prior to setting a motion on the Uniform Motion Calendar to "attempt to resolve the matter" and requires a certification of the "good faith attempt to resolve." Currently there is no definition of "attempt to resolve the matter" and further there is no uniform procedure to certify the "good faith attempt to resolve." Members of the local bar and *pro se* litigants are loosely defining "attempt to resolve" and perfunctorily inserting the "good faith certification" into motions and notices of hearing regardless of whether the parties have actually spoken about the issues. This is evident by the number of matters resolved outside the doors of the courtroom once the attorneys and *pro se litigants* actually communicate in person with one another.

The Fifteenth Judicial Circuit has seen a decrease in professionalism and civility amongst attorneys with neither side reaching out to resolve matters resulting in the unnecessary expenditure of limited judicial resources.[1] The proposed amendments to Local Rule 4 define "good faith attempt" and require attorneys and *pro se* litigants to make two attempts to speak about the matter prior to setting the hearing. To ensure that the certification is not simply an obligatory "add on" to the Notice of Hearing, a cover sheet is required that lists the attempts made. These proposed amendments incorporate procedures utilized by both the Ninth Judicial Circuit (*see* paragraph 6 of Administrative Order 2012-03 - Administrative Order Establishing Ninth Judicial Circuit Court Circuit Civil Court Guidelines) and the United States District Court for the Southern District of Florida (*see* local rule 7.1(a)(3)).

In the Fifteenth Judicial Circuit there is a common and growing problem of attorneys not speaking to each other prior to scheduling a hearing and prior to attending a hearing. Indeed, more than a majority of the judges in the Fifteenth Judicial Circuit believe that requiring attorneys to engage in a substantive conversation prior to a hearing, and not simply sending an e-mail, will help resolve matters. With the implementation of this rule, the number of unnecessary hearings set on Uniform Motion Calendar should decrease, allowing greater access to the court's limited hearing time. Thus, the purpose of the proposed amendment to Local Rule 4 is to foster actual communication between attorneys and *pro se* litigants so that there can be a narrowing of the issues to be heard by the judiciary resulting in more efficient administration of the courts.

The judges are also seeking to bring the Local Rule 4 into current practice. Courtroom deputies, rather than bailiffs, are now in the courtroom. Paper files are no longer delivered to the judges and copies of defaults and final judgments no longer need to be sent to the Clerk of Court prior to a hearing. Accordingly, updates were made to outdated practices currently included in Local Rule 4.

PROPOSED LOCAL RULE 9

Florida Rule of Judicial Administration 2.545 provides that judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. Florida Rule of Judicial Administration 2.515 provides that a signature of an attorney shall constitute a certificate by the attorney that to the best of the attorney's knowledge, information and belief there is good grounds to support the court filing and that the court filing is not interposed for delay. Florida Rule of Judicial Administration 2.250 provides that non-jury civil cases should take twelve (12) months from the filing to final disposition and that jury trial cases should take eighteen (18) months from the filing to final disposition. With these Rules of Judicial Administration as the cornerstone in litigation, a party should be timely bringing filed motions to the court's attention so that they may ruled upon in order for the case to judiciously move through the legal system.

Proposed Local Rule 9 follows on the path of cases such as *Bridier v. Burns*, 200 So. 355, 356 (Fla. 1941), *Weatherford v. Weatherford*, 91 So. 2d 179, 180 (Fla. 1956) and *State Dept. of*

[1] The Supreme Court of Florida is also addressing the issue of the increased lack of civility amongst attorneys with the recent amendment to the Oath of Admission for New Attorneys and mandating Professionalism Panels in each judicial circuit.

Revenue v. Kiedaisch, 670 So. 2d 1058 (Fla. 2d DCA 1996) where the courts have found that matters not brought to the attention of the court are abandoned. In *Bridier*, the court found that it was reasonable to assume that the appeals had been abandoned by counsel because they had not been brought to the court's attention, briefs had not been filed nor had a request for oral argument been made; in *Weatherford* the court found that assignments of error not argued are considered abandoned; and in *Kiedaisch* the court concluded that a supplemental petition for modification of final judgment was abandoned when party never set the petition for hearing.

A large majority of cases currently pending in the Fifteenth Judicial Circuit are not completed within the time standards set forth in the Rules of Judicial Administration. As of January 2015, there are on average 1200-1300 pending cases and 100-150 reopened cases in each of the eleven circuit civil divisions. In the one foreclosure division, there are approximately 7,800 pending cases and just over 2,100 reopened cases. In the eight county civil divisions there are on average 3,000 pending cases and 200 reopened cases. The volume of cases, along with the dearth of case managers, creates an environment where the judiciary cannot actively manage its docket. Thus, parties are able to file motions, avoid setting them for hearing, and have cases remain dormant until either the defendant or the court files a Notice of Failure to Prosecute pursuant to Florida Rule of Judicial Administration 1.420(e). Over the past five years, many more Notices of Failure to Prosecute have been filed by the judiciary than by the defendants. This dilatory practice is not what is contemplated by the Rules of Court.

Proposed Local Rule 9 would effectively give the court the authority to withdraw from consideration certain specified motions that are not set and heard within ninety (90) days. The rule is crafted to address motions that, for the most part, are scheduled on the court's uniform motion calendar. Should the motion need judicial time greater than that permitted for on uniform motion calendar and should the court be unable to schedule the hearing within ninety days, the parties simply need to obtain an order extending or excusing the ninety (90) day period. This rule would thus complement Rule of Judicial Administration 2.545 and the time standards set forth in Rule of Judicial Administration 2.250 in that motions will be timely brought to the court for resolution.

I appreciate the Committee taking the time to review the rules and I am available to answer any questions the Committee may have.

Sincerely,

Jeffrey J. Colbath
Chief Judge

Enclosed: Proposed Revised Local Rule 4, Current Local Rule 4, Proposed Local Rule 9, Comments

Amy Borman

From: Amy Borman
Sent: Friday, January 30, 2015 3:26 PM
To: 'Thomas Ice'; 'Greg Zele'; 'proman@hnrwlaw.com'; 'Abigail Beebe'; 'Culver (Skip) Smith III'
Cc: 'Thomas Hall'
Subject: local rules submission
Attachments: benton letter.pdf

Thank you all for providing input on the proposed amendment to Local Rule 4 and Proposed Local Rule 9. Your comments helped craft revisions to the proposed rules. Attached please find the local rule submission that was just sent to the Local Rules Advisory Committee.

Amy

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
JEFFREY J. COLBATH
CHIEF JUDGE

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561) 355-7845

January 30, 2015

The Honorable Robert T. Benton II
Chair, Supreme Court Local Rules Advisory Committee
First District Court of Appeal
Tallahassee, Florida 32399-1850
bentonb@1dca.org

Re: Submission of Proposed Amendment to Local Rule 4
Submission of Proposed Local Rule 9

Dear Judge Benton:

The Fifteenth Judicial Circuit is submitting for consideration two local rules in accordance with Florida Rule of Judicial Administration 2.215(e). The first is an Amendment to Local Rule 4 (the original rule was approved by the Florida Supreme Court in 1991) and the second is a new Proposed Local Rule 9. The current Local Rule 4, the Proposed Amendment to Local Rule 4 in legislative format, and the Proposed Local Rule 9 are attached for your review. Also attached are comments received from the members of the local bar association after publication of the rules as approved by greater than a majority of the judges in the Fifteenth Judicial Circuit in accordance with Florida Rule of Judicial Administration 2.215(e)(1). After input from the members of the local bar, revisions were made to the distributed versions of the proposed rules. These revised versions, which are attached, were approved by more than a majority of the judges. Due to time constrictions, the revised versions have not been circulated to members of the local bar for comment.

AMENDMENT TO LOCAL RULE 4

Paragraph 2 of Local Rule 4 currently requires an attorney prior to setting a motion on the Uniform Motion Calendar to "attempt to resolve the matter" and requires a certification of the "good faith attempt to resolve." Currently there is no definition of "attempt to resolve the matter" and further there is no uniform procedure to certify the "good faith attempt to resolve." Members of the local bar and *pro se* litigants are loosely defining "attempt to resolve" and perfunctorily inserting the "good faith certification" into motions and notices of hearing regardless of whether the parties have actually spoken about the issues. This is evident by the number of matters resolved outside the doors of the courtroom once the attorneys and *pro se litigants* actually communicate in person with one another.

The Fifteenth Judicial Circuit has seen a decrease in professionalism and civility amongst attorneys with neither side reaching out to resolve matters resulting in the unnecessary expenditure of limited judicial resources.[1] The proposed amendments to Local Rule 4 define "good faith attempt" and require attorneys and *pro se* litigants to make two attempts to speak about the matter prior to setting the hearing. To ensure that the certification is not simply an obligatory "add on" to the Notice of Hearing, a cover sheet is required that lists the attempts made. These proposed amendments incorporate procedures utilized by both the Ninth Judicial Circuit (*see* paragraph 6 of Administrative Order 2012-03 - Administrative Order Establishing Ninth Judicial Circuit Court Circuit Civil Court Guidelines) and the United States District Court for the Southern District of Florida (*see* local rule 7.1(a)(3)).

In the Fifteenth Judicial Circuit there is a common and growing problem of attorneys not speaking to each other prior to scheduling a hearing and prior to attending a hearing. Indeed, more than a majority of the judges in the Fifteenth Judicial Circuit believe that requiring attorneys to engage in a substantive conversation prior to a hearing, and not simply sending an e-mail, will help resolve matters. With the implementation of this rule, the number of unnecessary hearings set on Uniform Motion Calendar should decrease, allowing greater access to the court's limited hearing time. Thus, the purpose of the proposed amendment to Local Rule 4 is to foster actual communication between attorneys and *pro se* litigants so that there can be a narrowing of the issues to be heard by the judiciary resulting in more efficient administration of the courts.

The judges are also seeking to bring the Local Rule 4 into current practice. Courtroom deputies, rather than bailiffs, are now in the courtroom. Paper files are no longer delivered to the judges and copies of defaults and final judgments no longer need to be sent to the Clerk of Court prior to a hearing. Accordingly, updates were made to outdated practices currently included in Local Rule 4.

PROPOSED LOCAL RULE 9

Florida Rule of Judicial Administration 2.545 provides that judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. Florida Rule of Judicial Administration 2.515 provides that a signature of an attorney shall constitute a certificate by the attorney that to the best of the attorney's knowledge, information and belief there is good grounds to support the court filing and that the court filing is not interposed for delay. Florida Rule of Judicial Administration 2.250 provides that non-jury civil cases should take twelve (12) months from the filing to final disposition and that jury trial cases should take eighteen (18) months from the filing to final disposition. With these Rules of Judicial Administration as the cornerstone in litigation, a party should be timely bringing filed motions to the court's attention so that they may ruled upon in order for the case to judiciously move through the legal system.

Proposed Local Rule 9 follows on the path of cases such as *Bridier v. Burns*, 200 So. 355, 356 (Fla. 1941), *Weatherford v. Weatherford*, 91 So. 2d 179, 180 (Fla. 1956) and *State Dept. of*

[1] The Supreme Court of Florida is also addressing the issue of the increased lack of civility amongst attorneys with the recent amendment to the Oath of Admission for New Attorneys and mandating Professionalism Panels in each judicial circuit.

Revenue v. Kiedaisch, 670 So. 2d 1058 (Fla. 2d DCA 1996) where the courts have found that matters not brought to the attention of the court are abandoned. In *Bridier*, the court found that it was reasonable to assume that the appeals had been abandoned by counsel because they had not been brought to the court's attention, briefs had not been filed nor had a request for oral argument been made; in *Weatherford* the court found that assignments of error not argued are considered abandoned; and in *Kiedaisch* the court concluded that a supplemental petition for modification of final judgment was abandoned when party never set the petition for hearing.

A large majority of cases currently pending in the Fifteenth Judicial Circuit are not completed within the time standards set forth in the Rules of Judicial Administration. As of January 2015, there are on average 1200-1300 pending cases and 100-150 reopened cases in each of the eleven circuit civil divisions. In the one foreclosure division, there are approximately 7,800 pending cases and just over 2,100 reopened cases. In the eight county civil divisions there are on average 3,000 pending cases and 200 reopened cases. The volume of cases, along with the dearth of case managers, creates an environment where the judiciary cannot actively manage its docket. Thus, parties are able to file motions, avoid setting them for hearing, and have cases remain dormant until either the defendant or the court files a Notice of Failure to Prosecute pursuant to Florida Rule of Judicial Administration 1.420(e). Over the past five years, many more Notices of Failure to Prosecute have been filed by the judiciary than by the defendants. This dilatory practice is not what is contemplated by the Rules of Court.

Proposed Local Rule 9 would effectively give the court the authority to withdraw from consideration certain specified motions that are not set and heard within ninety (90) days. The rule is crafted to address motions that, for the most part, are scheduled on the court's uniform motion calendar. Should the motion need judicial time greater than that permitted for on uniform motion calendar and should the court be unable to schedule the hearing within ninety days, the parties simply need to obtain an order extending or excusing the ninety (90) day period. This rule would thus complement Rule of Judicial Administration 2.545 and the time standards set forth in Rule of Judicial Administration 2.250 in that motions will be timely brought to the court for resolution.

I appreciate the Committee taking the time to review the rules and I am available to answer any questions the Committee may have.

Sincerely,

Jeffrey J. Colbath
Chief Judge

Enclosed: Proposed Revised Local Rule 4, Current Local Rule 4, Proposed Local Rule 9, Comments

Amy Borman

From: Amy Borman
Sent: Friday, January 30, 2015 3:42 PM
To: Amy Borman; Thomas Ice; Greg Zele; proman@hnrwlaw.com; Abigail Beebe; Culver (Skip) Smith III
Cc: Thomas Hall
Subject: RE: local rules submission
Attachments: Supreme Court Local Rules Advisory Committee Submission.pdf

I apologize - I realized I did not send the complete package. Please see attached.

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

From: Amy Borman
Sent: Friday, January 30, 2015 3:26 PM
To: 'Thomas Ice'; 'Greg Zele'; 'proman@hnrwlaw.com'; 'Abigail Beebe'; 'Culver (Skip) Smith III'
Cc: 'Thomas Hall'
Subject: local rules submission

Thank you all for providing input on the proposed amendment to Local Rule 4 and Proposed Local Rule 9. Your comments helped craft revisions to the proposed rules. Attached please find the local rule submission that was just sent to the Local Rules Advisory Committee.

Amy

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
JEFFREY J. COLBATH
CHIEF JUDGE

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561) 355-7845

January 30, 2015

The Honorable Robert T. Benton II
Chair, Supreme Court Local Rules Advisory Committee
First District Court of Appeal
Tallahassee, Florida 32399-1850
bentonb@1dca.org

Re: Submission of Proposed Amendment to Local Rule 4
Submission of Proposed Local Rule 9

Dear Judge Benton:

The Fifteenth Judicial Circuit is submitting for consideration two local rules in accordance with Florida Rule of Judicial Administration 2.215(e). The first is an Amendment to Local Rule 4 (the original rule was approved by the Florida Supreme Court in 1991) and the second is a new Proposed Local Rule 9. The current Local Rule 4, the Proposed Amendment to Local Rule 4 in legislative format, and the Proposed Local Rule 9 are attached for your review. Also attached are comments received from the members of the local bar association after publication of the rules as approved by greater than a majority of the judges in the Fifteenth Judicial Circuit in accordance with Florida Rule of Judicial Administration 2.215(e)(1). After input from the members of the local bar, revisions were made to the distributed versions of the proposed rules. These revised versions, which are attached, were approved by more than a majority of the judges. Due to time constrictions, the revised versions have not been circulated to members of the local bar for comment.

AMENDMENT TO LOCAL RULE 4

Paragraph 2 of Local Rule 4 currently requires an attorney prior to setting a motion on the Uniform Motion Calendar to "attempt to resolve the matter" and requires a certification of the "good faith attempt to resolve." Currently there is no definition of "attempt to resolve the matter" and further there is no uniform procedure to certify the "good faith attempt to resolve." Members of the local bar and *pro se* litigants are loosely defining "attempt to resolve" and perfunctorily inserting the "good faith certification" into motions and notices of hearing regardless of whether the parties have actually spoken about the issues. This is evident by the number of matters resolved outside the doors of the courtroom once the attorneys and *pro se litigants* actually communicate in person with one another.

The Fifteenth Judicial Circuit has seen a decrease in professionalism and civility amongst attorneys with neither side reaching out to resolve matters resulting in the unnecessary expenditure of limited judicial resources.[1] The proposed amendments to Local Rule 4 define "good faith attempt" and require attorneys and *pro se* litigants to make two attempts to speak about the matter prior to setting the hearing. To ensure that the certification is not simply an obligatory "add on" to the Notice of Hearing, a cover sheet is required that lists the attempts made. These proposed amendments incorporate procedures utilized by both the Ninth Judicial Circuit (*see* paragraph 6 of Administrative Order 2012-03 - Administrative Order Establishing Ninth Judicial Circuit Court Circuit Civil Court Guidelines) and the United States District Court for the Southern District of Florida (*see* local rule 7.1(a)(3)).

In the Fifteenth Judicial Circuit there is a common and growing problem of attorneys not speaking to each other prior to scheduling a hearing and prior to attending a hearing. Indeed, more than a majority of the judges in the Fifteenth Judicial Circuit believe that requiring attorneys to engage in a substantive conversation prior to a hearing, and not simply sending an e-mail, will help resolve matters. With the implementation of this rule, the number of unnecessary hearings set on Uniform Motion Calendar should decrease, allowing greater access to the court's limited hearing time. Thus, the purpose of the proposed amendment to Local Rule 4 is to foster actual communication between attorneys and *pro se* litigants so that there can be a narrowing of the issues to be heard by the judiciary resulting in more efficient administration of the courts.

The judges are also seeking to bring the Local Rule 4 into current practice. Courtroom deputies, rather than bailiffs, are now in the courtroom. Paper files are no longer delivered to the judges and copies of defaults and final judgments no longer need to be sent to the Clerk of Court prior to a hearing. Accordingly, updates were made to outdated practices currently included in Local Rule 4.

PROPOSED LOCAL RULE 9

Florida Rule of Judicial Administration 2.545 provides that judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. Florida Rule of Judicial Administration 2.515 provides that a signature of an attorney shall constitute a certificate by the attorney that to the best of the attorney's knowledge, information and belief there is good grounds to support the court filing and that the court filing is not interposed for delay. Florida Rule of Judicial Administration 2.250 provides that non-jury civil cases should take twelve (12) months from the filing to final disposition and that jury trial cases should take eighteen (18) months from the filing to final disposition. With these Rules of Judicial Administration as the cornerstone in litigation, a party should be timely bringing filed motions to the court's attention so that they may ruled upon in order for the case to judiciously move through the legal system.

Proposed Local Rule 9 follows on the path of cases such as *Bridier v. Burns*, 200 So. 355, 356 (Fla. 1941), *Weatherford v. Weatherford*, 91 So. 2d 179, 180 (Fla. 1956) and *State Dept. of*

[1] The Supreme Court of Florida is also addressing the issue of the increased lack of civility amongst attorneys with the recent amendment to the Oath of Admission for New Attorneys and mandating Professionalism Panels in each judicial circuit.

Revenue v. Kiedaisch, 670 So. 2d 1058 (Fla. 2d DCA 1996) where the courts have found that matters not brought to the attention of the court are abandoned. In *Bridier*, the court found that it was reasonable to assume that the appeals had been abandoned by counsel because they had not been brought to the court's attention, briefs had not been filed nor had a request for oral argument been made; in *Weatherford* the court found that assignments of error not argued are considered abandoned; and in *Kiedaisch* the court concluded that a supplemental petition for modification of final judgment was abandoned when party never set the petition for hearing.

A large majority of cases currently pending in the Fifteenth Judicial Circuit are not completed within the time standards set forth in the Rules of Judicial Administration. As of January 2015, there are on average 1200-1300 pending cases and 100-150 reopened cases in each of the eleven circuit civil divisions. In the one foreclosure division, there are approximately 7,800 pending cases and just over 2,100 reopened cases. In the eight county civil divisions there are on average 3,000 pending cases and 200 reopened cases. The volume of cases, along with the dearth of case managers, creates an environment where the judiciary cannot actively manage its docket. Thus, parties are able to file motions, avoid setting them for hearing, and have cases remain dormant until either the defendant or the court files a Notice of Failure to Prosecute pursuant to Florida Rule of Judicial Administration 1.420(e). Over the past five years, many more Notices of Failure to Prosecute have been filed by the judiciary than by the defendants. This dilatory practice is not what is contemplated by the Rules of Court.

Proposed Local Rule 9 would effectively give the court the authority to withdraw from consideration certain specified motions that are not set and heard within ninety (90) days. The rule is crafted to address motions that, for the most part, are scheduled on the court's uniform motion calendar. Should the motion need judicial time greater than that permitted for on uniform motion calendar and should the court be unable to schedule the hearing within ninety days, the parties simply need to obtain an order extending or excusing the ninety (90) day period. This rule would thus complement Rule of Judicial Administration 2.545 and the time standards set forth in Rule of Judicial Administration 2.250 in that motions will be timely brought to the court for resolution.

I appreciate the Committee taking the time to review the rules and I am available to answer any questions the Committee may have.

Sincerely,

Jeffrey J. Colbath
Chief Judge

Enclosed: Proposed Revised Local Rule 4, Current Local Rule 4, Proposed Local Rule 9, Comments

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4

IN RE: UNIFORM MOTION CALENDAR
. . . . . :

Pursuant to the authority conferred by rule 2.050(b), Fla.R.Jud.Admin., it is

ORDERED as follows:

(1) Circuit judges in each division shall conduct a uniform motion calendar on days and at a time specified by the judges of the division.

(2) Prior to setting a matter on the motion calendar, the party or attorney noticing the motion shall attempt to resolve the matter and shall certify the good faith attempt to resolve.

(3) Hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

(4) Unless the moving party makes special arrangements with the clerk's office, the court file will not be present in the hearing room during the uniform motion calendar. Therefore, the moving party must furnish the court a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all documents, pleadings and case authority which they wish the Court to consider.

(5) SCHEDULING -- Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall notice opposing counsel pursuant to the applicable rules of civil procedure. Opposing counsel shall

be given reasonable notice. In default and final judgment matters only, a copy of the notice of hearing and a copy of the motion shall be delivered to the clerk, marked "Attention, Uniform Motion Calendar," at least four business days before the hearing. In this instance, the clerk shall deliver the file to the Court prior to the hearing.

(6) The bailiff shall call cases for hearing in the order in which counsel signed up on the sheet posted outside the hearing room. Failure of any party to appear at the time set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this 31st day of January, 1991.

/s/
Daniel T. K. Hurley
Chief Judge

Approved by the Supreme Court of Florida, April 23, 1991.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4

IN RE: UNIFORM MOTION CALENDAR
_____:

Pursuant to the authority conferred by rule 2.~~050(b)~~215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

1. Circuit judges in each division shall conduct a uniform motion calendar on days and at a time specified by the judges of the division.

2. Prior to setting a matter on the uniform motion calendar, the ~~party or~~ attorney or *pro se* litigant noticing the motion shall attempt to resolve the matter and shall certify the good faith attempt to resolve.

3. For the Circuit Civil, County Civil and Family (domestic relations) divisions the following apply:

   a. The term "attempt to resolve the matter" in paragraph 2 requires counsel or a *pro se* litigant with full authority to resolve the matter to confer before serving the Notice of Hearing on the motion to be set on the Uniform Motion Calendar.

   b. The term "confer" in paragraph 3a. requires that the parties' counsel or a *pro se* litigant engage in at least one substantive conversation, either in person or by telephone ("Conference"), in a good-faith effort to resolve the motion entirely (thus not requiring a hearing) or otherwise narrow the issues raised in the motion so as to narrow the hearing.

   c. Coordination of Conference and potential hearing date:

      1). In an effort to coordinate the Conference, counsel or a *pro se* litigant noticing the hearing ("Notice Counsel") may send an email or letter to, or leave a detailed message or voice-mail with opposing counsel (including opposing counsel's staff) or *pro se* litigant ("Responding Counsel") that proposes the timing of the Conference and the issues to be discussed. At the same time, and consistent with the Standards of Professional Courtesy and Civility approved by the judges of the Fifteenth Judicial Circuit,

Notice Counsel shall propose a minimum of three (3) dates to be used in the event a hearing becomes necessary.

2). Responding Counsel must respond promptly to Notice Counsel's communications about coordinating the Conference and scheduling the hearing including acceptance of one of the three (3) proposed hearing dates or proposing three (3) alternate dates falling within the same or similar time frame.

3). After two (2) good-faith attempts to coordinate the Conference and the hearing date, including at least one attempt by phone or in person, Notice Counsel may serve a notice of hearing on the motion if Responding Counsel has not responded. Notice Counsel may set the hearing on a mutually agreed date or, if Responding Counsel has not responded to Notice Counsel's attempts to coordinate the Conference or a hearing, on any one of the three dates that Notice Counsel previously proposed.

d. The term "certify the good faith attempt to resolve" requires Notice Counsel to include a Certificate of Compliance (sample form attached hereto as Exhibit "A") as a separate cover sheet attached to the Uniform Motion Calendar Notice of Hearing indicating that the Conference has occurred or that the good faith attempt has been made.

e. If the Conference has not occurred then,

1). Notice Counsel must identify in the Certificate of Compliance the dates and approximate times on which Notice Counsel attempted to contact Responding Counsel.

2). The Court may review the Certificate of Compliance to determine if the good faith attempts to confer were made.

3). The Court may review the Certificate of Compliance to determine whether Responding Counsel's failure to respond to Notice Counsel's inquiries or communications was reasonable.

f. The Clerk of Court shall identify in the docket a "notice of hearing" under that title despite that a Certificate of Compliance is included on the front page of the notice of hearing.

g. In the event that, despite compliance with this Order, the issue or issues in the motion remain unresolved, both parties should continue to make a good faith effort to meet and confer prior to the hearing date, to narrow or resolve the issues in the motion.

h. Notice Counsel shall ensure that the Court and the Court's Judicial Assistant are aware of any narrowing of the issues or other resolution regarding the motion as a result of the conference by referencing same in the space indicated on the Certificate of Compliance.

i. The Court may award sanctions for Notice Counsel's failure to attempt to confer in good faith or for Responding Counsel's failure to respond promptly to Notice Counsel's attempts to confer.

4. Hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

5. ~~Unless the moving party makes special arrangements with the clerk's office, the court file will not be present in the hearing room during the uniform motion calendar. Therefore,~~ The moving party must furnish the court a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all documents, pleadings and case authority which they wish the Court to consider.

6. SCHEDULING -- Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall notice opposing counsel pursuant to the applicable rules of civil procedure. Opposing counsel shall be given reasonable notice. ~~In default and final judgment matters only, a copy of the notice of hearing and a copy of the motion shall be delivered to the clerk, marked "Attention, Uniform Motion Calendar," at least four business days before the hearing. In this instance, the clerk shall deliver the file to the Court prior to the hearing.~~

7. The courtroom deputy ~~bailiff~~ shall call cases for hearing in the order in which counsel signed up on the sheet posted outside the hearing room. Failure of any party to appear at the time set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of_____, 2015.

_____

Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

(EXHIBIT A)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO:

Plaintiff,

vs.

Defendant.
_____/

CERTIFICATE OF COMPLIANCE

Option 1

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below had a substantive conversation in person or by telephone with opposing counsel in a good faith effort to resolve this motion before the motion was noticed for hearing, but the parties were unable to reach an agreement, other than as to: [specify any issues resolved]_____
_____

/S/
Counsel for party who noticed matter for hearing.

OR

Option 2

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below attempted in good faith to contact opposing counsel in writing, by telephone, or in person with at least one attempt by telephone or in person as follows:

1. (Date) _____ at (approximate time) _____; and

2. (Date) _____ at (approximate time) _____

to discuss resolution of this motion without a hearing and I or the lawyer in my firm was unable to speak with opposing counsel.

/S/
Counsel for party who noticed matter for hearing.

Dated:

Respectfully submitted,

_____

, Esquire
Florida Bar No.
Address
Telephone:
Facsimile:
E-mail:

Attorneys for

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing _____ was served via electronic mail this ____ day of _____, 20__, to all parties listed on the Service List.

_____

, Esquire

SERVICE LIST

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 9

IN RE: TIMELY SETTING OF HEARINGS
_____:

Pursuant to the authority conferred by rule 2.215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

A party filing a motion in the circuit civil, county civil, family (domestic relations section), foreclosure and probate & guardianship divisions of the court, must schedule the motion for hearing and be heard on the motion within ninety (90) days of the motion's filing. Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned, thus withdrawn by the filing party, on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained before the ninety-first (91) day or the hearing is rescheduled by order of court. A party is not precluded from re-filing a motion deemed abandoned by this rule. This rule does not apply to hearings on motions for summary judgment and motions for rehearing or reconsideration filed pursuant to Local Rule 6 nor does it apply to hearings that will include testimonial evidence except for hearings on motions to quash service of process. This rule will apply to motions filed on or after INSERT DATE ORDER IS SIGNED.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of January, 2015.

_____
Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

Amy Borman

From: Paul Roman [proman@hnrwlaw.com]
Sent: Friday, January 16, 2015 10:24 AM
To: Amy Borman
Subject: Question on Proposed Amendment to Local Rule 4

In the second line of paragraph 3c.1, is the phrase "serving the hearing" a litigation term of art, or should it be "seeking the hearing" or some other phrase? As you can probably tell, I am not a litigator.

Paul E. Roman
Hankins North Wood Roman, Werner & L...
1800 North Military Trail - Suite 160
Boca Raton, Florida 33431-6386
561-862-4139
Fax:862-4966

Amy Borman

From: Abigail Beebe [Abigail@abeebelaw.com]
Sent: Monday, January 26, 2015 5:01 PM
To: Amy Borman
Subject: proposed local rules

Chief Judge and Amy Borman,

As chair of the UFC committee for the palm beach county bar, I write to inform you that several members have commented on the local proposed rules. While I know some have submitted under separate and individual cover, I would like to state some issues

It is suggested that is these stringent coordinate rules are imposed, it should be in writing.
Most complaints are saying this is micromanagement of professionals

Abigail Beebe, Esquire
Law Office of Abigail Beebe, P.A.
P.O. Box 4467
West Palm Beach, FL 33402
Telephone: 561.370.3691
E-mail: abigail@abeebelaw.com
Website: www.abeebelaw.com

Palm Beach County
Justice Association
PO BOX 3515
WEST PALM BEACH, FL 33402
561.790.5823 (P)
561.790.5886 (F)
WWW.PBCJA.ORG

January 26, 2015

The Hon. Jeffrey Colbath, Chief Judge
c/o Amy Borman, General Counsel
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401

Via E-Mail Only: ABorman@pbcgov.org

RE: Proposed Changes to Local Rule 4

Your Honor:

I am writing to you on behalf of the Palm Beach County Justice Association and our nearly 400 members to express our concerns regarding the proposed changes to Local Rule Number 4. First and foremost, we fully agree that the parties should make a reasonable effort to resolve issues set for a UMC prior to the matter being set for hearing. However, we believe the burdens imposed by the proposed revised Rule 4 are onerous and burdensome and will disproportionately negatively affect plaintiffs in personal injury cases.

Specifically, the need to make two efforts to contact defense counsel will only contribute to unnecessary delays in setting matters for hearing. To that end, we believe that one effort - be it a substantive email, phone call, or in person meeting - should be sufficient. If the issue isn't resolved within 24 hours of the initial effort we believe the party should be able to set it for hearing. Frankly, if a defense attorney is not inclined to respond to our initial email, letter or phone call, it is doubtful that they will respond to a second email, letter or phone call.

In addition, the need to clear dates with defense counsel prior to setting a UMC hearing will result in further unnecessary delay in our cases. We believe that this scheduling provision defeats the purpose of a UMC hearing which is the quick resolution of relatively smaller issues. As the Rule is proposed, all defense counsel has to do is say that they are not available on any date chosen by the Plaintiff's counsel or that the first date they have available is weeks and weeks

down the road (this happens all the time when we try to schedule depositions). Nothing in the proposed Rule deals with, prevents, or otherwise addresses that scenario.

Further, how are we to prove that we left a voicemail for defense counsel? Unfortunately it is not as uncommon as you might think for defense attorneys claim they never received a phone call. What proof can we offer other than our word that we did call? At that point UMC hearings could easily devolve into a he said/she said over whether or not two good faith efforts were made thereby complicating matters rather than simplifying them.

Again, we fully agree that an effort should be made to resolve UMC hearings prior to the hearing and we are all in favor of efforts to require defense counsel to work with us to resolve issues prior to running to the courthouse. However, we are extremely concerned that the proposed Rule 4 changes potentially create more problems than they eliminate.

I would welcome the opportunity to discuss our concerns in more detail with you. Thank you for your consideration herein.

Very truly yours,

Gregory T. Zele
President
Palm Beach County Justice Association

Amy Borman

From: Culver (Skip) Smith III [csmith@culversmithlaw.com]
Sent: Monday, January 26, 2015 10:56 AM
To: Amy Borman
Subject: Proposed Local Rule 9

Amy:

I respectfully offer the following observations/suggestions re proposed Local Rule 9:

1. The rule provides that a motion will be "deemed abandoned" if not heard within ninety days. Will some record action reflect that? E.g., will the clerk file a document to that effect? There should be some record disposition of the motion. It would be better to have the clerk enter an order *denying* the motion "on order of the court."

2. Should not "granted" in the third sentence be "required"?

3. The last sentence excepts hearings that require "live testimonial evidence." Does that include hearings in which testimony is presented entirely through the reading of excerpts from depositions or the playing of videotape depositions? Perhaps "live" should be deleted. Also, I wonder about the use of "require" rather then, say, "will include." There may be some debate about whether a hearing requires testimonial evidence.

I also may have some comments on the proposed amendments to Local Rule 4. Could you please send me a copy of the "Certificate of Compliance" (Exhibit "A")? It was not included in the link provided by the bar association's e-mail. Thanks much.

Skip

D. Culver Smith III
CULVER SMITH III, P.A.
500 South Australian Boulevard, Suite 600
West Palm Beach, FL 33401
Tel.: 561.598.6800
Cell: 561.301.3800
csmith@culversmithlaw.com
www.culversmithlaw.com

Ice Legal P.A.

1015 N. State Rd. 7 ~ Suite C
Royal Palm Beach, FL 33411
561.729.0530
www.icelegal.com

FIRM ATTORNEYS:
THOMAS E. ICE
AMANDA L. LUNDERGAN
STEVEN BROTMAN
JAMES FLANAGAN
JAMES R. (RANDY) ACKLEY
CANDACE GIPSON
JACQUELINE LUKER
ALI L. HANSEN
JOSHUA S. MILLER
JOSE FUNCIA

*OF COUNSEL

January 26, 2015

Amy Borman, General Counsel
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
Via email: ABorman@pbcgov.org

Re: Proposed Local Rule 9

Dear Ms. Borman,

Please allow this letter to serve as my comments to the proposed Local Rule 9:

- The proposal contains no statement as to what local conditions in the 15th Judicial Circuit would justify this rule. Nor does it seem that one could be articulated, much less proven.

- The period for comments (ten days which included a three day holiday weekend) is too short to allow for all interested persons to be heard.

- The period for reviewing the comments (four days) is too short to allow for serious contemplation of the problems raised. Because the rule must be approved by a majority of judges, for their approval to be meaningful, the comments need to be circulated among all the judges before the proposal is sent to the Supreme Court.

- The proposed rule is invalid because it conflicts with Court rules of procedure because it creates time limits for a party to exercise a right where the rules of procedure have no such limits. *See Bathurst v.* Turner, 533 So. 2d 939, 941 (Fla. 3d DCA 1988).

- The claimed rationale for the abandonment of unheard motions has always been that the foreclosure crisis called for unprecedented and extraordinary measures to help clear cases. The proposal does not articulate any reason for taking extraordinary measures in non-foreclosure cases, or for that matter, provide any legal basis for the notion that a "crisis" would justify the adoption of local rules inconsistent with court rules.

- When the Administrative Order that created the abandonment rule for foreclosure cases was circulated among the judges, Judge Booras asked whether the abandonment rule could be adopted "across the board rather [than] just AW [the foreclosure division]." In other words, Judge Booras proposed that the Circuit adopt the very rule now under

consideration. The Chief Judge responded. "Probably not. It is very case manager intensive. We have the[m] in AW due to the extra foreclosure funding." The Chief Judge, therefore, was against the very rule the Fifteenth Circuit is now proposing because it was financially impractical to make use of the rule. We are unaware of any additional funding that would make the abandonment rule financially practical in other divisions—or for that matter, in the foreclosure division after June 30th.

- The proposal has no grandfathering language, such that its passage would immediately result in the abandonment of potentially thousands of motions. This will be exacerbated by the limited distribution of this proposal such that few attorneys will be aware of the new requirement before it is implemented.

- The proposed rule actually provides a disincentive for the setting of an adverse party's motion and encourages the avoidance of determinations on the merits. As already demonstrated by the Administrative Orders of both the Eleventh and Fifteenth Circuits, a party—such as a plaintiff who already has the obligation and incentive for moving the case forward—will not set a hearing on an adverse party's motion that the nonmovant believes has merit. Instead, the nonmovant will wait the required "abandonment" period and file a new motion to declare the opposition's motion abandoned. Accordingly, the proposed rule encourages gamesmanship while, at the same time, actually increasing the workload for the court and the parties.

- The proposed rule will create confusion and a morass of collateral litigation because its operation will cause problems with existing rules and potential unintended consequences that the Court may not have considered, for example:

    - Confusion in the computation of appellate filing deadlines:

        - Abandonment of 1.530 motions. When will the appeal time begin to run—thirty days from the 90th day even though there is no order in the file? (Local rule cannot conflict with the rules of appellate procedure.) If the abandoned motion is treated as though it were never filed (which will be the position of non-movants—and has been their position under Administrative Order 3/314-4.14), then the appeal time will have expired. For jury trials, will movants have waived their sufficiency of the evidence arguments? (see problems with ambiguous "leave of court to re-file" language below)

        - Abandonment of motions to quash. When will the time for filing non-final appeal begin to run? Without a written order in the case, how will it be appealed?

- Confusion as to whether motions that have a specific time period for filling are timely:
  - May "abandoned" 1.530 motions be refiled although more than fifteen days after the judgment or verdict?
  - May "abandoned" 1.540(1). (2) or (3) motions be refiled more than a year after the judgment?
  - May "abandoned" 1.525 motions for costs and attorneys' fees be refiled more than thirty days after judgment?
- Confusion in the computation of deadlines for answering a complaint or the entry of defaults:
  - Abandonment of pre-answer motions. When will the time for answering begin to run? Will the defendant be subject to a default on the 91st day?
  - Will a clerk be able to enter a default even though the defendant has filed a "paper." because the paper will have been abandoned?
- Confusion in the computation of discovery deadlines:
  - Abandonment of motions for extension of time for discovery. Will the movant be subject to an *ex parte* motion to compel on the 91st day? Will all objections to the discovery have been waived because the response is now overdue?

The sentence* "Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained" *is ambiguous and allows the proposed rule to be selectively enforced.

  - Must leave be obtained before the ninety days?
  - What standard will apply to the granting of leave? What standard of review will the decision be subject to?
  - With no objective standards, the proposed rule may be selectively enforced vis-à-vis the divisions or vis-à-vis the parties. E.g., can a

division judge enter a standing order automatically and indefinitely extending the 90 day period?

The sentence "Leave of court is granted for the party to re-file the motion" is hopelessly ambiguous.

- Does this mean "a motion for leave of court shall be granted" such that a motion for leave of court must be filed and granted or is this intended to be automatic permission for refiling without a motion?
- Does it matter whether the re-filing is before or after the 90 days?
- Can the same motion be re-filed to extend the time? For example, can a motion for extension of time to respond to discovery be routinely filed every 89 days?
- Does "leave of court" mean that the abandonment is without prejudice to time-dependent motions such as pre-answer motions or post-trial motions—e.g. does this change the rule that a 1.530 motion must be filed in fifteen days or that a 1.540 motion must be filed in a year?

- If motions are amended, does that restart the 90 day clock as to all the issues, or do the new issues have their own 90 day deadline—i.e. will only the original issues be abandoned at 90 days?
- What determines whether a motion requires an evidentiary hearing such that it is not subject to the proposed rule? Often this cannot be determined by the movant until a response is filed, or if no response is filed, until the day of hearing. Can one party stipulate to all the facts and thereby claim that the hearing was not evidentiary after all, such that the motion is declared abandoned?
- Abandonment of motions not normally set for hearing:
  - If clerk enters default more than ninety days after filing of motion, is the defendant defaulted or was the motion abandoned?
  - Motions for reconsideration cannot be set for hearing (Local Rule 6). If the judge takes no action for 90 days, is the motion abandoned? Which Local Rule takes precedence?
- Abandonment of motions through no fault of the parties will actually increase, rather than decrease, the work load of the court and the parties:

- Often hearings do not go forward for various unpredictable reasons, e.g. it did not make the court's calendar, a court reporter does not appear, an attorney's car breaks down, or (in the foreclosure division) the court simply refuses to hear noticed motions at a Court Management Conference that do not pertain to getting the case at issue. Either the non-heard motion will be declared abandoned or an additional motion must be filed and an additional hearing set to obtain leave of court to extend the ninety-day deadline.

- Lastly, the proposed rule must be considered in conjunction with the proposed changes in Local Rule 4 which will cause delays in in setting hearings while busy attorneys attempt to coordinate calendars for face-to-face or telephonic meetings, especially in cases with multiple parties. Proposed Local Rule 9 creates the opportunity for gamesmanship and "gotcha" litigation by nonmovants when movants attempt to comply with new Local Rule 4 requirements.

If you or anyone considering the proposal has any additional questions, please do not hesitate to contact me. I will be happy to provide further information and will make myself available to discuss these issues.

Sincerely,

Thomas E. Ice

Amy Borman

From: Amy Borman
Sent: Friday, January 30, 2015 3:42 PM
To: Amy Borman; Michael J. Gelfand
Subject: RE: local rules submission
Attachments: Supreme Court Local Rules Advisory Committee Submission.pdf

Sorry - see attached.

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

From: Amy Borman
Sent: Friday, January 30, 2015 3:21 PM
To: 'Michael J. Gelfand'
Subject: local rules submission

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
JEFFREY J. COLBATH
CHIEF JUDGE

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561) 355-7845

January 30, 2015

The Honorable Robert T. Benton II
Chair, Supreme Court Local Rules Advisory Committee
First District Court of Appeal
Tallahassee, Florida 32399-1850
bentonb@1dca.org

Re: Submission of Proposed Amendment to Local Rule 4
Submission of Proposed Local Rule 9

Dear Judge Benton:

The Fifteenth Judicial Circuit is submitting for consideration two local rules in accordance with Florida Rule of Judicial Administration 2.215(e). The first is an Amendment to Local Rule 4 (the original rule was approved by the Florida Supreme Court in 1991) and the second is a new Proposed Local Rule 9. The current Local Rule 4, the Proposed Amendment to Local Rule 4 in legislative format, and the Proposed Local Rule 9 are attached for your review. Also attached are comments received from the members of the local bar association after publication of the rules as approved by greater than a majority of the judges in the Fifteenth Judicial Circuit in accordance with Florida Rule of Judicial Administration 2.215(e)(1). After input from the members of the local bar, revisions were made to the distributed versions of the proposed rules. These revised versions, which are attached, were approved by more than a majority of the judges. Due to time constrictions, the revised versions have not been circulated to members of the local bar for comment.

AMENDMENT TO LOCAL RULE 4

Paragraph 2 of Local Rule 4 currently requires an attorney prior to setting a motion on the Uniform Motion Calendar to "attempt to resolve the matter" and requires a certification of the "good faith attempt to resolve." Currently there is no definition of "attempt to resolve the matter" and further there is no uniform procedure to certify the "good faith attempt to resolve." Members of the local bar and *pro se* litigants are loosely defining "attempt to resolve" and perfunctorily inserting the "good faith certification" into motions and notices of hearing regardless of whether the parties have actually spoken about the issues. This is evident by the number of matters resolved outside the doors of the courtroom once the attorneys and *pro se litigants* actually communicate in person with one another.

The Fifteenth Judicial Circuit has seen a decrease in professionalism and civility amongst attorneys with neither side reaching out to resolve matters resulting in the unnecessary expenditure of limited judicial resources.[1] The proposed amendments to Local Rule 4 define "good faith attempt" and require attorneys and *pro se* litigants to make two attempts to speak about the matter prior to setting the hearing. To ensure that the certification is not simply an obligatory "add on" to the Notice of Hearing, a cover sheet is required that lists the attempts made. These proposed amendments incorporate procedures utilized by both the Ninth Judicial Circuit (*see* paragraph 6 of Administrative Order 2012-03 - Administrative Order Establishing Ninth Judicial Circuit Court Circuit Civil Court Guidelines) and the United States District Court for the Southern District of Florida (*see* local rule 7.1(a)(3)).

In the Fifteenth Judicial Circuit there is a common and growing problem of attorneys not speaking to each other prior to scheduling a hearing and prior to attending a hearing. Indeed, more than a majority of the judges in the Fifteenth Judicial Circuit believe that requiring attorneys to engage in a substantive conversation prior to a hearing, and not simply sending an e-mail, will help resolve matters. With the implementation of this rule, the number of unnecessary hearings set on Uniform Motion Calendar should decrease, allowing greater access to the court's limited hearing time. Thus, the purpose of the proposed amendment to Local Rule 4 is to foster actual communication between attorneys and *pro se* litigants so that there can be a narrowing of the issues to be heard by the judiciary resulting in more efficient administration of the courts.

The judges are also seeking to bring the Local Rule 4 into current practice. Courtroom deputies, rather than bailiffs, are now in the courtroom. Paper files are no longer delivered to the judges and copies of defaults and final judgments no longer need to be sent to the Clerk of Court prior to a hearing. Accordingly, updates were made to outdated practices currently included in Local Rule 4.

PROPOSED LOCAL RULE 9

Florida Rule of Judicial Administration 2.545 provides that judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. Florida Rule of Judicial Administration 2.515 provides that a signature of an attorney shall constitute a certificate by the attorney that to the best of the attorney's knowledge, information and belief there is good grounds to support the court filing and that the court filing is not interposed for delay. Florida Rule of Judicial Administration 2.250 provides that non-jury civil cases should take twelve (12) months from the filing to final disposition and that jury trial cases should take eighteen (18) months from the filing to final disposition. With these Rules of Judicial Administration as the cornerstone in litigation, a party should be timely bringing filed motions to the court's attention so that they may ruled upon in order for the case to judiciously move through the legal system.

Proposed Local Rule 9 follows on the path of cases such as *Bridier v. Burns*, 200 So. 355, 356 (Fla. 1941), *Weatherford v. Weatherford*, 91 So. 2d 179, 180 (Fla. 1956) and *State Dept. of*

[1] The Supreme Court of Florida is also addressing the issue of the increased lack of civility amongst attorneys with the recent amendment to the Oath of Admission for New Attorneys and mandating Professionalism Panels in each judicial circuit.

Revenue v. Kiedaisch, 670 So. 2d 1058 (Fla. 2d DCA 1996) where the courts have found that matters not brought to the attention of the court are abandoned. In *Bridier*, the court found that it was reasonable to assume that the appeals had been abandoned by counsel because they had not been brought to the court's attention, briefs had not been filed nor had a request for oral argument been made; in *Weatherford* the court found that assignments of error not argued are considered abandoned; and in *Kiedaisch* the court concluded that a supplemental petition for modification of final judgment was abandoned when party never set the petition for hearing.

A large majority of cases currently pending in the Fifteenth Judicial Circuit are not completed within the time standards set forth in the Rules of Judicial Administration. As of January 2015, there are on average 1200-1300 pending cases and 100-150 reopened cases in each of the eleven circuit civil divisions. In the one foreclosure division, there are approximately 7,800 pending cases and just over 2,100 reopened cases. In the eight county civil divisions there are on average 3,000 pending cases and 200 reopened cases. The volume of cases, along with the dearth of case managers, creates an environment where the judiciary cannot actively manage its docket. Thus, parties are able to file motions, avoid setting them for hearing, and have cases remain dormant until either the defendant or the court files a Notice of Failure to Prosecute pursuant to Florida Rule of Judicial Administration 1.420(e). Over the past five years, many more Notices of Failure to Prosecute have been filed by the judiciary than by the defendants. This dilatory practice is not what is contemplated by the Rules of Court.

Proposed Local Rule 9 would effectively give the court the authority to withdraw from consideration certain specified motions that are not set and heard within ninety (90) days. The rule is crafted to address motions that, for the most part, are scheduled on the court's uniform motion calendar. Should the motion need judicial time greater than that permitted for on uniform motion calendar and should the court be unable to schedule the hearing within ninety days, the parties simply need to obtain an order extending or excusing the ninety (90) day period. This rule would thus complement Rule of Judicial Administration 2.545 and the time standards set forth in Rule of Judicial Administration 2.250 in that motions will be timely brought to the court for resolution.

I appreciate the Committee taking the time to review the rules and I am available to answer any questions the Committee may have.

Sincerely,

Jeffrey J. Colbath
Chief Judge

Enclosed: Proposed Revised Local Rule 4, Current Local Rule 4, Proposed Local Rule 9, Comments

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4

IN RE: UNIFORM MOTION CALENDAR
. . . . . :

Pursuant to the authority conferred by rule 2.050(b), Fla.R.Jud.Admin., it is

ORDERED as follows:

(1) Circuit judges in each division shall conduct a uniform motion calendar on days and at a time specified by the judges of the division.

(2) Prior to setting a matter on the motion calendar, the party or attorney noticing the motion shall attempt to resolve the matter and shall certify the good faith attempt to resolve.

(3) Hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

(4) Unless the moving party makes special arrangements with the clerk's office, the court file will not be present in the hearing room during the uniform motion calendar. Therefore, the moving party must furnish the court a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all documents, pleadings and case authority which they wish the Court to consider.

(5) SCHEDULING -- Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall notice opposing counsel pursuant to the applicable rules of civil procedure. Opposing counsel shall

be given reasonable notice. In default and final judgment matters only, a copy of the notice of hearing and a copy of the motion shall be delivered to the clerk, marked "Attention, Uniform Motion Calendar," at least four business days before the hearing. In this instance, the clerk shall deliver the file to the Court prior to the hearing.

(6) The bailiff shall call cases for hearing in the order in which counsel signed up on the sheet posted outside the hearing room. Failure of any party to appear at the time set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this 31st day of January, 1991.

/s/
Daniel T. K. Hurley
Chief Judge

Approved by the Supreme Court of Florida, April 23, 1991.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4

IN RE: UNIFORM MOTION CALENDAR
_____:

Pursuant to the authority conferred by rule 2.~~050(b)~~215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

1. Circuit judges in each division shall conduct a uniform motion calendar on days and at a time specified by the judges of the division.

2. Prior to setting a matter on the uniform motion calendar, the ~~party or~~ attorney or *pro se* litigant noticing the motion shall attempt to resolve the matter and shall certify the good faith attempt to resolve.

3. For the Circuit Civil, County Civil and Family (domestic relations) divisions the following apply:

   a. The term "attempt to resolve the matter" in paragraph 2 requires counsel or a *pro se* litigant with full authority to resolve the matter to confer before serving the Notice of Hearing on the motion to be set on the Uniform Motion Calendar.

   b. The term "confer" in paragraph 3a. requires that the parties' counsel or a *pro se* litigant engage in at least one substantive conversation, either in person or by telephone ("Conference"), in a good-faith effort to resolve the motion entirely (thus not requiring a hearing) or otherwise narrow the issues raised in the motion so as to narrow the hearing.

   c. Coordination of Conference and potential hearing date:

      1). In an effort to coordinate the Conference, counsel or a *pro se* litigant noticing the hearing ("Notice Counsel") may send an email or letter to, or leave a detailed message or voice-mail with opposing counsel (including opposing counsel's staff) or *pro se* litigant ("Responding Counsel") that proposes the timing of the Conference and the issues to be discussed. At the same time, and consistent with the Standards of Professional Courtesy and Civility approved by the judges of the Fifteenth Judicial Circuit,

Notice Counsel shall propose a minimum of three (3) dates to be used in the event a hearing becomes necessary.

2). Responding Counsel must respond promptly to Notice Counsel's communications about coordinating the Conference and scheduling the hearing including acceptance of one of the three (3) proposed hearing dates or proposing three (3) alternate dates falling within the same or similar time frame.

3). After two (2) good-faith attempts to coordinate the Conference and the hearing date, including at least one attempt by phone or in person, Notice Counsel may serve a notice of hearing on the motion if Responding Counsel has not responded. Notice Counsel may set the hearing on a mutually agreed date or, if Responding Counsel has not responded to Notice Counsel's attempts to coordinate the Conference or a hearing, on any one of the three dates that Notice Counsel previously proposed.

d. The term "certify the good faith attempt to resolve" requires Notice Counsel to include a Certificate of Compliance (sample form attached hereto as Exhibit "A") as a separate cover sheet attached to the Uniform Motion Calendar Notice of Hearing indicating that the Conference has occurred or that the good faith attempt has been made.

e. If the Conference has not occurred then,

1). Notice Counsel must identify in the Certificate of Compliance the dates and approximate times on which Notice Counsel attempted to contact Responding Counsel.

2). The Court may review the Certificate of Compliance to determine if the good faith attempts to confer were made.

3). The Court may review the Certificate of Compliance to determine whether Responding Counsel's failure to respond to Notice Counsel's inquiries or communications was reasonable.

f. The Clerk of Court shall identify in the docket a "notice of hearing" under that title despite that a Certificate of Compliance is included on the front page of the notice of hearing.

g. In the event that, despite compliance with this Order, the issue or issues in the motion remain unresolved, both parties should continue to make a good faith effort to meet and confer prior to the hearing date, to narrow or resolve the issues in the motion.

h. Notice Counsel shall ensure that the Court and the Court's Judicial Assistant are aware of any narrowing of the issues or other resolution regarding the motion as a result of the conference by referencing same in the space indicated on the Certificate of Compliance.

i. The Court may award sanctions for Notice Counsel's failure to attempt to confer in good faith or for Responding Counsel's failure to respond promptly to Notice Counsel's attempts to confer.

4. Hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

5. ~~Unless the moving party makes special arrangements with the clerk's office, the court file will not be present in the hearing room during the uniform motion calendar. Therefore,~~ The moving party must furnish the court a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all documents, pleadings and case authority which they wish the Court to consider.

6. SCHEDULING -- Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall notice opposing counsel pursuant to the applicable rules of civil procedure. Opposing counsel shall be given reasonable notice. ~~In default and final judgment matters only, a copy of the notice of hearing and a copy of the motion shall be delivered to the clerk, marked "Attention, Uniform Motion Calendar," at least four business days before the hearing. In this instance, the clerk shall deliver the file to the Court prior to the hearing.~~

7. The courtroom deputy ~~bailiff~~ shall call cases for hearing in the order in which counsel signed up on the sheet posted outside the hearing room. Failure of any party to appear at the time set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of_____, 2015.

_____

Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

(EXHIBIT A)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO:

Plaintiff,

vs.

Defendant.
_____/

CERTIFICATE OF COMPLIANCE

Option 1

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below had a substantive conversation in person or by telephone with opposing counsel in a good faith effort to resolve this motion before the motion was noticed for hearing, but the parties were unable to reach an agreement, other than as to: [specify any issues resolved]_____
_____

/S/
Counsel for party who noticed matter for hearing.

OR

Option 2

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below attempted in good faith to contact opposing counsel in writing, by telephone, or in person with at least one attempt by telephone or in person as follows:

1. (Date) _____ at (approximate time) _____; and

2. (Date) _____ at (approximate time) _____

to discuss resolution of this motion without a hearing and I or the lawyer in my firm was unable to speak with opposing counsel.

/S/
Counsel for party who noticed matter for hearing.

Dated:

Respectfully submitted,

_____

, Esquire
Florida Bar No.
Address
Telephone:
Facsimile:
E-mail:

Attorneys for

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing _____ was served via electronic mail this ____ day of _____, 20__, to all parties listed on the Service List.

_____

, Esquire

SERVICE LIST

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 9

IN RE: TIMELY SETTING OF HEARINGS
_____:

Pursuant to the authority conferred by rule 2.215(e), Fla. R. Jud. Admin.. it is **ORDERED** as follows:

A party filing a motion in the circuit civil, county civil, family (domestic relations section), foreclosure and probate & guardianship divisions of the court, must schedule the motion for hearing and be heard on the motion within ninety (90) days of the motion's filing. Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned, thus withdrawn by the filing party, on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained before the ninety-first (91) day or the hearing is rescheduled by order of court. A party is not precluded from re-filing a motion deemed abandoned by this rule. This rule does not apply to hearings on motions for summary judgment and motions for rehearing or reconsideration filed pursuant to Local Rule 6 nor does it apply to hearings that will include testimonial evidence except for hearings on motions to quash service of process. This rule will apply to motions filed on or after INSERT DATE ORDER IS SIGNED.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of January, 2015.

_____
Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

Amy Borman

From: Paul Roman [proman@hnrwlaw.com]
Sent: Friday, January 16, 2015 10:24 AM
To: Amy Borman
Subject: Question on Proposed Amendment to Local Rule 4

In the second line of paragraph 3c.1, is the phrase "serving the hearing" a litigation term of art, or should it be "seeking the hearing" or some other phrase? As you can probably tell, I am not a litigator.

Paul E. Roman
parkins northwood roman weinzi p...
1800 North Military Trail - Suite 160
Boca Raton, Florida 33431-6386
561-862-4139
Fax:862-4966

Amy Borman

From: Abigail Beebe [Abigail@abeebelaw.com]
Sent: Monday, January 26, 2015 5:01 PM
To: Amy Borman
Subject: proposed local rules

Chief Judge and Amy Borman,

As chair of the UFC committee for the palm beach county bar, I write to inform you that several members have commented on the local proposed rules. While I know some have submitted under separate and individual cover, I would like to state some issues

It is suggested that is these stringent coordinate rules are imposed, it should be in writing.
Most complaints are saying this is micromanagement of professionals

Abigail Beebe, Esquire
Law Office of Abigail Beebe, P.A.
P.O. Box 4467
West Palm Beach, FL 33402
Telephone: 561.370.3691
E-mail: abigail@abeebelaw.com
Website: www.abeebelaw.com

Palm Beach County
Justice Association
PO BOX 3515
WEST PALM BEACH, FL 33402
561.790.5885 (P)
561.790.5886 (F)
WWW.PBCJA.ORG

January 26, 2015

The Hon. Jeffrey Colbath, Chief Judge
c/o Amy Borman, General Counsel
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401

Via E-Mail Only: ABorman@pbcgov.org

RE: Proposed Changes to Local Rule 4

Your Honor:

I am writing to you on behalf of the Palm Beach County Justice Association and our nearly 400 members to express our concerns regarding the proposed changes to Local Rule Number 4. First and foremost, we fully agree that the parties should make a reasonable effort to resolve issues set for a UMC prior to the matter being set for hearing. However, we believe the burdens imposed by the proposed revised Rule 4 are onerous and burdensome and will disproportionately negatively affect plaintiffs in personal injury cases.

Specifically, the need to make two efforts to contact defense counsel will only contribute to unnecessary delays in setting matters for hearing. To that end, we believe that one effort - be it a substantive email, phone call, or in person meeting - should be sufficient. If the issue isn't resolved within 24 hours of the initial effort we believe the party should be able to set it for hearing. Frankly, if a defense attorney is not inclined to respond to our initial email, letter or phone call, it is doubtful that they will respond to a second email, letter or phone call.

In addition, the need to clear dates with defense counsel prior to setting a UMC hearing will result in further unnecessary delay in our cases. We believe that this scheduling provision defeats the purpose of a UMC hearing which is the quick resolution of relatively smaller issues. As the Rule is proposed, all defense counsel has to do is say that they are not available on any date chosen by the Plaintiff's counsel or that the first date they have available is weeks and weeks

down the road (this happens all the time when we try to schedule depositions). Nothing in the proposed Rule deals with, prevents, or otherwise addresses that scenario.

Further, how are we to prove that we left a voicemail for defense counsel? Unfortunately it is not as uncommon as you might think for defense attorneys claim they never received a phone call. What proof can we offer other than our word that we did call? At that point UMC hearings could easily devolve into a he said/she said over whether or not two good faith efforts were made thereby complicating matters rather than simplifying them.

Again, we fully agree that an effort should be made to resolve UMC hearings prior to the hearing and we are all in favor of efforts to require defense counsel to work with us to resolve issues prior to running to the courthouse. However, we are extremely concerned that the proposed Rule 4 changes potentially create more problems than they eliminate.

I would welcome the opportunity to discuss our concerns in more detail with you. Thank you for your consideration herein.

Very truly yours,

Gregory T. Zele
President
Palm Beach County Justice Association

Amy Borman

From: Culver (Skip) Smith III [csmith@culversmithlaw.com]
Sent: Monday, January 26, 2015 10:56 AM
To: Amy Borman
Subject: Proposed Local Rule 9

Amy:

I respectfully offer the following observations/suggestions re proposed Local Rule 9:

1. The rule provides that a motion will be "deemed abandoned" if not heard within ninety days. Will some record action reflect that? E.g., will the clerk file a document to that effect? There should be some record disposition of the motion. It would be better to have the clerk enter an order *denying* the motion "on order of the court."

2. Should not "granted" in the third sentence be "required"?

3. The last sentence excepts hearings that require "live testimonial evidence." Does that include hearings in which testimony is presented entirely through the reading of excerpts from depositions or the playing of videotape depositions? Perhaps "live" should be deleted. Also, I wonder about the use of "require" rather then, say, "will include." There may be some debate about whether a hearing requires testimonial evidence.

I also may have some comments on the proposed amendments to Local Rule 4. Could you please send me a copy of the "Certificate of Compliance" (Exhibit "A")? It was not included in the link provided by the bar association's e-mail. Thanks much.

Skip

D. Culver Smith III
CULVER SMITH III, P.A.
500 South Australian Boulevard, Suite 600
West Palm Beach, FL 33401
Tel.: 561.598.6800
Cell: 561.301.3800
csmith@culversmithlaw.com
www.culversmithlaw.com

Ice Legal P.A.

1015 N. State Rd. 7 ~ Suite C
Royal Palm Beach, FL 33411
561.729.0530
www.icelegal.com

FIRM ATTORNEYS:
THOMAS E. ICE
AMANDA L. LUNDERGAN
STEVEN BROTMAN
JAMES FLANAGAN
JAMES R. (RANDY) ACKLEY
CANDACE GIPSON
JACQUELINE LUKER
ALI L. HANSEN
JOSHUA S. MILLER
JOSE FUNCIA

*OF COUNSEL

January 26, 2015

Amy Borman, General Counsel
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
Via email: ABorman@pbcgov.org

Re: Proposed Local Rule 9

Dear Ms. Borman,

Please allow this letter to serve as my comments to the proposed Local Rule 9:

- The proposal contains no statement as to what local conditions in the 15th Judicial Circuit would justify this rule. Nor does it seem that one could be articulated, much less proven.

- The period for comments (ten days which included a three day holiday weekend) is too short to allow for all interested persons to be heard.

- The period for reviewing the comments (four days) is too short to allow for serious contemplation of the problems raised. Because the rule must be approved by a majority of judges, for their approval to be meaningful, the comments need to be circulated among all the judges before the proposal is sent to the Supreme Court.

- The proposed rule is invalid because it conflicts with Court rules of procedure because it creates time limits for a party to exercise a right where the rules of procedure have no such limits. *See Bathurst v.* Turner, 533 So. 2d 939, 941 (Fla. 3d DCA 1988).

- The claimed rationale for the abandonment of unheard motions has always been that the foreclosure crisis called for unprecedented and extraordinary measures to help clear cases. The proposal does not articulate any reason for taking extraordinary measures in non-foreclosure cases, or for that matter, provide any legal basis for the notion that a "crisis" would justify the adoption of local rules inconsistent with court rules.

- When the Administrative Order that created the abandonment rule for foreclosure cases was circulated among the judges, Judge Booras asked whether the abandonment rule could be adopted "across the board rather [than] just AW [the foreclosure division]." In other words, Judge Booras proposed that the Circuit adopt the very rule now under

consideration. The Chief Judge responded. "Probably not. It is very case manager intensive. We have the[m] in AW due to the extra foreclosure funding." The Chief Judge, therefore, was against the very rule the Fifteenth Circuit is now proposing because it was financially impractical to make use of the rule. We are unaware of any additional funding that would make the abandonment rule financially practical in other divisions—or for that matter, in the foreclosure division after June 30th.

- The proposal has no grandfathering language, such that its passage would immediately result in the abandonment of potentially thousands of motions. This will be exacerbated by the limited distribution of this proposal such that few attorneys will be aware of the new requirement before it is implemented.

- The proposed rule actually provides a disincentive for the setting of an adverse party's motion and encourages the avoidance of determinations on the merits. As already demonstrated by the Administrative Orders of both the Eleventh and Fifteenth Circuits, a party—such as a plaintiff who already has the obligation and incentive for moving the case forward—will not set a hearing on an adverse party's motion that the nonmovant believes has merit. Instead, the nonmovant will wait the required "abandonment" period and file a new motion to declare the opposition's motion abandoned. Accordingly, the proposed rule encourages gamesmanship while, at the same time, actually increasing the workload for the court and the parties.

- The proposed rule will create confusion and a morass of collateral litigation because its operation will cause problems with existing rules and potential unintended consequences that the Court may not have considered, for example:

    - Confusion in the computation of appellate filing deadlines:

        - Abandonment of 1.530 motions. When will the appeal time begin to run—thirty days from the 90th day even though there is no order in the file? (Local rule cannot conflict with the rules of appellate procedure.) If the abandoned motion is treated as though it were never filed (which will be the position of non-movants—and has been their position under Administrative Order 3/314-4.14), then the appeal time will have expired. For jury trials, will movants have waived their sufficiency of the evidence arguments? (see problems with ambiguous "leave of court to re-file" language below)

        - Abandonment of motions to quash. When will the time for filing non-final appeal begin to run? Without a written order in the case, how will it be appealed?

- Confusion as to whether motions that have a specific time period for filling are timely:
  - May "abandoned" 1.530 motions be refiled although more than fifteen days after the judgment or verdict?
  - May "abandoned" 1.540(1), (2) or (3) motions be refiled more than a year after the judgment?
  - May "abandoned" 1.525 motions for costs and attorneys' fees be refiled more than thirty days after judgment?
- Confusion in the computation of deadlines for answering a complaint or the entry of defaults:
  - Abandonment of pre-answer motions. When will the time for answering begin to run? Will the defendant be subject to a default on the 91st day?
  - Will a clerk be able to enter a default even though the defendant has filed a "paper," because the paper will have been abandoned?
- Confusion in the computation of discovery deadlines:
  - Abandonment of motions for extension of time for discovery. Will the movant be subject to an *ex parte* motion to compel on the 91st day? Will all objections to the discovery have been waived because the response is now overdue?

The sentence* "Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained" *is ambiguous and allows the proposed rule to be selectively enforced.

  - Must leave be obtained before the ninety days?
  - What standard will apply to the granting of leave? What standard of review will the decision be subject to?
  - With no objective standards, the proposed rule may be selectively enforced vis-à-vis the divisions or vis-à-vis the parties. E.g., can a

division judge enter a standing order automatically and indefinitely extending the 90 day period?

The sentence "Leave of court is granted for the party to re-file the motion" is hopelessly ambiguous.

- Does this mean "a motion for leave of court shall be granted" such that a motion for leave of court must be filed and granted or is this intended to be automatic permission for refiling without a motion?
- Does it matter whether the re-filing is before or after the 90 days?
- Can the same motion be re-filed to extend the time? For example, can a motion for extension of time to respond to discovery be routinely filed every 89 days?
- Does "leave of court" mean that the abandonment is without prejudice to time-dependent motions such as pre-answer motions or post-trial motions—e.g. does this change the rule that a 1.530 motion must be filed in fifteen days or that a 1.540 motion must be filed in a year?

- If motions are amended, does that restart the 90 day clock as to all the issues, or do the new issues have their own 90 day deadline—i.e. will only the original issues be abandoned at 90 days?
- What determines whether a motion requires an evidentiary hearing such that it is not subject to the proposed rule? Often this cannot be determined by the movant until a response is filed, or if no response is filed, until the day of hearing. Can one party stipulate to all the facts and thereby claim that the hearing was not evidentiary after all, such that the motion is declared abandoned?
- Abandonment of motions not normally set for hearing:
  - If clerk enters default more than ninety days after filing of motion, is the defendant defaulted or was the motion abandoned?
  - Motions for reconsideration cannot be set for hearing (Local Rule 6). If the judge takes no action for 90 days, is the motion abandoned? Which Local Rule takes precedence?
- Abandonment of motions through no fault of the parties will actually increase, rather than decrease, the work load of the court and the parties:

- Often hearings do not go forward for various unpredictable reasons, e.g. it did not make the court's calendar, a court reporter does not appear, an attorney's car breaks down, or (in the foreclosure division) the court simply refuses to hear noticed motions at a Court Management Conference that do not pertain to getting the case at issue. Either the non-heard motion will be declared abandoned or an additional motion must be filed and an additional hearing set to obtain leave of court to extend the ninety-day deadline.

- Lastly, the proposed rule must be considered in conjunction with the proposed changes in Local Rule 4 which will cause delays in in setting hearings while busy attorneys attempt to coordinate calendars for face-to-face or telephonic meetings, especially in cases with multiple parties. Proposed Local Rule 9 creates the opportunity for gamesmanship and "gotcha" litigation by nonmovants when movants attempt to comply with new Local Rule 4 requirements.

If you or anyone considering the proposal has any additional questions, please do not hesitate to contact me. I will be happy to provide further information and will make myself available to discuss these issues.

Sincerely,

Thomas E. Ice

Amy Borman

From: Amy Borman
Sent: Friday, January 30, 2015 3:43 PM
To: bentonb@1dca.org
Cc: Jeffrey Colbath; Barbara Dawicke
Subject: RE: Local Rule Submissions - 15th Judicial Circuit
Attachments: Supreme Court Local Rules Advisory Committee Submission.pdf

Judge Benton -

Attached please find the complete package. I mistakenly only sent the cover letter.

Thank you.

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

From: Amy Borman
Sent: Friday, January 30, 2015 3:20 PM
To: 'bentonb@1dca.org'
Cc: Jeffrey Colbath; Barbara Dawicke
Subject: Local Rule Submissions - 15th Judicial Circuit

Dear Judge Benton:

On behalf of Chief Judge Jeffrey Colbath, attached please find two local rule submissions pursuant to Florida Rule of Judicial Administration 2.215(e). A hard copy will follow in the mail.

Should you have any questions, or need additional information, please let me know.

Thank you,

Amy Borman

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
JEFFREY J. COLBATH
CHIEF JUDGE

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561) 355-7845

January 30, 2015

The Honorable Robert T. Benton II
Chair, Supreme Court Local Rules Advisory Committee
First District Court of Appeal
Tallahassee, Florida 32399-1850
bentonb@1dca.org

Re: Submission of Proposed Amendment to Local Rule 4
Submission of Proposed Local Rule 9

Dear Judge Benton:

The Fifteenth Judicial Circuit is submitting for consideration two local rules in accordance with Florida Rule of Judicial Administration 2.215(e). The first is an Amendment to Local Rule 4 (the original rule was approved by the Florida Supreme Court in 1991) and the second is a new Proposed Local Rule 9. The current Local Rule 4, the Proposed Amendment to Local Rule 4 in legislative format, and the Proposed Local Rule 9 are attached for your review. Also attached are comments received from the members of the local bar association after publication of the rules as approved by greater than a majority of the judges in the Fifteenth Judicial Circuit in accordance with Florida Rule of Judicial Administration 2.215(e)(1). After input from the members of the local bar, revisions were made to the distributed versions of the proposed rules. These revised versions, which are attached, were approved by more than a majority of the judges. Due to time constrictions, the revised versions have not been circulated to members of the local bar for comment.

AMENDMENT TO LOCAL RULE 4

Paragraph 2 of Local Rule 4 currently requires an attorney prior to setting a motion on the Uniform Motion Calendar to "attempt to resolve the matter" and requires a certification of the "good faith attempt to resolve." Currently there is no definition of "attempt to resolve the matter" and further there is no uniform procedure to certify the "good faith attempt to resolve." Members of the local bar and *pro se* litigants are loosely defining "attempt to resolve" and perfunctorily inserting the "good faith certification" into motions and notices of hearing regardless of whether the parties have actually spoken about the issues. This is evident by the number of matters resolved outside the doors of the courtroom once the attorneys and *pro se litigants* actually communicate in person with one another.

The Fifteenth Judicial Circuit has seen a decrease in professionalism and civility amongst attorneys with neither side reaching out to resolve matters resulting in the unnecessary expenditure of limited judicial resources.[1] The proposed amendments to Local Rule 4 define "good faith attempt" and require attorneys and *pro se* litigants to make two attempts to speak about the matter prior to setting the hearing. To ensure that the certification is not simply an obligatory "add on" to the Notice of Hearing, a cover sheet is required that lists the attempts made. These proposed amendments incorporate procedures utilized by both the Ninth Judicial Circuit (*see* paragraph 6 of Administrative Order 2012-03 - Administrative Order Establishing Ninth Judicial Circuit Court Circuit Civil Court Guidelines) and the United States District Court for the Southern District of Florida (*see* local rule 7.1(a)(3)).

In the Fifteenth Judicial Circuit there is a common and growing problem of attorneys not speaking to each other prior to scheduling a hearing and prior to attending a hearing. Indeed, more than a majority of the judges in the Fifteenth Judicial Circuit believe that requiring attorneys to engage in a substantive conversation prior to a hearing, and not simply sending an e-mail, will help resolve matters. With the implementation of this rule, the number of unnecessary hearings set on Uniform Motion Calendar should decrease, allowing greater access to the court's limited hearing time. Thus, the purpose of the proposed amendment to Local Rule 4 is to foster actual communication between attorneys and *pro se* litigants so that there can be a narrowing of the issues to be heard by the judiciary resulting in more efficient administration of the courts.

The judges are also seeking to bring the Local Rule 4 into current practice. Courtroom deputies, rather than bailiffs, are now in the courtroom. Paper files are no longer delivered to the judges and copies of defaults and final judgments no longer need to be sent to the Clerk of Court prior to a hearing. Accordingly, updates were made to outdated practices currently included in Local Rule 4.

PROPOSED LOCAL RULE 9

Florida Rule of Judicial Administration 2.545 provides that judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. Florida Rule of Judicial Administration 2.515 provides that a signature of an attorney shall constitute a certificate by the attorney that to the best of the attorney's knowledge, information and belief there is good grounds to support the court filing and that the court filing is not interposed for delay. Florida Rule of Judicial Administration 2.250 provides that non-jury civil cases should take twelve (12) months from the filing to final disposition and that jury trial cases should take eighteen (18) months from the filing to final disposition. With these Rules of Judicial Administration as the cornerstone in litigation, a party should be timely bringing filed motions to the court's attention so that they may ruled upon in order for the case to judiciously move through the legal system.

Proposed Local Rule 9 follows on the path of cases such as *Bridier v. Burns*, 200 So. 355, 356 (Fla. 1941), *Weatherford v. Weatherford*, 91 So. 2d 179, 180 (Fla. 1956) and *State Dept. of*

[1] The Supreme Court of Florida is also addressing the issue of the increased lack of civility amongst attorneys with the recent amendment to the Oath of Admission for New Attorneys and mandating Professionalism Panels in each judicial circuit.

Revenue v. Kiedaisch, 670 So. 2d 1058 (Fla. 2d DCA 1996) where the courts have found that matters not brought to the attention of the court are abandoned. In *Bridier*, the court found that it was reasonable to assume that the appeals had been abandoned by counsel because they had not been brought to the court's attention, briefs had not been filed nor had a request for oral argument been made; in *Weatherford* the court found that assignments of error not argued are considered abandoned; and in *Kiedaisch* the court concluded that a supplemental petition for modification of final judgment was abandoned when party never set the petition for hearing.

A large majority of cases currently pending in the Fifteenth Judicial Circuit are not completed within the time standards set forth in the Rules of Judicial Administration. As of January 2015, there are on average 1200-1300 pending cases and 100-150 reopened cases in each of the eleven circuit civil divisions. In the one foreclosure division, there are approximately 7,800 pending cases and just over 2,100 reopened cases. In the eight county civil divisions there are on average 3,000 pending cases and 200 reopened cases. The volume of cases, along with the dearth of case managers, creates an environment where the judiciary cannot actively manage its docket. Thus, parties are able to file motions, avoid setting them for hearing, and have cases remain dormant until either the defendant or the court files a Notice of Failure to Prosecute pursuant to Florida Rule of Judicial Administration 1.420(e). Over the past five years, many more Notices of Failure to Prosecute have been filed by the judiciary than by the defendants. This dilatory practice is not what is contemplated by the Rules of Court.

Proposed Local Rule 9 would effectively give the court the authority to withdraw from consideration certain specified motions that are not set and heard within ninety (90) days. The rule is crafted to address motions that, for the most part, are scheduled on the court's uniform motion calendar. Should the motion need judicial time greater than that permitted for on uniform motion calendar and should the court be unable to schedule the hearing within ninety days, the parties simply need to obtain an order extending or excusing the ninety (90) day period. This rule would thus complement Rule of Judicial Administration 2.545 and the time standards set forth in Rule of Judicial Administration 2.250 in that motions will be timely brought to the court for resolution.

I appreciate the Committee taking the time to review the rules and I am available to answer any questions the Committee may have.

Sincerely,

Jeffrey J. Colbath
Chief Judge

Enclosed: Proposed Revised Local Rule 4, Current Local Rule 4, Proposed Local Rule 9, Comments

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4

IN RE: UNIFORM MOTION CALENDAR
. . . . . :

Pursuant to the authority conferred by rule 2.050(b), Fla.R.Jud.Admin., it is

ORDERED as follows:

(1) Circuit judges in each division shall conduct a uniform motion calendar on days and at a time specified by the judges of the division.

(2) Prior to setting a matter on the motion calendar, the party or attorney noticing the motion shall attempt to resolve the matter and shall certify the good faith attempt to resolve.

(3) Hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

(4) Unless the moving party makes special arrangements with the clerk's office, the court file will not be present in the hearing room during the uniform motion calendar. Therefore, the moving party must furnish the court a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all documents, pleadings and case authority which they wish the Court to consider.

(5) SCHEDULING -- Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall notice opposing counsel pursuant to the applicable rules of civil procedure. Opposing counsel shall

be given reasonable notice. In default and final judgment matters only, a copy of the notice of hearing and a copy of the motion shall be delivered to the clerk, marked "Attention, Uniform Motion Calendar," at least four business days before the hearing. In this instance, the clerk shall deliver the file to the Court prior to the hearing.

(6) The bailiff shall call cases for hearing in the order in which counsel signed up on the sheet posted outside the hearing room. Failure of any party to appear at the time set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this 31st day of January, 1991.

/s/
Daniel T. K. Hurley
Chief Judge

Approved by the Supreme Court of Florida, April 23, 1991.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4

IN RE: UNIFORM MOTION CALENDAR
_____:

Pursuant to the authority conferred by rule 2.~~050(b)~~215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

1. Circuit judges in each division shall conduct a uniform motion calendar on days and at a time specified by the judges of the division.

2. Prior to setting a matter on the uniform motion calendar, the ~~party or~~ attorney or *pro se* litigant noticing the motion shall attempt to resolve the matter and shall certify the good faith attempt to resolve.

3. For the Circuit Civil, County Civil and Family (domestic relations) divisions the following apply:

   a. The term "attempt to resolve the matter" in paragraph 2 requires counsel or a *pro se* litigant with full authority to resolve the matter to confer before serving the Notice of Hearing on the motion to be set on the Uniform Motion Calendar.

   b. The term "confer" in paragraph 3a. requires that the parties' counsel or a *pro se* litigant engage in at least one substantive conversation, either in person or by telephone ("Conference"), in a good-faith effort to resolve the motion entirely (thus not requiring a hearing) or otherwise narrow the issues raised in the motion so as to narrow the hearing.

   c. Coordination of Conference and potential hearing date:

      1). In an effort to coordinate the Conference, counsel or a *pro se* litigant noticing the hearing ("Notice Counsel") may send an email or letter to, or leave a detailed message or voice-mail with opposing counsel (including opposing counsel's staff) or *pro se* litigant ("Responding Counsel") that proposes the timing of the Conference and the issues to be discussed. At the same time, and consistent with the Standards of Professional Courtesy and Civility approved by the judges of the Fifteenth Judicial Circuit,

Notice Counsel shall propose a minimum of three (3) dates to be used in the event a hearing becomes necessary.

2). Responding Counsel must respond promptly to Notice Counsel's communications about coordinating the Conference and scheduling the hearing including acceptance of one of the three (3) proposed hearing dates or proposing three (3) alternate dates falling within the same or similar time frame.

3). After two (2) good-faith attempts to coordinate the Conference and the hearing date, including at least one attempt by phone or in person, Notice Counsel may serve a notice of hearing on the motion if Responding Counsel has not responded. Notice Counsel may set the hearing on a mutually agreed date or, if Responding Counsel has not responded to Notice Counsel's attempts to coordinate the Conference or a hearing, on any one of the three dates that Notice Counsel previously proposed.

d. The term "certify the good faith attempt to resolve" requires Notice Counsel to include a Certificate of Compliance (sample form attached hereto as Exhibit "A") as a separate cover sheet attached to the Uniform Motion Calendar Notice of Hearing indicating that the Conference has occurred or that the good faith attempt has been made.

e. If the Conference has not occurred then,

1). Notice Counsel must identify in the Certificate of Compliance the dates and approximate times on which Notice Counsel attempted to contact Responding Counsel.

2). The Court may review the Certificate of Compliance to determine if the good faith attempts to confer were made.

3). The Court may review the Certificate of Compliance to determine whether Responding Counsel's failure to respond to Notice Counsel's inquiries or communications was reasonable.

f. The Clerk of Court shall identify in the docket a "notice of hearing" under that title despite that a Certificate of Compliance is included on the front page of the notice of hearing.

g. In the event that, despite compliance with this Order, the issue or issues in the motion remain unresolved, both parties should continue to make a good faith effort to meet and confer prior to the hearing date, to narrow or resolve the issues in the motion.

h. Notice Counsel shall ensure that the Court and the Court's Judicial Assistant are aware of any narrowing of the issues or other resolution regarding the motion as a result of the conference by referencing same in the space indicated on the Certificate of Compliance.

i. The Court may award sanctions for Notice Counsel's failure to attempt to confer in good faith or for Responding Counsel's failure to respond promptly to Notice Counsel's attempts to confer.

4. Hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

5. ~~Unless the moving party makes special arrangements with the clerk's office, the court file will not be present in the hearing room during the uniform motion calendar. Therefore,~~ The moving party must furnish the court a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all documents, pleadings and case authority which they wish the Court to consider.

6. SCHEDULING -- Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall notice opposing counsel pursuant to the applicable rules of civil procedure. Opposing counsel shall be given reasonable notice. ~~In default and final judgment matters only, a copy of the notice of hearing and a copy of the motion shall be delivered to the clerk, marked "Attention, Uniform Motion Calendar," at least four business days before the hearing. In this instance, the clerk shall deliver the file to the Court prior to the hearing.~~

7. The courtroom deputy ~~bailiff~~ shall call cases for hearing in the order in which counsel signed up on the sheet posted outside the hearing room. Failure of any party to appear at the time set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of_____, 2015.

_____

Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

(EXHIBIT A)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO:

Plaintiff,

vs.

Defendant.
_____/

CERTIFICATE OF COMPLIANCE

Option 1

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below had a substantive conversation in person or by telephone with opposing counsel in a good faith effort to resolve this motion before the motion was noticed for hearing, but the parties were unable to reach an agreement, other than as to: [specify any issues resolved]_____
_____

/S/
Counsel for party who noticed matter for hearing.

OR

Option 2

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below attempted in good faith to contact opposing counsel in writing, by telephone, or in person with at least one attempt by telephone or in person as follows:

1. (Date) _____ at (approximate time) _____; and

2. (Date) _____ at (approximate time) _____

to discuss resolution of this motion without a hearing and I or the lawyer in my firm was unable to speak with opposing counsel.

/S/
Counsel for party who noticed matter for hearing.

Dated:

Respectfully submitted,

_____

, Esquire
Florida Bar No.
Address
Telephone:
Facsimile:
E-mail:

Attorneys for

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing _____ was served via electronic mail this ____ day of _____, 20__, to all parties listed on the Service List.

_____

, Esquire

SERVICE LIST

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 9

IN RE: TIMELY SETTING OF HEARINGS
_____:

Pursuant to the authority conferred by rule 2.215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

A party filing a motion in the circuit civil, county civil, family (domestic relations section), foreclosure and probate & guardianship divisions of the court, must schedule the motion for hearing and be heard on the motion within ninety (90) days of the motion's filing. Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned, thus withdrawn by the filing party, on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained before the ninety-first (91) day or the hearing is rescheduled by order of court. A party is not precluded from re-filing a motion deemed abandoned by this rule. This rule does not apply to hearings on motions for summary judgment and motions for rehearing or reconsideration filed pursuant to Local Rule 6 nor does it apply to hearings that will include testimonial evidence except for hearings on motions to quash service of process. This rule will apply to motions filed on or after INSERT DATE ORDER IS SIGNED.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of January, 2015.

_____
Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

Amy Borman

From: Paul Roman [proman@hnrwlaw.com]
Sent: Friday, January 16, 2015 10:24 AM
To: Amy Borman
Subject: Question on Proposed Amendment to Local Rule 4

In the second line of paragraph 3c.1, is the phrase "serving the hearing" a litigation term of art, or should it be "seeking the hearing" or some other phrase? As you can probably tell, I am not a litigator.

Paul E. Roman
[illegible]
1800 North Military Trail - Suite 160
Boca Raton, Florida 33431-6386
561-862-4139
Fax:862-4966

Amy Borman

From: Abigail Beebe [Abigail@abeebelaw.com]
Sent: Monday, January 26, 2015 5:01 PM
To: Amy Borman
Subject: proposed local rules

Chief Judge and Amy Borman,

As chair of the UFC committee for the palm beach county bar, I write to inform you that several members have commented on the local proposed rules. While I know some have submitted under separate and individual cover, I would like to state some issues

It is suggested that is these stringent coordinate rules are imposed, it should be in writing.
Most complaints are saying this is micromanagement of professionals

Abigail Beebe, Esquire
Law Office of Abigail Beebe, P.A.
P.O. Box 4467
West Palm Beach, FL 33402
Telephone: 561.370.3691
E-mail: abigail@abeebelaw.com
Website: www.abeebelaw.com

Palm Beach County
Justice Association
PO BOX 3515
WEST PALM BEACH, FL 33402
561.790.5883 (P)
561.790.5886 (F)
WWW.PBCJA.ORG

January 26, 2015

The Hon. Jeffrey Colbath, Chief Judge
c/o Amy Borman, General Counsel
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401

Via E-Mail Only: ABorman@pbcgov.org

RE: Proposed Changes to Local Rule 4

Your Honor:

I am writing to you on behalf of the Palm Beach County Justice Association and our nearly 400 members to express our concerns regarding the proposed changes to Local Rule Number 4. First and foremost, we fully agree that the parties should make a reasonable effort to resolve issues set for a UMC prior to the matter being set for hearing. However, we believe the burdens imposed by the proposed revised Rule 4 are onerous and burdensome and will disproportionately negatively affect plaintiffs in personal injury cases.

Specifically, the need to make two efforts to contact defense counsel will only contribute to unnecessary delays in setting matters for hearing. To that end, we believe that one effort - be it a substantive email, phone call, or in person meeting - should be sufficient. If the issue isn't resolved within 24 hours of the initial effort we believe the party should be able to set it for hearing. Frankly, if a defense attorney is not inclined to respond to our initial email, letter or phone call, it is doubtful that they will respond to a second email, letter or phone call.

In addition, the need to clear dates with defense counsel prior to setting a UMC hearing will result in further unnecessary delay in our cases. We believe that this scheduling provision defeats the purpose of a UMC hearing which is the quick resolution of relatively smaller issues. As the Rule is proposed, all defense counsel has to do is say that they are not available on any date chosen by the Plaintiff's counsel or that the first date they have available is weeks and weeks

down the road (this happens all the time when we try to schedule depositions). Nothing in the proposed Rule deals with, prevents, or otherwise addresses that scenario.

Further, how are we to prove that we left a voicemail for defense counsel? Unfortunately it is not as uncommon as you might think for defense attorneys claim they never received a phone call. What proof can we offer other than our word that we did call? At that point UMC hearings could easily devolve into a he said/she said over whether or not two good faith efforts were made thereby complicating matters rather than simplifying them.

Again, we fully agree that an effort should be made to resolve UMC hearings prior to the hearing and we are all in favor of efforts to require defense counsel to work with us to resolve issues prior to running to the courthouse. However, we are extremely concerned that the proposed Rule 4 changes potentially create more problems than they eliminate.

I would welcome the opportunity to discuss our concerns in more detail with you. Thank you for your consideration herein.

Very truly yours,

Gregory T. Zele
President
Palm Beach County Justice Association

Amy Borman

From: Culver (Skip) Smith III [csmith@culversmithlaw.com]
Sent: Monday, January 26, 2015 10:56 AM
To: Amy Borman
Subject: Proposed Local Rule 9

Amy:

I respectfully offer the following observations/suggestions re proposed Local Rule 9:

1. The rule provides that a motion will be "deemed abandoned" if not heard within ninety days. Will some record action reflect that? E.g., will the clerk file a document to that effect? There should be some record disposition of the motion. It would be better to have the clerk enter an order *denying* the motion "on order of the court."

2. Should not "granted" in the third sentence be "required"?

3. The last sentence excepts hearings that require "live testimonial evidence." Does that include hearings in which testimony is presented entirely through the reading of excerpts from depositions or the playing of videotape depositions? Perhaps "live" should be deleted. Also, I wonder about the use of "require" rather then, say, "will include." There may be some debate about whether a hearing requires testimonial evidence.

I also may have some comments on the proposed amendments to Local Rule 4. Could you please send me a copy of the "Certificate of Compliance" (Exhibit "A")? It was not included in the link provided by the bar association's e-mail. Thanks much.

Skip

D. Culver Smith III
CULVER SMITH III, P.A.
500 South Australian Boulevard, Suite 600
West Palm Beach, FL 33401
Tel.: 561.598.6800
Cell: 561.301.3800
csmith@culversmithlaw.com
www.culversmithlaw.com

Ice Legal P.A.

1015 N. State Rd. 7 ~ Suite C
Royal Palm Beach, FL 33411
561.729.0530
www.icelegal.com

FIRM ATTORNEYS:
THOMAS E. ICE
AMANDA L. LUNDERGAN
STEVEN BROTMAN
JAMES FLANAGAN
JAMES R. (RANDY) ACKLEY
CANDACE GIPSON
JACQUELINE LUKER
ALI L. HANSEN
JOSHUA S. MILLER*
JOSE FUNCIA*

*OF COUNSEL

January 26, 2015

Amy Borman, General Counsel
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
Via email: ABorman@pbcgov.org

Re: Proposed Local Rule 9

Dear Ms. Borman,

Please allow this letter to serve as my comments to the proposed Local Rule 9:

- The proposal contains no statement as to what local conditions in the 15th Judicial Circuit would justify this rule. Nor does it seem that one could be articulated, much less proven.

- The period for comments (ten days which included a three day holiday weekend) is too short to allow for all interested persons to be heard.

- The period for reviewing the comments (four days) is too short to allow for serious contemplation of the problems raised. Because the rule must be approved by a majority of judges, for their approval to be meaningful, the comments need to be circulated among all the judges before the proposal is sent to the Supreme Court.

- The proposed rule is invalid because it conflicts with Court rules of procedure because it creates time limits for a party to exercise a right where the rules of procedure have no such limits. *See Bathurst v.* Turner, 533 So. 2d 939, 941 (Fla. 3d DCA 1988).

- The claimed rationale for the abandonment of unheard motions has always been that the foreclosure crisis called for unprecedented and extraordinary measures to help clear cases. The proposal does not articulate any reason for taking extraordinary measures in non-foreclosure cases, or for that matter, provide any legal basis for the notion that a "crisis" would justify the adoption of local rules inconsistent with court rules.

- When the Administrative Order that created the abandonment rule for foreclosure cases was circulated among the judges, Judge Booras asked whether the abandonment rule could be adopted "across the board rather [than] just AW [the foreclosure division]." In other words, Judge Booras proposed that the Circuit adopt the very rule now under

consideration. The Chief Judge responded. "Probably not. It is very case manager intensive. We have the[m] in AW due to the extra foreclosure funding." The Chief Judge, therefore, was against the very rule the Fifteenth Circuit is now proposing because it was financially impractical to make use of the rule. We are unaware of any additional funding that would make the abandonment rule financially practical in other divisions—or for that matter, in the foreclosure division after June 30th.

- The proposal has no grandfathering language, such that its passage would immediately result in the abandonment of potentially thousands of motions. This will be exacerbated by the limited distribution of this proposal such that few attorneys will be aware of the new requirement before it is implemented.

- The proposed rule actually provides a disincentive for the setting of an adverse party's motion and encourages the avoidance of determinations on the merits. As already demonstrated by the Administrative Orders of both the Eleventh and Fifteenth Circuits, a party—such as a plaintiff who already has the obligation and incentive for moving the case forward—will not set a hearing on an adverse party's motion that the nonmovant believes has merit. Instead, the nonmovant will wait the required "abandonment" period and file a new motion to declare the opposition's motion abandoned. Accordingly, the proposed rule encourages gamesmanship while, at the same time, actually increasing the workload for the court and the parties.

- The proposed rule will create confusion and a morass of collateral litigation because its operation will cause problems with existing rules and potential unintended consequences that the Court may not have considered, for example:

    - Confusion in the computation of appellate filing deadlines:

        - Abandonment of 1.530 motions. When will the appeal time begin to run—thirty days from the 90th day even though there is no order in the file? (Local rule cannot conflict with the rules of appellate procedure.) If the abandoned motion is treated as though it were never filed (which will be the position of non-movants—and has been their position under Administrative Order 3/314-4.14), then the appeal time will have expired. For jury trials, will movants have waived their sufficiency of the evidence arguments? (see problems with ambiguous "leave of court to re-file" language below)

        - Abandonment of motions to quash. When will the time for filing non-final appeal begin to run? Without a written order in the case, how will it be appealed?

- Confusion as to whether motions that have a specific time period for filling are timely:
  - May "abandoned" 1.530 motions be refiled although more than fifteen days after the judgment or verdict?
  - May "abandoned" 1.540(1), (2) or (3) motions be refiled more than a year after the judgment?
  - May "abandoned" 1.525 motions for costs and attorneys' fees be refiled more than thirty days after judgment?
- Confusion in the computation of deadlines for answering a complaint or the entry of defaults:
  - Abandonment of pre-answer motions. When will the time for answering begin to run? Will the defendant be subject to a default on the 91st day?
  - Will a clerk be able to enter a default even though the defendant has filed a "paper," because the paper will have been abandoned?
- Confusion in the computation of discovery deadlines:
  - Abandonment of motions for extension of time for discovery. Will the movant be subject to an *ex parte* motion to compel on the 91st day? Will all objections to the discovery have been waived because the response is now overdue?

The sentence* "Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained" *is ambiguous and allows the proposed rule to be selectively enforced.

  - Must leave be obtained before the ninety days?
  - What standard will apply to the granting of leave? What standard of review will the decision be subject to?
  - With no objective standards, the proposed rule may be selectively enforced vis-à-vis the divisions or vis-à-vis the parties. E.g., can a

division judge enter a standing order automatically and indefinitely extending the 90 day period?

The sentence "Leave of court is granted for the party to re-file the motion" is hopelessly ambiguous.

- Does this mean "a motion for leave of court shall be granted" such that a motion for leave of court must be filed and granted or is this intended to be automatic permission for refiling without a motion?
- Does it matter whether the re-filing is before or after the 90 days?
- Can the same motion be re-filed to extend the time? For example, can a motion for extension of time to respond to discovery be routinely filed every 89 days?
- Does "leave of court" mean that the abandonment is without prejudice to time-dependent motions such as pre-answer motions or post-trial motions—e.g. does this change the rule that a 1.530 motion must be filed in fifteen days or that a 1.540 motion must be filed in a year?

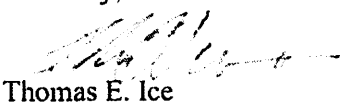
- If motions are amended, does that restart the 90 day clock as to all the issues, or do the new issues have their own 90 day deadline—i.e. will only the original issues be abandoned at 90 days?
- What determines whether a motion requires an evidentiary hearing such that it is not subject to the proposed rule? Often this cannot be determined by the movant until a response is filed, or if no response is filed, until the day of hearing. Can one party stipulate to all the facts and thereby claim that the hearing was not evidentiary after all, such that the motion is declared abandoned?
- Abandonment of motions not normally set for hearing:
  - If clerk enters default more than ninety days after filing of motion, is the defendant defaulted or was the motion abandoned?
  - Motions for reconsideration cannot be set for hearing (Local Rule 6). If the judge takes no action for 90 days, is the motion abandoned? Which Local Rule takes precedence?
- Abandonment of motions through no fault of the parties will actually increase, rather than decrease, the work load of the court and the parties:

- Often hearings do not go forward for various unpredictable reasons, e.g. it did not make the court's calendar, a court reporter does not appear, an attorney's car breaks down, or (in the foreclosure division) the court simply refuses to hear noticed motions at a Court Management Conference that do not pertain to getting the case at issue. Either the non-heard motion will be declared abandoned or an additional motion must be filed and an additional hearing set to obtain leave of court to extend the ninety-day deadline.

- Lastly, the proposed rule must be considered in conjunction with the proposed changes in Local Rule 4 which will cause delays in in setting hearings while busy attorneys attempt to coordinate calendars for face-to-face or telephonic meetings, especially in cases with multiple parties. Proposed Local Rule 9 creates the opportunity for gamesmanship and "gotcha" litigation by nonmovants when movants attempt to comply with new Local Rule 4 requirements.

If you or anyone considering the proposal has any additional questions, please do not hesitate to contact me. I will be happy to provide further information and will make myself available to discuss these issues.

Sincerely,



Thomas E. Ice

Ice Legal, P.A.
1015 N. State Rd. 7, Suite C, Royal Palm Beach, FL 33411 • Telephone (561) 729-0530

Amy Borman

From: Amy Borman
Sent: Friday, January 30, 2015 3:43 PM
To: Amy Borman; Adam Rabin; Dean T. Xenick (DXenick@lawclc.com); lawrence.rochefort@akerman.com; Peter Blanc
Subject: RE: Local Rules Submission
Attachments: Supreme Court Local Rules Advisory Committee Submission.pdf

Sorry - I sent just the letter. Attached is the complete submission.

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

From: Amy Borman
Sent: Friday, January 30, 2015 3:21 PM
To: 'Adam Rabin'; Dean T. Xenick (DXenick@lawclc.com); lawrence.rochefort@akerman.com; Peter Blanc
Subject: Local Rules Submission

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
JEFFREY J. COLBATH
CHIEF JUDGE

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561) 355-7845

January 30, 2015

The Honorable Robert T. Benton II
Chair, Supreme Court Local Rules Advisory Committee
First District Court of Appeal
Tallahassee, Florida 32399-1850
bentonb@1dca.org

Re: Submission of Proposed Amendment to Local Rule 4
Submission of Proposed Local Rule 9

Dear Judge Benton:

The Fifteenth Judicial Circuit is submitting for consideration two local rules in accordance with Florida Rule of Judicial Administration 2.215(e). The first is an Amendment to Local Rule 4 (the original rule was approved by the Florida Supreme Court in 1991) and the second is a new Proposed Local Rule 9. The current Local Rule 4, the Proposed Amendment to Local Rule 4 in legislative format, and the Proposed Local Rule 9 are attached for your review. Also attached are comments received from the members of the local bar association after publication of the rules as approved by greater than a majority of the judges in the Fifteenth Judicial Circuit in accordance with Florida Rule of Judicial Administration 2.215(e)(1). After input from the members of the local bar, revisions were made to the distributed versions of the proposed rules. These revised versions, which are attached, were approved by more than a majority of the judges. Due to time constrictions, the revised versions have not been circulated to members of the local bar for comment.

AMENDMENT TO LOCAL RULE 4

Paragraph 2 of Local Rule 4 currently requires an attorney prior to setting a motion on the Uniform Motion Calendar to "attempt to resolve the matter" and requires a certification of the "good faith attempt to resolve." Currently there is no definition of "attempt to resolve the matter" and further there is no uniform procedure to certify the "good faith attempt to resolve." Members of the local bar and *pro se* litigants are loosely defining "attempt to resolve" and perfunctorily inserting the "good faith certification" into motions and notices of hearing regardless of whether the parties have actually spoken about the issues. This is evident by the number of matters resolved outside the doors of the courtroom once the attorneys and *pro se litigants* actually communicate in person with one another.

The Fifteenth Judicial Circuit has seen a decrease in professionalism and civility amongst attorneys with neither side reaching out to resolve matters resulting in the unnecessary expenditure of limited judicial resources.[1] The proposed amendments to Local Rule 4 define "good faith attempt" and require attorneys and *pro se* litigants to make two attempts to speak about the matter prior to setting the hearing. To ensure that the certification is not simply an obligatory "add on" to the Notice of Hearing, a cover sheet is required that lists the attempts made. These proposed amendments incorporate procedures utilized by both the Ninth Judicial Circuit (*see* paragraph 6 of Administrative Order 2012-03 - Administrative Order Establishing Ninth Judicial Circuit Court Circuit Civil Court Guidelines) and the United States District Court for the Southern District of Florida (*see* local rule 7.1(a)(3)).

In the Fifteenth Judicial Circuit there is a common and growing problem of attorneys not speaking to each other prior to scheduling a hearing and prior to attending a hearing. Indeed, more than a majority of the judges in the Fifteenth Judicial Circuit believe that requiring attorneys to engage in a substantive conversation prior to a hearing, and not simply sending an e-mail, will help resolve matters. With the implementation of this rule, the number of unnecessary hearings set on Uniform Motion Calendar should decrease, allowing greater access to the court's limited hearing time. Thus, the purpose of the proposed amendment to Local Rule 4 is to foster actual communication between attorneys and *pro se* litigants so that there can be a narrowing of the issues to be heard by the judiciary resulting in more efficient administration of the courts.

The judges are also seeking to bring the Local Rule 4 into current practice. Courtroom deputies, rather than bailiffs, are now in the courtroom. Paper files are no longer delivered to the judges and copies of defaults and final judgments no longer need to be sent to the Clerk of Court prior to a hearing. Accordingly, updates were made to outdated practices currently included in Local Rule 4.

PROPOSED LOCAL RULE 9

Florida Rule of Judicial Administration 2.545 provides that judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. Florida Rule of Judicial Administration 2.515 provides that a signature of an attorney shall constitute a certificate by the attorney that to the best of the attorney's knowledge, information and belief there is good grounds to support the court filing and that the court filing is not interposed for delay. Florida Rule of Judicial Administration 2.250 provides that non-jury civil cases should take twelve (12) months from the filing to final disposition and that jury trial cases should take eighteen (18) months from the filing to final disposition. With these Rules of Judicial Administration as the cornerstone in litigation, a party should be timely bringing filed motions to the court's attention so that they may ruled upon in order for the case to judiciously move through the legal system.

Proposed Local Rule 9 follows on the path of cases such as *Bridier v. Burns*, 200 So. 355, 356 (Fla. 1941), *Weatherford v. Weatherford*, 91 So. 2d 179, 180 (Fla. 1956) and *State Dept. of*

[1] The Supreme Court of Florida is also addressing the issue of the increased lack of civility amongst attorneys with the recent amendment to the Oath of Admission for New Attorneys and mandating Professionalism Panels in each judicial circuit.

Revenue v. Kiedaisch, 670 So. 2d 1058 (Fla. 2d DCA 1996) where the courts have found that matters not brought to the attention of the court are abandoned. In *Bridier*, the court found that it was reasonable to assume that the appeals had been abandoned by counsel because they had not been brought to the court's attention, briefs had not been filed nor had a request for oral argument been made; in *Weatherford* the court found that assignments of error not argued are considered abandoned; and in *Kiedaisch* the court concluded that a supplemental petition for modification of final judgment was abandoned when party never set the petition for hearing.

A large majority of cases currently pending in the Fifteenth Judicial Circuit are not completed within the time standards set forth in the Rules of Judicial Administration. As of January 2015, there are on average 1200-1300 pending cases and 100-150 reopened cases in each of the eleven circuit civil divisions. In the one foreclosure division, there are approximately 7,800 pending cases and just over 2,100 reopened cases. In the eight county civil divisions there are on average 3,000 pending cases and 200 reopened cases. The volume of cases, along with the dearth of case managers, creates an environment where the judiciary cannot actively manage its docket. Thus, parties are able to file motions, avoid setting them for hearing, and have cases remain dormant until either the defendant or the court files a Notice of Failure to Prosecute pursuant to Florida Rule of Judicial Administration 1.420(e). Over the past five years, many more Notices of Failure to Prosecute have been filed by the judiciary than by the defendants. This dilatory practice is not what is contemplated by the Rules of Court.

Proposed Local Rule 9 would effectively give the court the authority to withdraw from consideration certain specified motions that are not set and heard within ninety (90) days. The rule is crafted to address motions that, for the most part, are scheduled on the court's uniform motion calendar. Should the motion need judicial time greater than that permitted for on uniform motion calendar and should the court be unable to schedule the hearing within ninety days, the parties simply need to obtain an order extending or excusing the ninety (90) day period. This rule would thus complement Rule of Judicial Administration 2.545 and the time standards set forth in Rule of Judicial Administration 2.250 in that motions will be timely brought to the court for resolution.

I appreciate the Committee taking the time to review the rules and I am available to answer any questions the Committee may have.

Sincerely,

Jeffrey J. Colbath
Chief Judge

Enclosed: Proposed Revised Local Rule 4, Current Local Rule 4, Proposed Local Rule 9, Comments

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4

IN RE: UNIFORM MOTION CALENDAR
. . . . . :

Pursuant to the authority conferred by rule 2.050(b), Fla.R.Jud.Admin., it is

ORDERED as follows:

(1) Circuit judges in each division shall conduct a uniform motion calendar on days and at a time specified by the judges of the division.

(2) Prior to setting a matter on the motion calendar, the party or attorney noticing the motion shall attempt to resolve the matter and shall certify the good faith attempt to resolve.

(3) Hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

(4) Unless the moving party makes special arrangements with the clerk's office, the court file will not be present in the hearing room during the uniform motion calendar. Therefore, the moving party must furnish the court a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all documents, pleadings and case authority which they wish the Court to consider.

(5) SCHEDULING -- Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall notice opposing counsel pursuant to the applicable rules of civil procedure. Opposing counsel shall

be given reasonable notice. In default and final judgment matters only, a copy of the notice of hearing and a copy of the motion shall be delivered to the clerk, marked "Attention, Uniform Motion Calendar," at least four business days before the hearing. In this instance, the clerk shall deliver the file to the Court prior to the hearing.

(6) The bailiff shall call cases for hearing in the order in which counsel signed up on the sheet posted outside the hearing room. Failure of any party to appear at the time set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this 31st day of January, 1991.

/s/
Daniel T. K. Hurley
Chief Judge

Approved by the Supreme Court of Florida, April 23, 1991.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4

IN RE: UNIFORM MOTION CALENDAR
_____:

Pursuant to the authority conferred by rule 2.~~050(b)~~215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

1. Circuit judges in each division shall conduct a uniform motion calendar on days and at a time specified by the judges of the division.

2. Prior to setting a matter on the uniform motion calendar, the ~~party or~~ attorney or *pro se* litigant noticing the motion shall attempt to resolve the matter and shall certify the good faith attempt to resolve.

3. For the Circuit Civil, County Civil and Family (domestic relations) divisions the following apply:

   a. The term "attempt to resolve the matter" in paragraph 2 requires counsel or a *pro se* litigant with full authority to resolve the matter to confer before serving the Notice of Hearing on the motion to be set on the Uniform Motion Calendar.

   b. The term "confer" in paragraph 3a. requires that the parties' counsel or a *pro se* litigant engage in at least one substantive conversation, either in person or by telephone ("Conference"), in a good-faith effort to resolve the motion entirely (thus not requiring a hearing) or otherwise narrow the issues raised in the motion so as to narrow the hearing.

   c. Coordination of Conference and potential hearing date:

      1). In an effort to coordinate the Conference, counsel or a *pro se* litigant noticing the hearing ("Notice Counsel") may send an email or letter to, or leave a detailed message or voice-mail with opposing counsel (including opposing counsel's staff) or *pro se* litigant ("Responding Counsel") that proposes the timing of the Conference and the issues to be discussed. At the same time, and consistent with the Standards of Professional Courtesy and Civility approved by the judges of the Fifteenth Judicial Circuit,

Notice Counsel shall propose a minimum of three (3) dates to be used in the event a hearing becomes necessary.

2). Responding Counsel must respond promptly to Notice Counsel's communications about coordinating the Conference and scheduling the hearing including acceptance of one of the three (3) proposed hearing dates or proposing three (3) alternate dates falling within the same or similar time frame.

3). After two (2) good-faith attempts to coordinate the Conference and the hearing date, including at least one attempt by phone or in person, Notice Counsel may serve a notice of hearing on the motion if Responding Counsel has not responded. Notice Counsel may set the hearing on a mutually agreed date or, if Responding Counsel has not responded to Notice Counsel's attempts to coordinate the Conference or a hearing, on any one of the three dates that Notice Counsel previously proposed.

d. The term "certify the good faith attempt to resolve" requires Notice Counsel to include a Certificate of Compliance (sample form attached hereto as Exhibit "A") as a separate cover sheet attached to the Uniform Motion Calendar Notice of Hearing indicating that the Conference has occurred or that the good faith attempt has been made.

e. If the Conference has not occurred then,

1). Notice Counsel must identify in the Certificate of Compliance the dates and approximate times on which Notice Counsel attempted to contact Responding Counsel.

2). The Court may review the Certificate of Compliance to determine if the good faith attempts to confer were made.

3). The Court may review the Certificate of Compliance to determine whether Responding Counsel's failure to respond to Notice Counsel's inquiries or communications was reasonable.

f. The Clerk of Court shall identify in the docket a "notice of hearing" under that title despite that a Certificate of Compliance is included on the front page of the notice of hearing.

g. In the event that, despite compliance with this Order, the issue or issues in the motion remain unresolved, both parties should continue to make a good faith effort to meet and confer prior to the hearing date, to narrow or resolve the issues in the motion.

h. Notice Counsel shall ensure that the Court and the Court's Judicial Assistant are aware of any narrowing of the issues or other resolution regarding the motion as a result of the conference by referencing same in the space indicated on the Certificate of Compliance.

i. The Court may award sanctions for Notice Counsel's failure to attempt to confer in good faith or for Responding Counsel's failure to respond promptly to Notice Counsel's attempts to confer.

4. Hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

5. ~~Unless the moving party makes special arrangements with the clerk's office, the court file will not be present in the hearing room during the uniform motion calendar. Therefore,~~ The moving party must furnish the court a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all documents, pleadings and case authority which they wish the Court to consider.

6. SCHEDULING -- Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall notice opposing counsel pursuant to the applicable rules of civil procedure. Opposing counsel shall be given reasonable notice. ~~In default and final judgment matters only, a copy of the notice of hearing and a copy of the motion shall be delivered to the clerk, marked "Attention, Uniform Motion Calendar," at least four business days before the hearing. In this instance, the clerk shall deliver the file to the Court prior to the hearing.~~

7. The courtroom deputy ~~bailiff~~ shall call cases for hearing in the order in which counsel signed up on the sheet posted outside the hearing room. Failure of any party to appear at the time set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of_____, 2015.

_____

Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

(EXHIBIT A)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO:

Plaintiff,

vs.

Defendant.
_____/

CERTIFICATE OF COMPLIANCE

Option 1

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below had a substantive conversation in person or by telephone with opposing counsel in a good faith effort to resolve this motion before the motion was noticed for hearing, but the parties were unable to reach an agreement, other than as to: [specify any issues resolved]_____
_____

/S/
Counsel for party who noticed matter for hearing.

OR

Option 2

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below attempted in good faith to contact opposing counsel in writing, by telephone, or in person with at least one attempt by telephone or in person as follows:

1. (Date) _____ at (approximate time) _____; and
2. (Date) _____ at (approximate time) _____

to discuss resolution of this motion without a hearing and I or the lawyer in my firm was unable to speak with opposing counsel.

/S/
Counsel for party who noticed matter for hearing.

Dated:

Respectfully submitted,

_____

, Esquire
Florida Bar No.
Address
Telephone:
Facsimile:
E-mail:

Attorneys for

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing _____ was served via electronic mail this ____ day of _____, 20__, to all parties listed on the Service List.

_____

, Esquire

SERVICE LIST

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 9

IN RE: TIMELY SETTING OF HEARINGS
_____:

Pursuant to the authority conferred by rule 2.215(e), Fla. R. Jud. Admin.. it is **ORDERED** as follows:

A party filing a motion in the circuit civil, county civil, family (domestic relations section), foreclosure and probate & guardianship divisions of the court, must schedule the motion for hearing and be heard on the motion within ninety (90) days of the motion's filing. Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned, thus withdrawn by the filing party, on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained before the ninety-first (91) day or the hearing is rescheduled by order of court. A party is not precluded from re-filing a motion deemed abandoned by this rule. This rule does not apply to hearings on motions for summary judgment and motions for rehearing or reconsideration filed pursuant to Local Rule 6 nor does it apply to hearings that will include testimonial evidence except for hearings on motions to quash service of process. This rule will apply to motions filed on or after INSERT DATE ORDER IS SIGNED.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of January, 2015.

_____
Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

(EXHIBIT A)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO:

Plaintiff,

vs.

Defendant.
_____/

CERTIFICATE OF COMPLIANCE

Option 1

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below had a substantive conversation in person or by telephone with opposing counsel in a good faith effort to resolve this motion before the motion was noticed for hearing, but the parties were unable to reach an agreement, other than as to: [specify any issues resolved]_____
_____

/S/
Counsel for party who noticed matter for hearing.

OR

Option 2

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below attempted in good faith to contact opposing counsel in writing, by telephone, or in person with at least one attempt by telephone or in person as follows:

1. (Date) _____ at (approximate time) _____; and
2. (Date) _____ at (approximate time) _____

to discuss resolution of this motion without a hearing and I or the lawyer in my firm was unable to speak with opposing counsel.

/S/
Counsel for party who noticed matter for hearing.

Dated:

Respectfully submitted,

_____

, Esquire
Florida Bar No.
Address
Telephone:
Facsimile:
E-mail:

Attorneys for

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing _____ was served via electronic mail this ____ day of _____, 20__, to all parties listed on the Service List.

_____

, Esquire

SERVICE LIST

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 9

IN RE: TIMELY SETTING OF HEARINGS
_____:

Pursuant to the authority conferred by rule 2.215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

A party filing a motion in the circuit civil, county civil, family (domestic relations section), foreclosure and probate & guardianship divisions of the court, must schedule the motion for hearing and be heard on the motion within ninety (90) days of the motion's filing. Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned, thus withdrawn by the filing party, on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained before the ninety-first (91) day or the hearing is rescheduled by order of court. A party is not precluded from re-filing a motion deemed abandoned by this rule. This rule does not apply to hearings on motions for summary judgment and motions for rehearing or reconsideration filed pursuant to Local Rule 6 nor does it apply to hearings that will include testimonial evidence except for hearings on motions to quash service of process. This rule will apply to motions filed on or after INSERT DATE ORDER IS SIGNED.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of January, 2015.

_____
Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

Amy Borman

From: Paul Roman [proman@hnrwlaw.com]
Sent: Friday, January 16, 2015 10:24 AM
To: Amy Borman
Subject: Question on Proposed Amendment to Local Rule 4

In the second line of paragraph 3c.1, is the phrase "serving the hearing" a litigation term of art, or should it be "seeking the hearing" or some other phrase? As you can probably tell, I am not a litigator.

Paul E. Roman
[illegible]
1800 North Military Trail - Suite 160
Boca Raton, Florida 33431-6386
561-862-4139
Fax:862-4966

Amy Borman

From: Abigail Beebe [Abigail@abeebelaw.com]
Sent: Monday, January 26, 2015 5:01 PM
To: Amy Borman
Subject: proposed local rules

Chief Judge and Amy Borman,

As chair of the UFC committee for the palm beach county bar, I write to inform you that several members have commented on the local proposed rules. While I know some have submitted under separate and individual cover, I would like to state some issues

It is suggested that is these stringent coordinate rules are imposed, it should be in writing.
Most complaints are saying this is micromanagement of professionals

Abigail Beebe, Esquire
Law Office of Abigail Beebe, P.A.
P.O. Box 4467
West Palm Beach, FL 33402
Telephone: 561.370.3691
E-mail: abigail@abeebelaw.com
Website: www.abeebelaw.com

Palm Beach County
Justice Association
PO BOX 3515
WEST PALM BEACH, FL 33402
561.790.5829 (P)
561.790.5880 (F)
WWW.PBCJA.ORG

January 26, 2015

The Hon. Jeffrey Colbath, Chief Judge
c/o Amy Borman, General Counsel
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401

Via E-Mail Only: ABorman@pbcgov.org

RE: Proposed Changes to Local Rule 4

Your Honor:

I am writing to you on behalf of the Palm Beach County Justice Association and our nearly 400 members to express our concerns regarding the proposed changes to Local Rule Number 4. First and foremost, we fully agree that the parties should make a reasonable effort to resolve issues set for a UMC prior to the matter being set for hearing. However, we believe the burdens imposed by the proposed revised Rule 4 are onerous and burdensome and will disproportionately negatively affect plaintiffs in personal injury cases.

Specifically, the need to make two efforts to contact defense counsel will only contribute to unnecessary delays in setting matters for hearing. To that end, we believe that one effort - be it a substantive email, phone call, or in person meeting - should be sufficient. If the issue isn't resolved within 24 hours of the initial effort we believe the party should be able to set it for hearing. Frankly, if a defense attorney is not inclined to respond to our initial email, letter or phone call, it is doubtful that they will respond to a second email, letter or phone call.

In addition, the need to clear dates with defense counsel prior to setting a UMC hearing will result in further unnecessary delay in our cases. We believe that this scheduling provision defeats the purpose of a UMC hearing which is the quick resolution of relatively smaller issues. As the Rule is proposed, all defense counsel has to do is say that they are not available on any date chosen by the Plaintiff's counsel or that the first date they have available is weeks and weeks

down the road (this happens all the time when we try to schedule depositions). Nothing in the proposed Rule deals with, prevents, or otherwise addresses that scenario.

Further, how are we to prove that we left a voicemail for defense counsel? Unfortunately it is not as uncommon as you might think for defense attorneys claim they never received a phone call. What proof can we offer other than our word that we did call? At that point UMC hearings could easily devolve into a he said/she said over whether or not two good faith efforts were made thereby complicating matters rather than simplifying them.

Again, we fully agree that an effort should be made to resolve UMC hearings prior to the hearing and we are all in favor of efforts to require defense counsel to work with us to resolve issues prior to running to the courthouse. However, we are extremely concerned that the proposed Rule 4 changes potentially create more problems than they eliminate.

I would welcome the opportunity to discuss our concerns in more detail with you. Thank you for your consideration herein.

Very truly yours,

Gregory T. Zele
President
Palm Beach County Justice Association

Amy Borman

From: Culver (Skip) Smith III [csmith@culversmithlaw.com]
Sent: Monday, January 26, 2015 10:56 AM
To: Amy Borman
Subject: Proposed Local Rule 9

Amy:

I respectfully offer the following observations/suggestions re proposed Local Rule 9:

1. The rule provides that a motion will be "deemed abandoned" if not heard within ninety days. Will some record action reflect that? E.g., will the clerk file a document to that effect? There should be some record disposition of the motion. It would be better to have the clerk enter an order *denying* the motion "on order of the court."

2. Should not "granted" in the third sentence be "required"?

3. The last sentence excepts hearings that require "live testimonial evidence." Does that include hearings in which testimony is presented entirely through the reading of excerpts from depositions or the playing of videotape depositions? Perhaps "live" should be deleted. Also, I wonder about the use of "require" rather then, say, "will include." There may be some debate about whether a hearing requires testimonial evidence.

I also may have some comments on the proposed amendments to Local Rule 4. Could you please send me a copy of the "Certificate of Compliance" (Exhibit "A")? It was not included in the link provided by the bar association's e-mail. Thanks much.

Skip

D. Culver Smith III
CULVER SMITH III, P.A.
500 South Australian Boulevard, Suite 600
West Palm Beach, FL 33401
Tel.: 561.598.6800
Cell: 561.301.3800
csmith@culversmithlaw.com
www.culversmithlaw.com

Ice Legal P.A.

1015 N. State Rd. 7 ~ Suite C
Royal Palm Beach, FL 33411
561.729.0530
www.icelegal.com

FIRM ATTORNEYS:
THOMAS E. ICE
AMANDA L. LUNDERGAN
STEVEN BROTMAN
JAMES FLANAGAN
JAMES R. (RANDY) ACKLEY
CANDACE GIPSON
JACQUELINE LUKER
ALI L. HANSEN
JOSHUA S. MILLER*
JOSE FUNCIA*

*OF COUNSEL

January 26, 2015

Amy Borman, General Counsel
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
Via email: ABorman@pbcgov.org

Re: Proposed Local Rule 9

Dear Ms. Borman,

Please allow this letter to serve as my comments to the proposed Local Rule 9:

- The proposal contains no statement as to what local conditions in the 15th Judicial Circuit would justify this rule. Nor does it seem that one could be articulated, much less proven.

- The period for comments (ten days which included a three day holiday weekend) is too short to allow for all interested persons to be heard.

- The period for reviewing the comments (four days) is too short to allow for serious contemplation of the problems raised. Because the rule must be approved by a majority of judges, for their approval to be meaningful, the comments need to be circulated among all the judges before the proposal is sent to the Supreme Court.

- The proposed rule is invalid because it conflicts with Court rules of procedure because it creates time limits for a party to exercise a right where the rules of procedure have no such limits. *See Bathurst v.* Turner, 533 So. 2d 939, 941 (Fla. 3d DCA 1988).

- The claimed rationale for the abandonment of unheard motions has always been that the foreclosure crisis called for unprecedented and extraordinary measures to help clear cases. The proposal does not articulate any reason for taking extraordinary measures in non-foreclosure cases, or for that matter, provide any legal basis for the notion that a "crisis" would justify the adoption of local rules inconsistent with court rules.

- When the Administrative Order that created the abandonment rule for foreclosure cases was circulated among the judges, Judge Booras asked whether the abandonment rule could be adopted "across the board rather [than] just AW [the foreclosure division]." In other words, Judge Booras proposed that the Circuit adopt the very rule now under

consideration. The Chief Judge responded. "Probably not. It is very case manager intensive. We have the[m] in AW due to the extra foreclosure funding." The Chief Judge, therefore, was against the very rule the Fifteenth Circuit is now proposing because it was financially impractical to make use of the rule. We are unaware of any additional funding that would make the abandonment rule financially practical in other divisions—or for that matter, in the foreclosure division after June 30th.

- The proposal has no grandfathering language, such that its passage would immediately result in the abandonment of potentially thousands of motions. This will be exacerbated by the limited distribution of this proposal such that few attorneys will be aware of the new requirement before it is implemented.

- The proposed rule actually provides a disincentive for the setting of an adverse party's motion and encourages the avoidance of determinations on the merits. As already demonstrated by the Administrative Orders of both the Eleventh and Fifteenth Circuits, a party—such as a plaintiff who already has the obligation and incentive for moving the case forward—will not set a hearing on an adverse party's motion that the nonmovant believes has merit. Instead, the nonmovant will wait the required "abandonment" period and file a new motion to declare the opposition's motion abandoned. Accordingly, the proposed rule encourages gamesmanship while, at the same time, actually increasing the workload for the court and the parties.

- The proposed rule will create confusion and a morass of collateral litigation because its operation will cause problems with existing rules and potential unintended consequences that the Court may not have considered, for example:

    - Confusion in the computation of appellate filing deadlines:

        - Abandonment of 1.530 motions. When will the appeal time begin to run—thirty days from the 90th day even though there is no order in the file? (Local rule cannot conflict with the rules of appellate procedure.) If the abandoned motion is treated as though it were never filed (which will be the position of non-movants—and has been their position under Administrative Order 3/314-4.14), then the appeal time will have expired. For jury trials, will movants have waived their sufficiency of the evidence arguments? (see problems with ambiguous "leave of court to re-file" language below)

        - Abandonment of motions to quash. When will the time for filing non-final appeal begin to run? Without a written order in the case, how will it be appealed?

- Confusion as to whether motions that have a specific time period for filling are timely:
  - May "abandoned" 1.530 motions be refiled although more than fifteen days after the judgment or verdict?
  - May "abandoned" 1.540(1). (2) or (3) motions be refiled more than a year after the judgment?
  - May "abandoned" 1.525 motions for costs and attorneys' fees be refiled more than thirty days after judgment?
- Confusion in the computation of deadlines for answering a complaint or the entry of defaults:
  - Abandonment of pre-answer motions. When will the time for answering begin to run? Will the defendant be subject to a default on the 91st day?
  - Will a clerk be able to enter a default even though the defendant has filed a "paper," because the paper will have been abandoned?
- Confusion in the computation of discovery deadlines:
  - Abandonment of motions for extension of time for discovery. Will the movant be subject to an *ex parte* motion to compel on the 91st day? Will all objections to the discovery have been waived because the response is now overdue?

The sentence* "Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained" *is ambiguous and allows the proposed rule to be selectively enforced.

  - Must leave be obtained before the ninety days?
  - What standard will apply to the granting of leave? What standard of review will the decision be subject to?
  - With no objective standards, the proposed rule may be selectively enforced vis-à-vis the divisions or vis-à-vis the parties. E.g., can a

division judge enter a standing order automatically and indefinitely extending the 90 day period?

The sentence "Leave of court is granted for the party to re-file the motion" is hopelessly ambiguous.

- Does this mean "a motion for leave of court shall be granted" such that a motion for leave of court must be filed and granted or is this intended to be automatic permission for refiling without a motion?
- Does it matter whether the re-filing is before or after the 90 days?
- Can the same motion be re-filed to extend the time? For example, can a motion for extension of time to respond to discovery be routinely filed every 89 days?
- Does "leave of court" mean that the abandonment is without prejudice to time-dependent motions such as pre-answer motions or post-trial motions—e.g. does this change the rule that a 1.530 motion must be filed in fifteen days or that a 1.540 motion must be filed in a year?

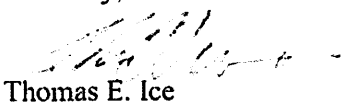
- If motions are amended, does that restart the 90 day clock as to all the issues, or do the new issues have their own 90 day deadline—i.e. will only the original issues be abandoned at 90 days?
- What determines whether a motion requires an evidentiary hearing such that it is not subject to the proposed rule? Often this cannot be determined by the movant until a response is filed, or if no response is filed, until the day of hearing. Can one party stipulate to all the facts and thereby claim that the hearing was not evidentiary after all, such that the motion is declared abandoned?
- Abandonment of motions not normally set for hearing:
  - If clerk enters default more than ninety days after filing of motion, is the defendant defaulted or was the motion abandoned?
  - Motions for reconsideration cannot be set for hearing (Local Rule 6). If the judge takes no action for 90 days, is the motion abandoned? Which Local Rule takes precedence?
- Abandonment of motions through no fault of the parties will actually increase, rather than decrease, the work load of the court and the parties:

- Often hearings do not go forward for various unpredictable reasons, e.g. it did not make the court's calendar, a court reporter does not appear, an attorney's car breaks down, or (in the foreclosure division) the court simply refuses to hear noticed motions at a Court Management Conference that do not pertain to getting the case at issue. Either the non-heard motion will be declared abandoned or an additional motion must be filed and an additional hearing set to obtain leave of court to extend the ninety-day deadline.

- Lastly, the proposed rule must be considered in conjunction with the proposed changes in Local Rule 4 which will cause delays in in setting hearings while busy attorneys attempt to coordinate calendars for face-to-face or telephonic meetings, especially in cases with multiple parties. Proposed Local Rule 9 creates the opportunity for gamesmanship and "gotcha" litigation by nonmovants when movants attempt to comply with new Local Rule 4 requirements.

If you or anyone considering the proposal has any additional questions, please do not hesitate to contact me. I will be happy to provide further information and will make myself available to discuss these issues.

Sincerely,



Thomas E. Ice

Ice Legal, P.A.
1015 N. State Rd. 7, Suite C, Royal Palm Beach, Fl. 33411 • Telephone (561) 729-0530

Amy Borman

From: Amy Borman
Sent: Monday, February 02, 2015 9:09 AM
To: Bart Schneider
Subject: Local Rules Advisory Submission
Attachments: Supreme Court Local Rules Advisory Committee Submission.pdf

Bart -

Hope all is well. Attached please find a submission of a Proposed Amendment to Fifteenth Judicial Circuit Local Rule 4 and Proposed Local Rule 9 which were sent to Judge Benton on Friday January 30, 2015. Please let me know if I correctly submitted the proposed local rules.

Thanks,
Amy

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
JEFFREY J. COLBATH
CHIEF JUDGE

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561) 355-7845

January 30, 2015

The Honorable Robert T. Benton II
Chair, Supreme Court Local Rules Advisory Committee
First District Court of Appeal
Tallahassee, Florida 32399-1850
bentonb@1dca.org

Re: Submission of Proposed Amendment to Local Rule 4
Submission of Proposed Local Rule 9

Dear Judge Benton:

The Fifteenth Judicial Circuit is submitting for consideration two local rules in accordance with Florida Rule of Judicial Administration 2.215(e). The first is an Amendment to Local Rule 4 (the original rule was approved by the Florida Supreme Court in 1991) and the second is a new Proposed Local Rule 9. The current Local Rule 4, the Proposed Amendment to Local Rule 4 in legislative format, and the Proposed Local Rule 9 are attached for your review. Also attached are comments received from the members of the local bar association after publication of the rules as approved by greater than a majority of the judges in the Fifteenth Judicial Circuit in accordance with Florida Rule of Judicial Administration 2.215(e)(1). After input from the members of the local bar, revisions were made to the distributed versions of the proposed rules. These revised versions, which are attached, were approved by more than a majority of the judges. Due to time constrictions, the revised versions have not been circulated to members of the local bar for comment.

AMENDMENT TO LOCAL RULE 4

Paragraph 2 of Local Rule 4 currently requires an attorney prior to setting a motion on the Uniform Motion Calendar to "attempt to resolve the matter" and requires a certification of the "good faith attempt to resolve." Currently there is no definition of "attempt to resolve the matter" and further there is no uniform procedure to certify the "good faith attempt to resolve." Members of the local bar and *pro se* litigants are loosely defining "attempt to resolve" and perfunctorily inserting the "good faith certification" into motions and notices of hearing regardless of whether the parties have actually spoken about the issues. This is evident by the number of matters resolved outside the doors of the courtroom once the attorneys and *pro se litigants* actually communicate in person with one another.

The Fifteenth Judicial Circuit has seen a decrease in professionalism and civility amongst attorneys with neither side reaching out to resolve matters resulting in the unnecessary expenditure of limited judicial resources.[1] The proposed amendments to Local Rule 4 define "good faith attempt" and require attorneys and *pro se* litigants to make two attempts to speak about the matter prior to setting the hearing. To ensure that the certification is not simply an obligatory "add on" to the Notice of Hearing, a cover sheet is required that lists the attempts made. These proposed amendments incorporate procedures utilized by both the Ninth Judicial Circuit (*see* paragraph 6 of Administrative Order 2012-03 - Administrative Order Establishing Ninth Judicial Circuit Court Circuit Civil Court Guidelines) and the United States District Court for the Southern District of Florida (*see* local rule 7.1(a)(3)).

In the Fifteenth Judicial Circuit there is a common and growing problem of attorneys not speaking to each other prior to scheduling a hearing and prior to attending a hearing. Indeed, more than a majority of the judges in the Fifteenth Judicial Circuit believe that requiring attorneys to engage in a substantive conversation prior to a hearing, and not simply sending an e-mail, will help resolve matters. With the implementation of this rule, the number of unnecessary hearings set on Uniform Motion Calendar should decrease, allowing greater access to the court's limited hearing time. Thus, the purpose of the proposed amendment to Local Rule 4 is to foster actual communication between attorneys and *pro se* litigants so that there can be a narrowing of the issues to be heard by the judiciary resulting in more efficient administration of the courts.

The judges are also seeking to bring the Local Rule 4 into current practice. Courtroom deputies, rather than bailiffs, are now in the courtroom. Paper files are no longer delivered to the judges and copies of defaults and final judgments no longer need to be sent to the Clerk of Court prior to a hearing. Accordingly, updates were made to outdated practices currently included in Local Rule 4.

PROPOSED LOCAL RULE 9

Florida Rule of Judicial Administration 2.545 provides that judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. Florida Rule of Judicial Administration 2.515 provides that a signature of an attorney shall constitute a certificate by the attorney that to the best of the attorney's knowledge, information and belief there is good grounds to support the court filing and that the court.filing is not interposed for delay. Florida Rule of Judicial Administration 2.250 provides that non-jury civil cases should take twelve (12) months from the filing to final disposition and that jury trial cases should take eighteen (18) months from the filing to final disposition. With these Rules of Judicial Administration as the cornerstone in litigation, a party should be timely bringing filed motions to the court's attention so that they may ruled upon in order for the case to judiciously move through the legal system.

Proposed Local Rule 9 follows on the path of cases such as *Bridier v. Burns*, 200 So. 355, 356 (Fla. 1941), *Weatherford v. Weatherford*, 91 So. 2d 179, 180 (Fla. 1956) and *State Dept. of*

[1] The Supreme Court of Florida is also addressing the issue of the increased lack of civility amongst attorneys with the recent amendment to the Oath of Admission for New Attorneys and mandating Professionalism Panels in each judicial circuit.

Revenue v. Kiedaisch, 670 So. 2d 1058 (Fla. 2d DCA 1996) where the courts have found that matters not brought to the attention of the court are abandoned. In *Bridier*, the court found that it was reasonable to assume that the appeals had been abandoned by counsel because they had not been brought to the court's attention, briefs had not been filed nor had a request for oral argument been made; in *Weatherford* the court found that assignments of error not argued are considered abandoned; and in *Kiedaisch* the court concluded that a supplemental petition for modification of final judgment was abandoned when party never set the petition for hearing.

A large majority of cases currently pending in the Fifteenth Judicial Circuit are not completed within the time standards set forth in the Rules of Judicial Administration. As of January 2015, there are on average 1200-1300 pending cases and 100-150 reopened cases in each of the eleven circuit civil divisions. In the one foreclosure division, there are approximately 7,800 pending cases and just over 2,100 reopened cases. In the eight county civil divisions there are on average 3,000 pending cases and 200 reopened cases. The volume of cases, along with the dearth of case managers, creates an environment where the judiciary cannot actively manage its docket. Thus, parties are able to file motions, avoid setting them for hearing, and have cases remain dormant until either the defendant or the court files a Notice of Failure to Prosecute pursuant to Florida Rule of Judicial Administration 1.420(e). Over the past five years, many more Notices of Failure to Prosecute have been filed by the judiciary than by the defendants. This dilatory practice is not what is contemplated by the Rules of Court.

Proposed Local Rule 9 would effectively give the court the authority to withdraw from consideration certain specified motions that are not set and heard within ninety (90) days. The rule is crafted to address motions that, for the most part, are scheduled on the court's uniform motion calendar. Should the motion need judicial time greater than that permitted for on uniform motion calendar and should the court be unable to schedule the hearing within ninety days, the parties simply need to obtain an order extending or excusing the ninety (90) day period. This rule would thus complement Rule of Judicial Administration 2.545 and the time standards set forth in Rule of Judicial Administration 2.250 in that motions will be timely brought to the court for resolution.

I appreciate the Committee taking the time to review the rules and I am available to answer any questions the Committee may have.

Sincerely,

Jeffrey J. Colbath
Chief Judge

Enclosed: Proposed Revised Local Rule 4, Current Local Rule 4, Proposed Local Rule 9, Comments

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4

IN RE: UNIFORM MOTION CALENDAR
. . . . . :

Pursuant to the authority conferred by rule 2.050(b), Fla.R.Jud.Admin., it is

ORDERED as follows:

(1) Circuit judges in each division shall conduct a uniform motion calendar on days and at a time specified by the judges of the division.

(2) Prior to setting a matter on the motion calendar, the party or attorney noticing the motion shall attempt to resolve the matter and shall certify the good faith attempt to resolve.

(3) Hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

(4) Unless the moving party makes special arrangements with the clerk's office, the court file will not be present in the hearing room during the uniform motion calendar. Therefore, the moving party must furnish the court a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all documents, pleadings and case authority which they wish the Court to consider.

(5) SCHEDULING -- Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall notice opposing counsel pursuant to the applicable rules of civil procedure. Opposing counsel shall

be given reasonable notice. In default and final judgment matters only, a copy of the notice of hearing and a copy of the motion shall be delivered to the clerk, marked "Attention, Uniform Motion Calendar," at least four business days before the hearing. In this instance, the clerk shall deliver the file to the Court prior to the hearing.

(6) The bailiff shall call cases for hearing in the order in which counsel signed up on the sheet posted outside the hearing room. Failure of any party to appear at the time set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this 31st day of January, 1991.

/s/
Daniel T. K. Hurley
Chief Judge

Approved by the Supreme Court of Florida, April 23, 1991.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4

IN RE: UNIFORM MOTION CALENDAR
_____:

Pursuant to the authority conferred by rule 2.~~050(b)~~215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

1. Circuit judges in each division shall conduct a uniform motion calendar on days and at a time specified by the judges of the division.

2. Prior to setting a matter on the uniform motion calendar, the ~~party or~~ attorney or *pro se* litigant noticing the motion shall attempt to resolve the matter and shall certify the good faith attempt to resolve.

3. For the Circuit Civil, County Civil and Family (domestic relations) divisions the following apply:

   a. The term "attempt to resolve the matter" in paragraph 2 requires counsel or a *pro se* litigant with full authority to resolve the matter to confer before serving the Notice of Hearing on the motion to be set on the Uniform Motion Calendar.

   b. The term "confer" in paragraph 3a. requires that the parties' counsel or a *pro se* litigant engage in at least one substantive conversation, either in person or by telephone ("Conference"), in a good-faith effort to resolve the motion entirely (thus not requiring a hearing) or otherwise narrow the issues raised in the motion so as to narrow the hearing.

   c. Coordination of Conference and potential hearing date:

      1). In an effort to coordinate the Conference, counsel or a *pro se* litigant noticing the hearing ("Notice Counsel") may send an email or letter to, or leave a detailed message or voice-mail with opposing counsel (including opposing counsel's staff) or *pro se* litigant ("Responding Counsel") that proposes the timing of the Conference and the issues to be discussed. At the same time, and consistent with the Standards of Professional Courtesy and Civility approved by the judges of the Fifteenth Judicial Circuit,

Notice Counsel shall propose a minimum of three (3) dates to be used in the event a hearing becomes necessary.

2). Responding Counsel must respond promptly to Notice Counsel's communications about coordinating the Conference and scheduling the hearing including acceptance of one of the three (3) proposed hearing dates or proposing three (3) alternate dates falling within the same or similar time frame.

3). After two (2) good-faith attempts to coordinate the Conference and the hearing date, including at least one attempt by phone or in person, Notice Counsel may serve a notice of hearing on the motion if Responding Counsel has not responded. Notice Counsel may set the hearing on a mutually agreed date or, if Responding Counsel has not responded to Notice Counsel's attempts to coordinate the Conference or a hearing, on any one of the three dates that Notice Counsel previously proposed.

d. The term "certify the good faith attempt to resolve" requires Notice Counsel to include a Certificate of Compliance (sample form attached hereto as Exhibit "A") as a separate cover sheet attached to the Uniform Motion Calendar Notice of Hearing indicating that the Conference has occurred or that the good faith attempt has been made.

e. If the Conference has not occurred then,

1). Notice Counsel must identify in the Certificate of Compliance the dates and approximate times on which Notice Counsel attempted to contact Responding Counsel.

2). The Court may review the Certificate of Compliance to determine if the good faith attempts to confer were made.

3). The Court may review the Certificate of Compliance to determine whether Responding Counsel's failure to respond to Notice Counsel's inquiries or communications was reasonable.

f. The Clerk of Court shall identify in the docket a "notice of hearing" under that title despite that a Certificate of Compliance is included on the front page of the notice of hearing.

g. In the event that, despite compliance with this Order, the issue or issues in the motion remain unresolved, both parties should continue to make a good faith effort to meet and confer prior to the hearing date, to narrow or resolve the issues in the motion.

h. Notice Counsel shall ensure that the Court and the Court's Judicial Assistant are aware of any narrowing of the issues or other resolution regarding the motion as a result of the conference by referencing same in the space indicated on the Certificate of Compliance.

i. The Court may award sanctions for Notice Counsel's failure to attempt to confer in good faith or for Responding Counsel's failure to respond promptly to Notice Counsel's attempts to confer.

4. Hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

5. ~~Unless the moving party makes special arrangements with the clerk's office, the court file will not be present in the hearing room during the uniform motion calendar. Therefore,~~ The moving party must furnish the court a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all documents, pleadings and case authority which they wish the Court to consider.

6. SCHEDULING -- Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall notice opposing counsel pursuant to the applicable rules of civil procedure. Opposing counsel shall be given reasonable notice. ~~In default and final judgment matters only, a copy of the notice of hearing and a copy of the motion shall be delivered to the clerk, marked "Attention, Uniform Motion Calendar," at least four business days before the hearing. In this instance, the clerk shall deliver the file to the Court prior to the hearing.~~

7. The courtroom deputy ~~bailiff~~ shall call cases for hearing in the order in which counsel signed up on the sheet posted outside the hearing room. Failure of any party to appear at the time set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of_____, 2015.

_____

Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

(EXHIBIT A)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO:

Plaintiff,

vs.

Defendant.
_____/

CERTIFICATE OF COMPLIANCE

Option 1

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below had a substantive conversation in person or by telephone with opposing counsel in a good faith effort to resolve this motion before the motion was noticed for hearing, but the parties were unable to reach an agreement, other than as to: [specify any issues resolved]_____
_____

/S/
Counsel for party who noticed matter for hearing.

OR

Option 2

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below attempted in good faith to contact opposing counsel in writing, by telephone, or in person with at least one attempt by telephone or in person as follows:

1. (Date) _____ at (approximate time) _____; and

2. (Date) _____ at (approximate time) _____

to discuss resolution of this motion without a hearing and I or the lawyer in my firm was unable to speak with opposing counsel.

/S/
Counsel for party who noticed matter for hearing.

Dated:

Respectfully submitted,

_____

, Esquire
Florida Bar No.
Address
Telephone:
Facsimile:
E-mail:

Attorneys for

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing _____ was served via electronic mail this ____ day of _____, 20__, to all parties listed on the Service List.

_____

, Esquire

SERVICE LIST

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 9

IN RE: TIMELY SETTING OF HEARINGS
_____:

Pursuant to the authority conferred by rule 2.215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

A party filing a motion in the circuit civil, county civil, family (domestic relations section), foreclosure and probate & guardianship divisions of the court, must schedule the motion for hearing and be heard on the motion within ninety (90) days of the motion's filing. Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned, thus withdrawn by the filing party, on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained before the ninety-first (91) day or the hearing is rescheduled by order of court. A party is not precluded from re-filing a motion deemed abandoned by this rule. This rule does not apply to hearings on motions for summary judgment and motions for rehearing or reconsideration filed pursuant to Local Rule 6 nor does it apply to hearings that will include testimonial evidence except for hearings on motions to quash service of process. This rule will apply to motions filed on or after INSERT DATE ORDER IS SIGNED.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of January, 2015.

_____
Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

Amy Borman

From: Paul Roman [proman@hnrwlaw.com]
Sent: Friday, January 16, 2015 10:24 AM
To: Amy Borman
Subject: Question on Proposed Amendment to Local Rule 4

In the second line of paragraph 3c.1, is the phrase "serving the hearing" a litigation term of art, or should it be "seeking the hearing" or some other phrase? As you can probably tell, I am not a litigator.

Paul E. Roman
Hankin Norkwood Roman Weiss [illegible]
1800 North Military Trail - Suite 160
Boca Raton, Florida 33431-6386
561-862-4139
Fax:862-4966

Amy Borman

From: Abigail Beebe [Abigail@abeebelaw.com]
Sent: Monday, January 26, 2015 5:01 PM
To: Amy Borman
Subject: proposed local rules

Chief Judge and Amy Borman,

As chair of the UFC committee for the palm beach county bar, I write to inform you that several members have commented on the local proposed rules. While I know some have submitted under separate and individual cover, I would like to state some issues

It is suggested that is these stringent coordinate rules are imposed, it should be in writing.
Most complaints are saying this is micromanagement of professionals

Abigail Beebe, Esquire
Law Office of Abigail Beebe, P.A.
P.O. Box 4467
West Palm Beach, FL 33402
Telephone: 561.370.3691
E-mail: abigail@abeebelaw.com
Website: www.abeebelaw.com

Palm Beach County
Justice Association
PO BOX 3515
WEST PALM BEACH, FL 33402
561.790.5833 (P)
561.790.5386 (F)
WWW.PBCJA.ORG

January 26, 2015

The Hon. Jeffrey Colbath, Chief Judge
c/o Amy Borman, General Counsel
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401

Via E-Mail Only: ABorman@pbcgov.org

RE: Proposed Changes to Local Rule 4

Your Honor:

I am writing to you on behalf of the Palm Beach County Justice Association and our nearly 400 members to express our concerns regarding the proposed changes to Local Rule Number 4. First and foremost, we fully agree that the parties should make a reasonable effort to resolve issues set for a UMC prior to the matter being set for hearing. However, we believe the burdens imposed by the proposed revised Rule 4 are onerous and burdensome and will disproportionately negatively affect plaintiffs in personal injury cases.

Specifically, the need to make two efforts to contact defense counsel will only contribute to unnecessary delays in setting matters for hearing. To that end, we believe that one effort - be it a substantive email, phone call, or in person meeting - should be sufficient. If the issue isn't resolved within 24 hours of the initial effort we believe the party should be able to set it for hearing. Frankly, if a defense attorney is not inclined to respond to our initial email, letter or phone call, it is doubtful that they will respond to a second email, letter or phone call.

In addition, the need to clear dates with defense counsel prior to setting a UMC hearing will result in further unnecessary delay in our cases. We believe that this scheduling provision defeats the purpose of a UMC hearing which is the quick resolution of relatively smaller issues. As the Rule is proposed, all defense counsel has to do is say that they are not available on any date chosen by the Plaintiff's counsel or that the first date they have available is weeks and weeks

down the road (this happens all the time when we try to schedule depositions). Nothing in the proposed Rule deals with, prevents, or otherwise addresses that scenario.

Further, how are we to prove that we left a voicemail for defense counsel? Unfortunately it is not as uncommon as you might think for defense attorneys claim they never received a phone call. What proof can we offer other than our word that we did call? At that point UMC hearings could easily devolve into a he said/she said over whether or not two good faith efforts were made thereby complicating matters rather than simplifying them.

Again, we fully agree that an effort should be made to resolve UMC hearings prior to the hearing and we are all in favor of efforts to require defense counsel to work with us to resolve issues prior to running to the courthouse. However, we are extremely concerned that the proposed Rule 4 changes potentially create more problems than they eliminate.

I would welcome the opportunity to discuss our concerns in more detail with you. Thank you for your consideration herein.

Very truly yours,

Gregory T. Zele
President
Palm Beach County Justice Association

Amy Borman

From: Culver (Skip) Smith III [csmith@culversmithlaw.com]
Sent: Monday, January 26, 2015 10:56 AM
To: Amy Borman
Subject: Proposed Local Rule 9

Amy:

I respectfully offer the following observations/suggestions re proposed Local Rule 9:

1. The rule provides that a motion will be "deemed abandoned" if not heard within ninety days. Will some record action reflect that? E.g., will the clerk file a document to that effect? There should be some record disposition of the motion. It would be better to have the clerk enter an order *denying* the motion "on order of the court."

2. Should not "granted" in the third sentence be "required"?

3. The last sentence excepts hearings that require "live testimonial evidence." Does that include hearings in which testimony is presented entirely through the reading of excerpts from depositions or the playing of videotape depositions? Perhaps "live" should be deleted. Also, I wonder about the use of "require" rather then, say, "will include." There may be some debate about whether a hearing requires testimonial evidence.

I also may have some comments on the proposed amendments to Local Rule 4. Could you please send me a copy of the "Certificate of Compliance" (Exhibit "A")? It was not included in the link provided by the bar association's e-mail. Thanks much.

Skip

D. Culver Smith III
CULVER SMITH III, P.A.
500 South Australian Boulevard, Suite 600
West Palm Beach, FL 33401
Tel.: 561.598.6800
Cell: 561.301.3800
csmith@culversmithlaw.com
www.culversmithlaw.com

Ice Legal P.A.

1015 N. State Rd. 7 ~ Suite C
Royal Palm Beach, FL 33411
561.729.0530
www.icelegal.com

FIRM ATTORNEYS:
THOMAS E. ICE
AMANDA L. LUNDERGAN
STEVEN BROTMAN
JAMES FLANAGAN
JAMES R. (RANDY) ACKLEY
CANDACE GIPSON
JACQUELINE LUKER
ALI L. HANSEN
JOSHUA S. MILLER*
JOSE FUNCIA*

*OF COUNSEL

January 26, 2015

Amy Borman, General Counsel
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
Via email: ABorman@pbcgov.org

Re: Proposed Local Rule 9

Dear Ms. Borman,

Please allow this letter to serve as my comments to the proposed Local Rule 9:

- The proposal contains no statement as to what local conditions in the 15th Judicial Circuit would justify this rule. Nor does it seem that one could be articulated, much less proven.

- The period for comments (ten days which included a three day holiday weekend) is too short to allow for all interested persons to be heard.

- The period for reviewing the comments (four days) is too short to allow for serious contemplation of the problems raised. Because the rule must be approved by a majority of judges, for their approval to be meaningful, the comments need to be circulated among all the judges before the proposal is sent to the Supreme Court.

- The proposed rule is invalid because it conflicts with Court rules of procedure because it creates time limits for a party to exercise a right where the rules of procedure have no such limits. *See Bathurst v.* Turner, 533 So. 2d 939, 941 (Fla. 3d DCA 1988).

- The claimed rationale for the abandonment of unheard motions has always been that the foreclosure crisis called for unprecedented and extraordinary measures to help clear cases. The proposal does not articulate any reason for taking extraordinary measures in non-foreclosure cases, or for that matter, provide any legal basis for the notion that a "crisis" would justify the adoption of local rules inconsistent with court rules.

- When the Administrative Order that created the abandonment rule for foreclosure cases was circulated among the judges, Judge Booras asked whether the abandonment rule could be adopted "across the board rather [than] just AW [the foreclosure division]." In other words, Judge Booras proposed that the Circuit adopt the very rule now under

consideration. The Chief Judge responded, "Probably not. It is very case manager intensive. We have the[m] in AW due to the extra foreclosure funding." The Chief Judge, therefore, was against the very rule the Fifteenth Circuit is now proposing because it was financially impractical to make use of the rule. We are unaware of any additional funding that would make the abandonment rule financially practical in other divisions—or for that matter, in the foreclosure division after June 30th.

- The proposal has no grandfathering language, such that its passage would immediately result in the abandonment of potentially thousands of motions. This will be exacerbated by the limited distribution of this proposal such that few attorneys will be aware of the new requirement before it is implemented.

- The proposed rule actually provides a disincentive for the setting of an adverse party's motion and encourages the avoidance of determinations on the merits. As already demonstrated by the Administrative Orders of both the Eleventh and Fifteenth Circuits, a party—such as a plaintiff who already has the obligation and incentive for moving the case forward—will not set a hearing on an adverse party's motion that the nonmovant believes has merit. Instead, the nonmovant will wait the required "abandonment" period and file a new motion to declare the opposition's motion abandoned. Accordingly, the proposed rule encourages gamesmanship while, at the same time, actually increasing the workload for the court and the parties.

- The proposed rule will create confusion and a morass of collateral litigation because its operation will cause problems with existing rules and potential unintended consequences that the Court may not have considered, for example:

    - Confusion in the computation of appellate filing deadlines:

        - Abandonment of 1.530 motions. When will the appeal time begin to run—thirty days from the 90th day even though there is no order in the file? (Local rule cannot conflict with the rules of appellate procedure.) If the abandoned motion is treated as though it were never filed (which will be the position of non-movants—and has been their position under Administrative Order 3/314-4.14), then the appeal time will have expired. For jury trials, will movants have waived their sufficiency of the evidence arguments? (see problems with ambiguous "leave of court to re-file" language below)

        - Abandonment of motions to quash. When will the time for filing non-final appeal begin to run? Without a written order in the case, how will it be appealed?

- Confusion as to whether motions that have a specific time period for filling are timely:
  - May "abandoned" 1.530 motions be refiled although more than fifteen days after the judgment or verdict?
  - May "abandoned" 1.540(1), (2) or (3) motions be refiled more than a year after the judgment?
  - May "abandoned" 1.525 motions for costs and attorneys' fees be refiled more than thirty days after judgment?
- Confusion in the computation of deadlines for answering a complaint or the entry of defaults:
  - Abandonment of pre-answer motions. When will the time for answering begin to run? Will the defendant be subject to a default on the 91st day?
  - Will a clerk be able to enter a default even though the defendant has filed a "paper," because the paper will have been abandoned?
- Confusion in the computation of discovery deadlines:
  - Abandonment of motions for extension of time for discovery. Will the movant be subject to an *ex parte* motion to compel on the 91st day? Will all objections to the discovery have been waived because the response is now overdue?

The sentence* "Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained" *is ambiguous and allows the proposed rule to be selectively enforced.

  - Must leave be obtained before the ninety days?
  - What standard will apply to the granting of leave? What standard of review will the decision be subject to?
  - With no objective standards, the proposed rule may be selectively enforced vis-à-vis the divisions or vis-à-vis the parties. E.g., can a

division judge enter a standing order automatically and indefinitely extending the 90 day period?

The sentence "Leave of court is granted for the party to re-file the motion" is hopelessly ambiguous.

- Does this mean "a motion for leave of court shall be granted" such that a motion for leave of court must be filed and granted or is this intended to be automatic permission for refiling without a motion?
- Does it matter whether the re-filing is before or after the 90 days?
- Can the same motion be re-filed to extend the time? For example, can a motion for extension of time to respond to discovery be routinely filed every 89 days?
- Does "leave of court" mean that the abandonment is without prejudice to time-dependent motions such as pre-answer motions or post-trial motions—e.g. does this change the rule that a 1.530 motion must be filed in fifteen days or that a 1.540 motion must be filed in a year?

- If motions are amended, does that restart the 90 day clock as to all the issues, or do the new issues have their own 90 day deadline—i.e. will only the original issues be abandoned at 90 days?
- What determines whether a motion requires an evidentiary hearing such that it is not subject to the proposed rule? Often this cannot be determined by the movant until a response is filed, or if no response is filed, until the day of hearing. Can one party stipulate to all the facts and thereby claim that the hearing was not evidentiary after all, such that the motion is declared abandoned?
- Abandonment of motions not normally set for hearing:
  - If clerk enters default more than ninety days after filing of motion, is the defendant defaulted or was the motion abandoned?
  - Motions for reconsideration cannot be set for hearing (Local Rule 6). If the judge takes no action for 90 days, is the motion abandoned? Which Local Rule takes precedence?
- Abandonment of motions through no fault of the parties will actually increase, rather than decrease, the work load of the court and the parties:

- Often hearings do not go forward for various unpredictable reasons, e.g. it did not make the court's calendar, a court reporter does not appear, an attorney's car breaks down, or (in the foreclosure division) the court simply refuses to hear noticed motions at a Court Management Conference that do not pertain to getting the case at issue. Either the non-heard motion will be declared abandoned or an additional motion must be filed and an additional hearing set to obtain leave of court to extend the ninety-day deadline.

- Lastly, the proposed rule must be considered in conjunction with the proposed changes in Local Rule 4 which will cause delays in in setting hearings while busy attorneys attempt to coordinate calendars for face-to-face or telephonic meetings, especially in cases with multiple parties. Proposed Local Rule 9 creates the opportunity for gamesmanship and "gotcha" litigation by nonmovants when movants attempt to comply with new Local Rule 4 requirements.

If you or anyone considering the proposal has any additional questions, please do not hesitate to contact me. I will be happy to provide further information and will make myself available to discuss these issues.

Sincerely,

Thomas E. Ice

Amy Borman

From: Bart Schneider [schneidb@flcourts.org]
Sent: Monday, February 02, 2015 10:12 AM
To: Amy Borman
Subject: RE: Local Rules Advisory Submission

Amy-
I got it but check out the RJA, 2.215(e).
-Bart

From: Amy Borman [mailto:ABorman@pbcgov.org]
Sent: Monday, February 2, 2015 9:09 AM
To: Bart Schneider
Subject: Local Rules Advisory Submission

Bart -

Hope all is well. Attached please find a submission of a Proposed Amendment to Fifteenth Judicial Circuit Local Rule 4 and Proposed Local Rule 9 which were sent to Judge Benton on Friday January 30, 2015. Please let me know if I correctly submitted the proposed local rules.

Thanks,
Amy

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

Amy Borman

From: Bart Schneider [schneidb@flcourts.org]
Sent: Monday, February 02, 2015 10:16 AM
To: Amy Borman
Subject: RE: Local Rules Advisory Submission

I would get in touch with the clerk, John Tomasino. Let him know you sent to chair in January but were supposed to send to him.

tomasino@flcourts.org

From: Amy Borman [mailto:ABorman@pbcgov.org]
Sent: Monday, February 2, 2015 10:14 AM
To: Bart Schneider
Subject: RE: Local Rules Advisory Submission

Thanks. I wasn't too sure how to file with the Supreme Court so I sent to the chair. Do I need to pull a case number?

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

From: Bart Schneider [mailto:schneidb@flcourts.org]
Sent: Monday, February 02, 2015 10:12 AM
To: Amy Borman
Subject: RE: Local Rules Advisory Submission

Amy-
I got it but check out the RJA, 2.215(e).
-Bart

From: Amy Borman [mailto:ABorman@pbcgov.org]
Sent: Monday, February 2, 2015 9:09 AM
To: Bart Schneider
Subject: Local Rules Advisory Submission

Bart -

Hope all is well. Attached please find a submission of a Proposed Amendment to Fifteenth Judicial Circuit Local Rule 4 and Proposed Local Rule 9 which were sent to Judge Benton on Friday January 30, 2015. Please let me know if I correctly submitted the proposed local rules.

Thanks,
Amy

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401

(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

Amy Borman

From: Amy Borman
Sent: Monday, February 02, 2015 10:21 AM
To: tomasino@flcourts.org
Cc: Jeffrey Colbath
Subject: FW: Local Rule Submissions - 15th Judicial Circuit
Attachments: Supreme Court Local Rules Advisory Committee Submission.pdf

Dear Mr. Tomasino:

Attached please find two Local Rule Submissions that were sent to Judge Benton as the Chair of the Local Rules Advisory Committee on Friday, January 30, 2015 by Chief Judge Jeffrey Colbath of the Fifteenth Judicial Circuit.

I apologize for my misunderstanding on sending it to the Chair rather than to the Clerk of the Supreme Court.

If you have any questions, or need further information, please let me know.

Thank you,

Amy Borman

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

From: Amy Borman
Sent: Friday, January 30, 2015 3:43 PM
To: bentonb@1dca.org
Cc: Jeffrey Colbath; Barbara Dawicke
Subject: RE: Local Rule Submissions - 15th Judicial Circuit

Judge Benton -

Attached please find the complete package. I mistakenly only sent the cover letter.

Thank you.

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

From: Amy Borman
Sent: Friday, January 30, 2015 3:20 PM
To: 'bentonb@1dca.org'
Cc: Jeffrey Colbath; Barbara Dawicke
Subject: Local Rule Submissions - 15th Judicial Circuit

Dear Judge Benton:

On behalf of Chief Judge Jeffrey Colbath, attached please find two local rule submissions pursuant to Florida Rule of Judicial Administration 2.215(e). A hard copy will follow in the mail.

Should you have any questions, or need additional information, please let me know.

Thank you,

Amy Borman

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
JEFFREY J. COLBATH
CHIEF JUDGE

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561) 355-7845

January 30, 2015

The Honorable Robert T. Benton II
Chair, Supreme Court Local Rules Advisory Committee
First District Court of Appeal
Tallahassee, Florida 32399-1850
bentonb@1dca.org

Re: Submission of Proposed Amendment to Local Rule 4
Submission of Proposed Local Rule 9

Dear Judge Benton:

The Fifteenth Judicial Circuit is submitting for consideration two local rules in accordance with Florida Rule of Judicial Administration 2.215(e). The first is an Amendment to Local Rule 4 (the original rule was approved by the Florida Supreme Court in 1991) and the second is a new Proposed Local Rule 9. The current Local Rule 4, the Proposed Amendment to Local Rule 4 in legislative format, and the Proposed Local Rule 9 are attached for your review. Also attached are comments received from the members of the local bar association after publication of the rules as approved by greater than a majority of the judges in the Fifteenth Judicial Circuit in accordance with Florida Rule of Judicial Administration 2.215(e)(1). After input from the members of the local bar, revisions were made to the distributed versions of the proposed rules. These revised versions, which are attached, were approved by more than a majority of the judges. Due to time constrictions, the revised versions have not been circulated to members of the local bar for comment.

AMENDMENT TO LOCAL RULE 4

Paragraph 2 of Local Rule 4 currently requires an attorney prior to setting a motion on the Uniform Motion Calendar to "attempt to resolve the matter" and requires a certification of the "good faith attempt to resolve." Currently there is no definition of "attempt to resolve the matter" and further there is no uniform procedure to certify the "good faith attempt to resolve." Members of the local bar and *pro se* litigants are loosely defining "attempt to resolve" and perfunctorily inserting the "good faith certification" into motions and notices of hearing regardless of whether the parties have actually spoken about the issues. This is evident by the number of matters resolved outside the doors of the courtroom once the attorneys and *pro se litigants* actually communicate in person with one another.

The Fifteenth Judicial Circuit has seen a decrease in professionalism and civility amongst attorneys with neither side reaching out to resolve matters resulting in the unnecessary expenditure of limited judicial resources.[1] The proposed amendments to Local Rule 4 define "good faith attempt" and require attorneys and *pro se* litigants to make two attempts to speak about the matter prior to setting the hearing. To ensure that the certification is not simply an obligatory "add on" to the Notice of Hearing, a cover sheet is required that lists the attempts made. These proposed amendments incorporate procedures utilized by both the Ninth Judicial Circuit (*see* paragraph 6 of Administrative Order 2012-03 - Administrative Order Establishing Ninth Judicial Circuit Court Circuit Civil Court Guidelines) and the United States District Court for the Southern District of Florida (*see* local rule 7.1(a)(3)).

In the Fifteenth Judicial Circuit there is a common and growing problem of attorneys not speaking to each other prior to scheduling a hearing and prior to attending a hearing. Indeed, more than a majority of the judges in the Fifteenth Judicial Circuit believe that requiring attorneys to engage in a substantive conversation prior to a hearing, and not simply sending an e-mail, will help resolve matters. With the implementation of this rule, the number of unnecessary hearings set on Uniform Motion Calendar should decrease, allowing greater access to the court's limited hearing time. Thus, the purpose of the proposed amendment to Local Rule 4 is to foster actual communication between attorneys and *pro se* litigants so that there can be a narrowing of the issues to be heard by the judiciary resulting in more efficient administration of the courts.

The judges are also seeking to bring the Local Rule 4 into current practice. Courtroom deputies, rather than bailiffs, are now in the courtroom. Paper files are no longer delivered to the judges and copies of defaults and final judgments no longer need to be sent to the Clerk of Court prior to a hearing. Accordingly, updates were made to outdated practices currently included in Local Rule 4.

PROPOSED LOCAL RULE 9

Florida Rule of Judicial Administration 2.545 provides that judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. Florida Rule of Judicial Administration 2.515 provides that a signature of an attorney shall constitute a certificate by the attorney that to the best of the attorney's knowledge, information and belief there is good grounds to support the court filing and that the court filing is not interposed for delay. Florida Rule of Judicial Administration 2.250 provides that non-jury civil cases should take twelve (12) months from the filing to final disposition and that jury trial cases should take eighteen (18) months from the filing to final disposition. With these Rules of Judicial Administration as the cornerstone in litigation, a party should be timely bringing filed motions to the court's attention so that they may ruled upon in order for the case to judiciously move through the legal system.

Proposed Local Rule 9 follows on the path of cases such as *Bridier v. Burns*, 200 So. 355, 356 (Fla. 1941), *Weatherford v. Weatherford*, 91 So. 2d 179, 180 (Fla. 1956) and *State Dept. of*

[1] The Supreme Court of Florida is also addressing the issue of the increased lack of civility amongst attorneys with the recent amendment to the Oath of Admission for New Attorneys and mandating Professionalism Panels in each judicial circuit.

Revenue v. Kiedaisch, 670 So. 2d 1058 (Fla. 2d DCA 1996) where the courts have found that matters not brought to the attention of the court are abandoned. In *Bridier*, the court found that it was reasonable to assume that the appeals had been abandoned by counsel because they had not been brought to the court's attention, briefs had not been filed nor had a request for oral argument been made; in *Weatherford* the court found that assignments of error not argued are considered abandoned; and in *Kiedaisch* the court concluded that a supplemental petition for modification of final judgment was abandoned when party never set the petition for hearing.

A large majority of cases currently pending in the Fifteenth Judicial Circuit are not completed within the time standards set forth in the Rules of Judicial Administration. As of January 2015, there are on average 1200-1300 pending cases and 100-150 reopened cases in each of the eleven circuit civil divisions. In the one foreclosure division, there are approximately 7,800 pending cases and just over 2,100 reopened cases. In the eight county civil divisions there are on average 3,000 pending cases and 200 reopened cases. The volume of cases, along with the dearth of case managers, creates an environment where the judiciary cannot actively manage its docket. Thus, parties are able to file motions, avoid setting them for hearing, and have cases remain dormant until either the defendant or the court files a Notice of Failure to Prosecute pursuant to Florida Rule of Judicial Administration 1.420(e). Over the past five years, many more Notices of Failure to Prosecute have been filed by the judiciary than by the defendants. This dilatory practice is not what is contemplated by the Rules of Court.

Proposed Local Rule 9 would effectively give the court the authority to withdraw from consideration certain specified motions that are not set and heard within ninety (90) days. The rule is crafted to address motions that, for the most part, are scheduled on the court's uniform motion calendar. Should the motion need judicial time greater than that permitted for on uniform motion calendar and should the court be unable to schedule the hearing within ninety days, the parties simply need to obtain an order extending or excusing the ninety (90) day period. This rule would thus complement Rule of Judicial Administration 2.545 and the time standards set forth in Rule of Judicial Administration 2.250 in that motions will be timely brought to the court for resolution.

I appreciate the Committee taking the time to review the rules and I am available to answer any questions the Committee may have.

Sincerely,

Jeffrey J. Colbath
Chief Judge

Enclosed: Proposed Revised Local Rule 4, Current Local Rule 4, Proposed Local Rule 9, Comments

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4

IN RE: UNIFORM MOTION CALENDAR
. . . . . :

Pursuant to the authority conferred by rule 2.050(b), Fla.R.Jud.Admin., it is

ORDERED as follows:

(1) Circuit judges in each division shall conduct a uniform motion calendar on days and at a time specified by the judges of the division.

(2) Prior to setting a matter on the motion calendar, the party or attorney noticing the motion shall attempt to resolve the matter and shall certify the good faith attempt to resolve.

(3) Hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

(4) Unless the moving party makes special arrangements with the clerk's office, the court file will not be present in the hearing room during the uniform motion calendar. Therefore, the moving party must furnish the court a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all documents, pleadings and case authority which they wish the Court to consider.

(5) SCHEDULING -- Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall notice opposing counsel pursuant to the applicable rules of civil procedure. Opposing counsel shall

be given reasonable notice. In default and final judgment matters only, a copy of the notice of hearing and a copy of the motion shall be delivered to the clerk, marked "Attention, Uniform Motion Calendar," at least four business days before the hearing. In this instance, the clerk shall deliver the file to the Court prior to the hearing.

(6) The bailiff shall call cases for hearing in the order in which counsel signed up on the sheet posted outside the hearing room. Failure of any party to appear at the time set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this 31st day of January, 1991.

/s/
Daniel T. K. Hurley
Chief Judge

Approved by the Supreme Court of Florida, April 23, 1991.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 4

IN RE: UNIFORM MOTION CALENDAR
_____:

Pursuant to the authority conferred by rule 2.~~050(b)~~215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

1. Circuit judges in each division shall conduct a uniform motion calendar on days and at a time specified by the judges of the division.

2. Prior to setting a matter on the uniform motion calendar, the ~~party or~~ attorney or *pro se* litigant noticing the motion shall attempt to resolve the matter and shall certify the good faith attempt to resolve.

3. For the Circuit Civil, County Civil and Family (domestic relations) divisions the following apply:

   a. The term "attempt to resolve the matter" in paragraph 2 requires counsel or a *pro se* litigant with full authority to resolve the matter to confer before serving the Notice of Hearing on the motion to be set on the Uniform Motion Calendar.

   b. The term "confer" in paragraph 3a. requires that the parties' counsel or a *pro se* litigant engage in at least one substantive conversation, either in person or by telephone ("Conference"), in a good-faith effort to resolve the motion entirely (thus not requiring a hearing) or otherwise narrow the issues raised in the motion so as to narrow the hearing.

   c. Coordination of Conference and potential hearing date:

      1). In an effort to coordinate the Conference, counsel or a *pro se* litigant noticing the hearing ("Notice Counsel") may send an email or letter to, or leave a detailed message or voice-mail with opposing counsel (including opposing counsel's staff) or *pro se* litigant ("Responding Counsel") that proposes the timing of the Conference and the issues to be discussed. At the same time, and consistent with the Standards of Professional Courtesy and Civility approved by the judges of the Fifteenth Judicial Circuit,

Notice Counsel shall propose a minimum of three (3) dates to be used in the event a hearing becomes necessary.

2). Responding Counsel must respond promptly to Notice Counsel's communications about coordinating the Conference and scheduling the hearing including acceptance of one of the three (3) proposed hearing dates or proposing three (3) alternate dates falling within the same or similar time frame.

3). After two (2) good-faith attempts to coordinate the Conference and the hearing date, including at least one attempt by phone or in person, Notice Counsel may serve a notice of hearing on the motion if Responding Counsel has not responded. Notice Counsel may set the hearing on a mutually agreed date or, if Responding Counsel has not responded to Notice Counsel's attempts to coordinate the Conference or a hearing, on any one of the three dates that Notice Counsel previously proposed.

d. The term "certify the good faith attempt to resolve" requires Notice Counsel to include a Certificate of Compliance (sample form attached hereto as Exhibit "A") as a separate cover sheet attached to the Uniform Motion Calendar Notice of Hearing indicating that the Conference has occurred or that the good faith attempt has been made.

e. If the Conference has not occurred then,

1). Notice Counsel must identify in the Certificate of Compliance the dates and approximate times on which Notice Counsel attempted to contact Responding Counsel.

2). The Court may review the Certificate of Compliance to determine if the good faith attempts to confer were made.

3). The Court may review the Certificate of Compliance to determine whether Responding Counsel's failure to respond to Notice Counsel's inquiries or communications was reasonable.

f. The Clerk of Court shall identify in the docket a "notice of hearing" under that title despite that a Certificate of Compliance is included on the front page of the notice of hearing.

g. In the event that, despite compliance with this Order, the issue or issues in the motion remain unresolved, both parties should continue to make a good faith effort to meet and confer prior to the hearing date, to narrow or resolve the issues in the motion.

h. Notice Counsel shall ensure that the Court and the Court's Judicial Assistant are aware of any narrowing of the issues or other resolution regarding the motion as a result of the conference by referencing same in the space indicated on the Certificate of Compliance.

i. The Court may award sanctions for Notice Counsel's failure to attempt to confer in good faith or for Responding Counsel's failure to respond promptly to Notice Counsel's attempts to confer.

4. Hearings shall be limited to ten minutes per case. If two parties, each side shall be allotted five minutes. If more than two parties, the time shall be allocated by the Court. The ten-minute time limitation shall include the time necessary for the Court to review documents, memoranda, case authority, etc.

5. ~~Unless the moving party makes special arrangements with the clerk's office, the court file will not be present in the hearing room during the uniform motion calendar. Therefore,~~ The moving party must furnish the court a copy of the motion to be heard together with a copy of the notice of hearing. Also, all parties shall furnish the Court with copies of all documents, pleadings and case authority which they wish the Court to consider.

6. SCHEDULING -- Except in the criminal division, counsel shall not make appointments with the Court's judicial assistant but shall notice opposing counsel pursuant to the applicable rules of civil procedure. Opposing counsel shall be given reasonable notice. ~~In default and final judgment matters only, a copy of the notice of hearing and a copy of the motion shall be delivered to the clerk, marked "Attention, Uniform Motion Calendar," at least four business days before the hearing. In this instance, the clerk shall deliver the file to the Court prior to the hearing.~~

7. The courtroom deputy ~~bailiff~~ shall call cases for hearing in the order in which counsel signed up on the sheet posted outside the hearing room. Failure of any party to appear at the time set for the commencement of the calendar shall not prevent a party from proceeding with the hearing. If a party called for hearing chooses to wait for an absent party, the matter will be passed over but shall retain its position on that day's calendar.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of_____, 2015.

_____

Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

(EXHIBIT A)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO:

Plaintiff,

vs.

Defendant.
_____/

CERTIFICATE OF COMPLIANCE

Option 1

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below had a substantive conversation in person or by telephone with opposing counsel in a good faith effort to resolve this motion before the motion was noticed for hearing, but the parties were unable to reach an agreement, other than as to: [specify any issues resolved]_____
_____

/S/
Counsel for party who noticed matter for hearing.

OR

Option 2

I HEREBY CERTIFY that ____ I OR _____(name), a lawyer in my firm with full authority to resolve the matter being set for hearing described below attempted in good faith to contact opposing counsel in writing, by telephone, or in person with at least one attempt by telephone or in person as follows:

1. (Date) _____ at (approximate time) _____; and

2. (Date) _____ at (approximate time) _____

to discuss resolution of this motion without a hearing and I or the lawyer in my firm was unable to speak with opposing counsel.

/S/
Counsel for party who noticed matter for hearing.

Dated:

Respectfully submitted,

_____

, Esquire
Florida Bar No.
Address
Telephone:
Facsimile:
E-mail:

Attorneys for

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing _____ was served via electronic mail this ____ day of _____, 20__, to all parties listed on the Service List.

_____

, Esquire

SERVICE LIST

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 9

IN RE: TIMELY SETTING OF HEARINGS
_____:

Pursuant to the authority conferred by rule 2.215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

A party filing a motion in the circuit civil, county civil, family (domestic relations section), foreclosure and probate & guardianship divisions of the court, must schedule the motion for hearing and be heard on the motion within ninety (90) days of the motion's filing. Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned, thus withdrawn by the filing party, on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained before the ninety-first (91) day or the hearing is rescheduled by order of court. A party is not precluded from re-filing a motion deemed abandoned by this rule. This rule does not apply to hearings on motions for summary judgment and motions for rehearing or reconsideration filed pursuant to Local Rule 6 nor does it apply to hearings that will include testimonial evidence except for hearings on motions to quash service of process. This rule will apply to motions filed on or after INSERT DATE ORDER IS SIGNED.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of January, 2015.

_____
Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

Amy Borman

From: Paul Roman [proman@hnrwlaw.com]
Sent: Friday, January 16, 2015 10:24 AM
To: Amy Borman
Subject: Question on Proposed Amendment to Local Rule 4

In the second line of paragraph 3c.1, is the phrase "serving the hearing" a litigation term of art, or should it be "seeking the hearing" or some other phrase? As you can probably tell, I am not a litigator.

Paul E. Roman
Parkins Northwood Roman Wenzel P.L.
1800 North Military Trail - Suite 160
Boca Raton, Florida 33431-6386
561-862-4139
Fax:862-4966

Amy Borman

From: Abigail Beebe [Abigail@abeebelaw.com]
Sent: Monday, January 26, 2015 5:01 PM
To: Amy Borman
Subject: proposed local rules

Chief Judge and Amy Borman,

As chair of the UFC committee for the palm beach county bar, I write to inform you that several members have commented on the local proposed rules. While I know some have submitted under separate and individual cover, I would like to state some issues

It is suggested that is these stringent coordinate rules are imposed, it should be in writing.
Most complaints are saying this is micromanagement of professionals

Abigail Beebe, Esquire
Law Office of Abigail Beebe, P.A.
P.O. Box 4467
West Palm Beach, FL 33402
Telephone: 561.370.3691
E-mail: abigail@abeebelaw.com
Website: www.abeebelaw.com

Palm Beach County
Justice Association
PO BOX 3515
WEST PALM BEACH, FL 33402
561.790.5833 (P)
561.790.5884 (F)
WWW.PBCJA.ORG

January 26, 2015

The Hon. Jeffrey Colbath, Chief Judge
c/o Amy Borman, General Counsel
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401

Via E-Mail Only: ABorman@pbcgov.org

RE: Proposed Changes to Local Rule 4

Your Honor:

I am writing to you on behalf of the Palm Beach County Justice Association and our nearly 400 members to express our concerns regarding the proposed changes to Local Rule Number 4. First and foremost, we fully agree that the parties should make a reasonable effort to resolve issues set for a UMC prior to the matter being set for hearing. However, we believe the burdens imposed by the proposed revised Rule 4 are onerous and burdensome and will disproportionately negatively affect plaintiffs in personal injury cases.

Specifically, the need to make two efforts to contact defense counsel will only contribute to unnecessary delays in setting matters for hearing. To that end, we believe that one effort - be it a substantive email, phone call, or in person meeting - should be sufficient. If the issue isn't resolved within 24 hours of the initial effort we believe the party should be able to set it for hearing. Frankly, if a defense attorney is not inclined to respond to our initial email, letter or phone call, it is doubtful that they will respond to a second email, letter or phone call.

In addition, the need to clear dates with defense counsel prior to setting a UMC hearing will result in further unnecessary delay in our cases. We believe that this scheduling provision defeats the purpose of a UMC hearing which is the quick resolution of relatively smaller issues. As the Rule is proposed, all defense counsel has to do is say that they are not available on any date chosen by the Plaintiff's counsel or that the first date they have available is weeks and weeks

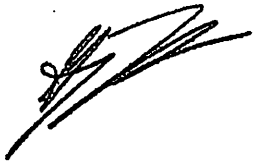
down the road (this happens all the time when we try to schedule depositions). Nothing in the proposed Rule deals with, prevents, or otherwise addresses that scenario.

Further, how are we to prove that we left a voicemail for defense counsel? Unfortunately it is not as uncommon as you might think for defense attorneys claim they never received a phone call. What proof can we offer other than our word that we did call? At that point UMC hearings could easily devolve into a he said/she said over whether or not two good faith efforts were made thereby complicating matters rather than simplifying them.

Again, we fully agree that an effort should be made to resolve UMC hearings prior to the hearing and we are all in favor of efforts to require defense counsel to work with us to resolve issues prior to running to the courthouse. However, we are extremely concerned that the proposed Rule 4 changes potentially create more problems than they eliminate.

I would welcome the opportunity to discuss our concerns in more detail with you. Thank you for your consideration herein.

Very truly yours,



Gregory T. Zele
President
Palm Beach County Justice Association

Amy Borman

From: Culver (Skip) Smith III [csmith@culversmithlaw.com]
Sent: Monday, January 26, 2015 10:56 AM
To: Amy Borman
Subject: Proposed Local Rule 9

Amy:

I respectfully offer the following observations/suggestions re proposed Local Rule 9:

1. The rule provides that a motion will be "deemed abandoned" if not heard within ninety days. Will some record action reflect that? E.g., will the clerk file a document to that effect? There should be some record disposition of the motion. It would be better to have the clerk enter an order *denying* the motion "on order of the court."

2. Should not "granted" in the third sentence be "required"?

3. The last sentence excepts hearings that require "live testimonial evidence." Does that include hearings in which testimony is presented entirely through the reading of excerpts from depositions or the playing of videotape depositions? Perhaps "live" should be deleted. Also, I wonder about the use of "require" rather then, say, "will include." There may be some debate about whether a hearing requires testimonial evidence.

I also may have some comments on the proposed amendments to Local Rule 4. Could you please send me a copy of the "Certificate of Compliance" (Exhibit "A")? It was not included in the link provided by the bar association's e-mail. Thanks much.

Skip

D. Culver Smith III
CULVER SMITH III, P.A.
500 South Australian Boulevard, Suite 600
West Palm Beach, FL 33401
Tel.: 561.598.6800
Cell: 561.301.3800
csmith@culversmithlaw.com
www.culversmithlaw.com

Ice Legal P.A.

1015 N. State Rd. 7 ~ Suite C
Royal Palm Beach, FL 33411
561.729.0530
www.icelegal.com

FIRM ATTORNEYS:
THOMAS E. ICE
AMANDA L. LUNDERGAN
STEVEN BROTMAN
JAMES FLANAGAN
JAMES R. (RANDY) ACKLEY
CANDACE GIPSON
JACQUELINE LUKER
ALI L. HANSEN
JOSHUA S. MILLER
JOSE FUNCIA

*OF COUNSEL

January 26, 2015

Amy Borman, General Counsel
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
Via email: ABorman@pbcgov.org

Re: Proposed Local Rule 9

Dear Ms. Borman,

Please allow this letter to serve as my comments to the proposed Local Rule 9:

- The proposal contains no statement as to what local conditions in the 15th Judicial Circuit would justify this rule. Nor does it seem that one could be articulated, much less proven.

- The period for comments (ten days which included a three day holiday weekend) is too short to allow for all interested persons to be heard.

- The period for reviewing the comments (four days) is too short to allow for serious contemplation of the problems raised. Because the rule must be approved by a majority of judges, for their approval to be meaningful, the comments need to be circulated among all the judges before the proposal is sent to the Supreme Court.

- The proposed rule is invalid because it conflicts with Court rules of procedure because it creates time limits for a party to exercise a right where the rules of procedure have no such limits. *See Bathurst v.* Turner, 533 So. 2d 939, 941 (Fla. 3d DCA 1988).

- The claimed rationale for the abandonment of unheard motions has always been that the foreclosure crisis called for unprecedented and extraordinary measures to help clear cases. The proposal does not articulate any reason for taking extraordinary measures in non-foreclosure cases, or for that matter, provide any legal basis for the notion that a "crisis" would justify the adoption of local rules inconsistent with court rules.

- When the Administrative Order that created the abandonment rule for foreclosure cases was circulated among the judges, Judge Booras asked whether the abandonment rule could be adopted "across the board rather [than] just AW [the foreclosure division]." In other words, Judge Booras proposed that the Circuit adopt the very rule now under

consideration. The Chief Judge responded. "Probably not. It is very case manager intensive. We have the[m] in AW due to the extra foreclosure funding." The Chief Judge, therefore, was against the very rule the Fifteenth Circuit is now proposing because it was financially impractical to make use of the rule. We are unaware of any additional funding that would make the abandonment rule financially practical in other divisions—or for that matter, in the foreclosure division after June 30th.

- The proposal has no grandfathering language, such that its passage would immediately result in the abandonment of potentially thousands of motions. This will be exacerbated by the limited distribution of this proposal such that few attorneys will be aware of the new requirement before it is implemented.

- The proposed rule actually provides a disincentive for the setting of an adverse party's motion and encourages the avoidance of determinations on the merits. As already demonstrated by the Administrative Orders of both the Eleventh and Fifteenth Circuits, a party—such as a plaintiff who already has the obligation and incentive for moving the case forward—will not set a hearing on an adverse party's motion that the nonmovant believes has merit. Instead, the nonmovant will wait the required "abandonment" period and file a new motion to declare the opposition's motion abandoned. Accordingly, the proposed rule encourages gamesmanship while, at the same time, actually increasing the workload for the court and the parties.

- The proposed rule will create confusion and a morass of collateral litigation because its operation will cause problems with existing rules and potential unintended consequences that the Court may not have considered, for example:

    - Confusion in the computation of appellate filing deadlines:

        - Abandonment of 1.530 motions. When will the appeal time begin to run—thirty days from the 90th day even though there is no order in the file? (Local rule cannot conflict with the rules of appellate procedure.) If the abandoned motion is treated as though it were never filed (which will be the position of non-movants—and has been their position under Administrative Order 3/314-4.14), then the appeal time will have expired. For jury trials, will movants have waived their sufficiency of the evidence arguments? (see problems with ambiguous "leave of court to re-file" language below)

        - Abandonment of motions to quash. When will the time for filing non-final appeal begin to run? Without a written order in the case, how will it be appealed?

- Confusion as to whether motions that have a specific time period for filling are timely:
  - May "abandoned" 1.530 motions be refiled although more than fifteen days after the judgment or verdict?
  - May "abandoned" 1.540(1), (2) or (3) motions be refiled more than a year after the judgment?
  - May "abandoned" 1.525 motions for costs and attorneys' fees be refiled more than thirty days after judgment?
- Confusion in the computation of deadlines for answering a complaint or the entry of defaults:
  - Abandonment of pre-answer motions. When will the time for answering begin to run? Will the defendant be subject to a default on the 91st day?
  - Will a clerk be able to enter a default even though the defendant has filed a "paper," because the paper will have been abandoned?
- Confusion in the computation of discovery deadlines:
  - Abandonment of motions for extension of time for discovery. Will the movant be subject to an *ex parte* motion to compel on the 91st day? Will all objections to the discovery have been waived because the response is now overdue?

The sentence* "Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained" *is ambiguous and allows the proposed rule to be selectively enforced.

  - Must leave be obtained before the ninety days?
  - What standard will apply to the granting of leave? What standard of review will the decision be subject to?
  - With no objective standards, the proposed rule may be selectively enforced vis-à-vis the divisions or vis-à-vis the parties. E.g., can a

division judge enter a standing order automatically and indefinitely extending the 90 day period?

The sentence "Leave of court is granted for the party to re-file the motion" is hopelessly ambiguous.

- Does this mean "a motion for leave of court shall be granted" such that a motion for leave of court must be filed and granted or is this intended to be automatic permission for refiling without a motion?
- Does it matter whether the re-filing is before or after the 90 days?
- Can the same motion be re-filed to extend the time? For example, can a motion for extension of time to respond to discovery be routinely filed every 89 days?
- Does "leave of court" mean that the abandonment is without prejudice to time-dependent motions such as pre-answer motions or post-trial motions—e.g. does this change the rule that a 1.530 motion must be filed in fifteen days or that a 1.540 motion must be filed in a year?

- If motions are amended, does that restart the 90 day clock as to all the issues, or do the new issues have their own 90 day deadline—i.e. will only the original issues be abandoned at 90 days?
- What determines whether a motion requires an evidentiary hearing such that it is not subject to the proposed rule? Often this cannot be determined by the movant until a response is filed, or if no response is filed, until the day of hearing. Can one party stipulate to all the facts and thereby claim that the hearing was not evidentiary after all, such that the motion is declared abandoned?
- Abandonment of motions not normally set for hearing:
  - If clerk enters default more than ninety days after filing of motion, is the defendant defaulted or was the motion abandoned?
  - Motions for reconsideration cannot be set for hearing (Local Rule 6). If the judge takes no action for 90 days, is the motion abandoned? Which Local Rule takes precedence?
- Abandonment of motions through no fault of the parties will actually increase, rather than decrease, the work load of the court and the parties:

- Often hearings do not go forward for various unpredictable reasons, e.g. it did not make the court's calendar, a court reporter does not appear, an attorney's car breaks down, or (in the foreclosure division) the court simply refuses to hear noticed motions at a Court Management Conference that do not pertain to getting the case at issue. Either the non-heard motion will be declared abandoned or an additional motion must be filed and an additional hearing set to obtain leave of court to extend the ninety-day deadline.

- Lastly, the proposed rule must be considered in conjunction with the proposed changes in Local Rule 4 which will cause delays in in setting hearings while busy attorneys attempt to coordinate calendars for face-to-face or telephonic meetings, especially in cases with multiple parties. Proposed Local Rule 9 creates the opportunity for gamesmanship and "gotcha" litigation by nonmovants when movants attempt to comply with new Local Rule 4 requirements.

If you or anyone considering the proposal has any additional questions, please do not hesitate to contact me. I will be happy to provide further information and will make myself available to discuss these issues.

Sincerely,

Thomas E. Ice

Ice Legal, P.A.
1015 N. State Rd. 7, Suite C, Royal Palm Beach, Fl. 33411 • Telephone (561) 729-0530

Amy Borman

From: Receptionist [Receptionist@gelfandarpe.com]
Sent: Friday, January 30, 2015 4:50 PM
To: cberman@bhappeals.com; wendyloquasto@flappeal.com
Cc: Michael J. Gelfand; phill@flabar.org; Mike Dribin (mdribin@harpermeyer.com); Deborah Packer Goodall Office (dgoodall@gfsestatelaw.com); Andrew O'Malley Office (aomalley@cowmpa.com); Thomas M. Karr (tkarr@gunster.com); Manuel Farach (mfarach@richmangreer.com); Susan Spurgeon (susan@penningtonlaw.com); Greg William Coleman (gwc@bclclaw.com); Jeffrey Colbath; Amy Borman
Subject: Proposed Local Rule 9-15th Judicial Circuit (Abandoned Motions) *Corrected Meeting Date*
Attachments: 150130ctobermanmjgcorrected.pdf

Please see the revised correspondence with a corrected meeting date.

Thank you,
Melissa S. Schefe
Gelfand & Arpe, P.A.
"Assisting Communities to Efficiently Reach Goals"
1555 Tower, Suite 1220
1555 Palm Beach Lakes Blvd.
West Palm Beach Florida 33401-2329
(561) 655-6224

CHAIR
Michael A. Dribin
Harper Meyer Perez Hagen O'Connor Albert & Dribin LLP
201 S. Biscayne Boulevard, Suite 800
Miami, Florida 33131
(305) 577-5415
mdribin@harpermeyer.com

CHAIR-ELECT
Michael J. Gelfand
Gelfand & Arpe, P.A.
1555 Palm Beach Lakes Blvd., Ste. 1220
West Palm Beach, FL 33401-2323
(561) 655-6224
mjgelfand@gelfandarpe.com

DIRECTOR, PROBATE AND TRUST LAW DIVISION
Deborah Packer Goodall
Goldman Felcoski & Stone P.A.
327 Plaza Real, Suite 230
Boca Raton, FL 33432
(561) 395-0400
dgoodall@gfsestatelaw.com

DIRECTOR, REAL PROPERTY LAW DIVISION
Andrew M. O'Malley
Carey, O'Malley, Whitaker & Mueller, P.A.
712 S. Oregon Avenue
Tampa, FL 33606-2543
(813) 250-0577
aomalley@cowrnpa.com

SECRETARY
Debra L. Boje
Gunster, Yoakley & Stewart, P.A.
401 E. Jackson St., Ste. 2500
Tampa, FL 33602-5226
(813) 222-6614
dboje@gunster.com

TREASURER
S. Katherine Frazier
Hill Ward Henderson
3700 Bank of America Plaza
101 East Kennedy Boulevard
Tampa, FL 33602
(813) 221-3900
skfrazier@hwhlaw.com

LEGISLATION CO-CHAIRS
William Thomas Hennessey, III
Gunster Yoakley & Stewart, P.A.
777 S. Flagler Dr., Suite 500E
West Palm Beach, FL 33401-6121
(561) 650-0663
whennessey@gunster.com

Robert Scott Freedman
Carlton Fields Jorden Burt, P.A.
PO Box 3239
Tampa, FL 33601-3239
(813) 229 - 4149
rfreedman@cfjblaw.com

DIRECTOR, AT-LARGE MEMBERS
Shane Kelley
The Kelley Law Firm, PL
3365 Galt Ocean Drive
Fort Lauderdale, FL 33308-7002
(954) 563-1400
shane@estatelaw.com

IMMEDIATE PAST CHAIR
Margaret Ann Rolando
Shutts & Bowen, LLP
201 S. Biscayne Boulevard, Suite 1500
Miami, FL 33131-4328
(305) 379-9144
mrolando@shutts.com

PROGRAM ADMINISTRATOR
Mary Ann D. Obos
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5626
mobos@flabar.org

REAL PROPERTY, PROBATE & TRUST LAW SECTION

THE FLORIDA BAR

www.RPPTL.org

January 30, 2015
CORRECTED

VIA EMAIL ONLY
CBerman@bhappeals.com
Ceci Culpepper Berman, Esq.
Chair of The Florida Bar's
Appellate Practice Section

VIA EMAIL ONLY
wendyloquasto@flappeal.com
Wendy Loqusto, Esq.
Chair of Appellate
Court Rules Committee

Re: Proposed Local Rule 9-15th Judicial Circuit (Abandoned Motions)

Dear Ms. Berman and Ms. Loqusto:

Thank you for forwarding your letter of yesterday addressed to Paul Hill concerning Fifteenth (Palm Beach) Judicial Circuit Court's Proposed Local Rule 9, addressing the abandonment of certain civil motions that were filed but not set for hearing within ninety days.

As the RPPTL Section's Real Property Litigation Committee and Probate Litigation Committee are reviewing the proposed local rule, I obtained from the Court an updated version of the Proposed Rule, revised as a result of public comment. That version is attached.

Usually, the RPPTL Section seeks out a proponent to resolve issues before taking a stance in opposition. It has been the historical experience of most local practitioners that the Fifteenth Judicial Circuit has been responsive to constructive comments; thus, I requested a meeting with the Court to review concerns that the Section may have which were not included in the public comments. Undoubtedly, you or an Appellate Section and Rules Committee representative are welcome to attend. If possible this meeting will be on Wednesday, February 4, 2015 at noon, subject to the Court's calendar.

In the interim, please forward to me your proposed revisions and comments to the Circuit Court. I am certain that the RPPTL Section committees tasked to review the proposed local rule would be interested in your perspectives, including how to control dockets and meet Supreme Court disposition guidelines. In an effort to avoid an unnecessary proliferation of emails, if other Sections or Committees have responded to your letter, then also please forward this letter to them.

Very Truly Yours,

Michael J. Gelfand
Chair Elect

Copy List Attached

MJG/ms

cc: Paul Hill, Esq. via email
Michael Dribin, Esq. via email
Deborah Packer Goodall, Esq. via email
Andrew O'Malley, Esq. via email
Thomas Karr, Esq. via email
Manuel Farach, Esq. via email
Susan Spurgeon, Esq. via email
Greg Coleman, Esq. via email
Chief Judge Jeffrey Colbath via email
Any Borman, Esq. via email

F:\WP\RPPTL\150130ctobermanmjg.docx

Amy Borman

From: Receptionist [Receptionist@gelfandarpe.com]
Sent: Friday, January 30, 2015 4:00 PM
To: cberman@bhappeals.com; wendyloquasto@flappeal.com
Cc: Michael J. Gelfand; Paul Hill (phill@flabar.org); Mike Dribin (mdribin@harpermeyer.com); Deborah Packer Goodall Office (dgoodall@gfsestatelaw.com); Andrew O'Malley Office (aomalley@cowmpa.com); Thomas M. Karr (tkarr@gunster.com); Manuel Farach (mfarach@richmangreer.com); Susan Spurgeon (susan@penningtonlaw.com); Greg William Coleman (gwc@bclclaw.com); Jeffrey Colbath; Amy Borman
Subject: Proposed Local Rule 9-15th Judicial Circuit (Abandoned Motions)
Attachments: 150130ctobermanmjg.pdf

Ms. Berman and Ms. Loqusto:

Please see attached.

Thank you,
Melissa S. Schefe
Gelfand & Arpe, P.A.
"Assisting Communities to Efficiently Reach Goals"
1555 Tower, Suite 1220
1555 Palm Beach Lakes Blvd.
West Palm Beach Florida 33401-2329
(561) 655-6224

CHAIR
Michael A. Dribin
Harper Meyer Perez Hagen O'Connor
Albert & Dribin LLP
201 S. Biscayne Boulevard, Suite 800
Miami, Florida 33131
(305) 577-5415
mdribin@harpermeyer.com

CHAIR-ELECT
Michael J. Gelfand
Gelfand & Arpe, P.A.
1555 Palm Beach Lakes Blvd., Ste. 1220
West Palm Beach, FL 33401-2323
(561) 655-6224
mjgelfand@gelfandarpe.com

DIRECTOR, PROBATE AND TRUST LAW DIVISION
Deborah Packer Goodall
Goldman Felcoski & Stone P.A.
327 Plaza Real, Suite 230
Boca Raton, FL 33432
(561) 395-0400
dgoodall@gfsestatelaw.com

DIRECTOR, REAL PROPERTY LAW DIVISION
Andrew M. O'Malley
Carey, O'Malley, Whitaker & Mueller, P.A.
712 S. Oregon Avenue
Tampa, FL 33606-2543
(813) 250-0577
aomalley@cowmpa.com

SECRETARY
Debra L. Boje
Gunster, Yoakley & Stewart, P.A.
401 E. Jackson St., Ste. 2500
Tampa, FL 33602-5226
(813) 222-6614
dboje@gunster.com

TREASURER
S. Katherine Frazier
Hill Ward Henderson
3700 Bank of America Plaza
101 East Kennedy Boulevard
Tampa, FL 33602
(813) 221-3900
skfrazier@hwhlaw.com

LEGISLATION CO-CHAIRS
William Thomas Hennessey, III
Gunster Yoakley & Stewart, P.A.
777 S. Flagler Dr., Suite 500E
West Palm Beach, FL 33401-6121
(561) 650-0663
whennessey@gunster.com

Robert Scott Freedman
Carlton Fields Jorden Burt, P.A.
PO Box 3239
Tampa, FL 33601-3239
(813) 229 - 4149
rfreedman@cfjblaw.com

DIRECTOR AT-LARGE MEMBERS
Shane Kelley
The Kelley Law Firm, PL
3365 Galt Ocean Drive
Fort Lauderdale, FL 33308-7002
(954) 563-1400
shane@estatelaw.com

IMMEDIATE PAST CHAIR
Margaret Ann Rolando
Shutts & Bowen, LLP
201 S. Biscayne Boulevard, Suite 1500
Miami, FL 33131-4328
(305) 379-9144
mrolando@shutts.com

PROGRAM ADMINISTRATOR
Mary Ann D. Obos
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5626
mobos@flabar.org

REAL PROPERTY, PROBATE & TRUST LAW SECTION

THE FLORIDA BAR

www.RPPTL.org

January 30, 2015

VIA EMAIL ONLY
CBerman@bhappeals.com
Ceci Culpepper Berman, Esq.
Chair of The Florida Bar's
Appellate Practice Section

VIA EMAIL ONLY
wendyloquasto@flappeal.com
Wendy Loqusto, Esq.
Chair of Appellate
Court Rules Committee

Re: Proposed Local Rule 9-15th Judicial Circuit (Abandoned Motions)

Dear Ms. Berman and Ms. Loqusto:

Thank you for forwarding your letter of yesterday addressed to Paul Hill concerning Fifteenth (Palm Beach) Judicial Circuit Court's Proposed Local Rule 9, addressing the abandonment of certain civil motions that were filed but not set for hearing within ninety days.

As the RPPTL Section's Real Property Litigation Committee and Probate Litigation Committee are reviewing the proposed local rule, I obtained from the Court an updated version of the Proposed Rule, revised as a result of public comment. That version is attached.

Usually, the RPPTL Section seeks out a proponent to resolve issues before taking a stance in opposition. It has been the historical experience of most local practitioners that the Fifteenth Judicial Circuit has been responsive to constructive comments; thus, I requested a meeting with the Court to review concerns that the Section may have which were not included in the public comments. Undoubtedly, you or an Appellate Section and Rules Committee representative are welcome to attend. If possible this meeting will be on Wednesday, March 4, 2015 at noon, subject to the Court's calendar.

In the interim, please forward to me your proposed revisions and comments to the Circuit Court. I am certain that the RPPTL Section committees tasked to review the proposed local rule would be interested in your perspectives, including how to control dockets and meet Supreme Court disposition guidelines. In an effort to avoid an unnecessary proliferation of emails, if other Sections or Committees have responded to your letter, then also please forward this letter to them.

Very Truly Yours,

Michael J. Gelfand
Chair Elect

Copy List Attached

MJG/ms

cc: Paul Hill, Esq. via email
Michael Dribin, Esq. via email
Deborah Packer Goodall, Esq. via email
Andrew O'Malley, Esq. via email
Thomas Karr, Esq. via email
Manuel Farach, Esq. via email
Susan Spurgeon, Esq. via email
Greg Colman, Esq. via email
Chief Judge Jeffrey Colbath via email
Any Bowman, Esq. via email

F:\WP\RPPTL\150130ctobermanmjg.docx

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 9

IN RE: TIMELY SETTING OF HEARINGS
_____:

Pursuant to the authority conferred by rule 2.215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

A party filing a motion in the circuit civil, county civil, family (domestic relations section), foreclosure and probate & guardianship divisions of the court, must schedule the motion for hearing and be heard on the motion within ninety (90) days of the motion's filing. Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned, thus withdrawn by the filing party, on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained before the ninety-first (91) day or the hearing is rescheduled by order of court. A party is not precluded from re-filing a motion deemed abandoned by this rule. This rule does not apply to hearings on motions for summary judgment and motions for rehearing or reconsideration filed pursuant to Local Rule 6 nor does it apply to hearings that will include testimonial evidence except for hearings on motions to quash service of process. This rule will apply to motions filed on or after INSERT DATE ORDER IS SIGNED.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of January, 2015.

_____
Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

Amy Borman

From: Michael J. Gelfand [MJGelfand@gelfandarpe.com]
Sent: Friday, January 30, 2015 12:06 PM
To: Amy Borman
Subject: Fwd: Question regarding section filing comments in case

FYI on status

'All thumbs and no spelling!
Please excuse grammar and punctuation errors, sent from a "smartphone."

Begin forwarded message:

> **From:** Thomas Hall <thall@mills-appeals.com>
> **Date:** January 30, 2015 at 11:46:33 AM EST
> **To:** Paul Hill <phill@flabar.org>
> **Cc:** "wendyloquasto@flappeal.com" <wendyloquasto@flappeal.com>, "cberman@BHappeals.com" <cberman@BHappeals.com>, "Michael J. Gelfand" <MJGelfand@gelfandarpe.com>, John F Harkness <jharkness@flabar.org>
> **Subject: Re: Question regarding section filing comments in case**
>
> Thank you.
>
> Sent from my iPhone 6+.
>
> On Jan 30, 2015, at 11:42 AM, Paul Hill <phill@flabar.org> wrote:
>
> > Tom:
> >
> > You folks are good to go.... Jack Harkness shared this matter with the BoG's Executive Committee this morning -- and they're okay with your intentions. Please just share a copy of your final comments with us
> >
> > Also, because you copied this request with other groups, I've already heard from the RPPTLs -- who hope to engage in their own style of diplomacy regarding this issue. The Executive Committee's green light essentially applies to any other section that may care to weigh in on this local rule.
> >
> > I'm cc'ing Michael Gelfand of RPPTL with this dialogue and trust they'll similarly coordinate with Jack and me -- and certainly your group.
> >
> > OK? Good luck all...

Paul F. Hill
General Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850 / 561-5661 (Commercial - Direct)

800 / 342-8060 - Ext. 5661 (Toll-Free - Direct)
850 / 561-9406 Facsimile

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.
----- Forwarded by Paul Hill/The Florida Bar on 01/30/2015 11:35 AM -----

From: Paul Hill/The Florida Bar
To: "Thomas Hall" <thall@mills-appeals.com>,
Cc: John F Harkness/The Florida Bar@FLABAR
Date: 01/29/2015 03:25 PM
Subject: Question regarding section filing comments in case

Tom:

I just got the package from Ceci Berman & Wendy Loquasto (pdf attached)....

I'll pass it on to Jack and hope for prompt action....and will keep you posted.

(See attached file: 150129 AppRules & AppPracSection re Local Rule 9 -15th Cir.pdf)

Paul F. Hill
General Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850 / 561-5661 (Commercial - Direct)
800 / 342-8060 - Ext. 5661 (Toll-Free - Direct)
850 / 561-9406 Facsimile
----- Forwarded by Paul Hill/The Florida Bar on 01/29/2015 03:23 PM -----

From: Paul Hill/The Florida Bar
To: "Thomas Hall" <thall@mills-appeals.com>,
Cc: John F Harkness/The Florida Bar@flabar
Date: 01/27/2015 02:20 PM
Subject: Re: Question regarding section filing comments in case

---

10-4

Sent from my iPhone

On Jan 27, 2015, at 12:52 PM, Thomas Hall <thall@mills-appeals.com> wrote:
Yes

Sent from my iPhone 6+.

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.

On Jan 27, 2015, at 12:22 PM, Paul Hill <phill@flabar.org> wrote:

Tom:

Is this your matter? From today's Bar clips.....

Daily News Summary

JANUARY 27, 2015

Legal Profession

PALM BEACH CIRCUIT RULE WOULD REDEFINE ABANDONED CASES

Daily Business Review | Article (requires subscription) | January 26, 2015

A strategy suggested by Chief Judge Jeffrey Colbath to speed foreclosure cases through Palm Beach Circuit Court could soon apply to most civil cases. Local Rule 9 would consider civil, family, probate and guardianship cases abandoned if not set for a hearing and heard within 90 days. It would expand on an April order, rejected by the Florida Supreme Court Local Rules Advisory Committee, intended to sweep through a backlog of foreclosure cases clogging the court system after the housing crash devastated Florida's real estate market. Foreclosure defense attorney Tom Ice and former Florida Supreme Court Clerk Tom Hall challenged the order that created Palm Beach's foreclosure abandonment rule, arguing the court exceeded its reach. The Supreme Court's committee agreed, suggesting the order overreached and exceeded the court's judicial authority. Palm Beach County is awaiting a decision from the Supreme Court, which will consider the recommendation.

<mime-attachment.gif>

Paul F. Hill
General Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850 / 561-5661 (Commercial - Direct)
800 / 342-8060 - Ext. 5661 (Toll-Free - Direct)
850 / 561-9406 Facsimile

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.

----- Forwarded by Paul Hill/The Florida Bar on 01/27/2015 12:20 PM -----

From: Paul Hill/The Florida Bar
To: Thomas Hall <thall@mills-appeals.com>,
Cc: John F Harkness/The Florida Bar@FLABAR
Date: 01/27/2015 08:30 AM
Subject: Re: Question regarding section filing comments in case

---

de nada

<mime-attachment.gif>
Paul F. Hill
General Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850 / 561-5661 (Commercial - Direct)
800 / 342-8060 - Ext. 5661 (Toll-Free - Direct)
850 / 561-9406 Facsimile

From: Thomas Hall <thall@mills-appeals.com>
To: Paul Hill <phill@flabar.org>,
Date: 01/27/2015 06:23 AM
Subject: Re: Question regarding section filing comments in case

I will getting you a letter on behalf of the appellate section and appellate rules committee in the next couple of days. Thanks for your help.

Sent from my iPhone 6+.

On Jan 22, 2015, at 2:57 PM, Paul Hill <phill@flabar.org> wrote:

Got it. I think Jack and I saw one of these a few years ago, from another section, and we let it happen. We just asked for courtesy notice of the filing....

<mime-attachment.gif>
Paul F. Hill
General Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850 / 561-5661 (Commercial - Direct)
800 / 342-8060 - Ext. 5661 (Toll-Free - Direct)
850 / 561-9406 Facsimile

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.

From: Thomas Hall <thall@mills-appeals.com>
To: Paul Hill <phill@flabar.org>,
Date: 01/22/2015 02:54 PM
Subject: Re: Question regarding section filing comments in case

---

It is a challenge to a local rule under the process for reviewing local rules by the Supreme Court under rule 2.225. By rule comments would be due March 15th. The section is the appellate practice section but the rule affects cases in all the divisions in the circuit, other than criminal. I suspect a number of the rules committees may want to file a comment too. It is highly likely appellate rules will want to. And I suspect other sections will as well.

Sent from my iPhone 6+.

On Jan 22, 2015, at 2:41 PM, Paul Hill <phill@flabar.org> wrote:

what kind of "case"? we have policies in place for rules filings already... and for amicus matters

did the court ask for comments?

if not, do we know if they'd be welcomed?

assuming problems, is it critical that "the section" file comments -- or could section members be equally effective, incidentally mentioning their section affiliation?

<mime-attachment.gif>

Paul F. Hill
General Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850 / 561-5661 (Commercial - Direct)
800 / 342-8060 - Ext. 5661 (Toll-Free - Direct)
850 / 561-9406 Facsimile

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.

From: Thomas Hall <thall@mills-appeals.com>
To: Paul Hill <phill@flabar.org>,
Date: 01/22/2015 02:27 PM
Subject: Re: Question regarding section filing comments in case

---

Okay. Thanks. I will catch you when you are done.

Sent from my iPhone 6+.

On Jan 22, 2015, at 1:53 PM, Paul Hill <phill@flabar.org> wrote:

Grand Ballroom 3 till 5

Sent from my iPhone

> On Jan 22, 2015, at 1:42 PM, Thomas Hall <thall@mills-appeals.com> wrote:
>
> Are you here somewhere in the hotel for a quick question?
>
> Sent from my iPhone 6+.
> Please note: Florida has very broad public records laws. Many written
> communications to or from The Florida Bar regarding Bar business may be
> considered public records, which must be made available to anyone upon request.
> Your e-mail communications may therefore be subject to public disclosure.
>

 <mime-attachment.gif> <mime-attachment.gif><mime-attachment.gif>

<ATT00001.gif><ATT00002.gif><ATT00003.gif><ATT00004.gif>
<150129 AppRules & AppPracSection re Local Rule 9 -15th Cir.pdf>

Amy Borman

From: Jeffrey Colbath
Sent: Friday, January 30, 2015 10:03 AM
To: Michael J. Gelfand
Cc: Amy Borman; Peter Blanc; Richard Oftedal L.; Diana Grant
Subject: FW: proposed local rules - proposed revisions
Attachments: Letter Paul Hill-Local Rule Comment (fully signed).pdf

You are welcome and thank you for the attached letter. Amy, Peter, Rich, are you all open for lunch here this coming Wednesday?

From: Michael J. Gelfand [mailto:MJGelfand@gelfandarpe.com]
Sent: Friday, January 30, 2015 9:58 AM
To: Jeffrey Colbath
Subject: RE: proposed local rules - proposed revisions

Dear Judge Colbath

Thank you for your time this morning and your swift follow up email. Attached is the letter that was provided to the RPPTL Section. I will be following up and inviting the Appellate Section to a lunch meeting in a few moments.

Please let me know about Wed 3/4 lunch, if at all possible, or less favored alternative of Tuesday 3/3 (for which I will have do some juggling I will need to know quickly).

Have a great morning!

Michael J. Gelfand
Florida Bar Board Certified Real Estate Attorney
Florida Supreme Court Certified Mediator:
Civil Circuit Court & Civil County Court
Fellow, American College of Real Estate Attorneys

Gelfand & Arpe, P.A.
"Assisting Communities to Efficiently Reach Goals"
1555 Tower, Suite 1220
1555 Palm Beach Lakes Blvd.
West Palm Beach Florida 33401-2329
(561) 655-6224

From: Jeffrey Colbath [mailto:JColbath@pbcgov.org]
Sent: Friday, January 30, 2015 9:49 AM
To: Michael J. Gelfand
Subject: FW: proposed local rules - proposed revisions
Importance: High

The changes include:

Proposed Amendment to Local Rule 4

- Fixing a typo from "faither" to "faith"
- Changing "serving the hearing" to "noticing the hearing"
- Cleaning up some other confusing language

Proposed Local Rule 9

- Clarifying that "abandoned" equates to "withdrawn"
- Clarifying that leave of court to extend the 90 days must be obtained prior to the 91st day
- Acknowledging that a rescheduling of the hearing by an order of the court would preclude the motion from being deemed abandoned
- Amending the "leave of court" sentence to make it clearer that a party is not precluded from refiling the motion.
- Stating that this local rule will only pertain to motions filed on or after the date the chief judge signs the order

If you have any questions, please feel free to call me on my cell today 644-0186 or at my desk tomorrow (Friday) 3-1927. You can email but please be advised that the emails may be deemed public record.

The rules are required to be submitted in January - thus I will be submitting them tomorrow afternoon. If you have questions about Local Rule 4, please speak with Judge Blanc.

Appellate Practice Section

www.flabarappellate.org

January 29, 2015

Via Hand Delivery
Paul F. Hill
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32301

Re: Proposed Local Rule 9-15th Judicial Circuit

Dear Mr. Hill:

This is a request by the Appellate Practice Section of The Florida Bar (Section) and the Appellate Court Rules Committee of The Florida Bar (Committee) for permission by the Board of Governors of The Florida Bar to file a joint comment with the Local Rules Advisory Committee (Advisory Committee) and the Florida Supreme Court regarding the proposed local rule. A copy of the proposed rule is attached.

The Fifteenth Judicial Circuit intends to file the proposed local rule for approval by the Florida Supreme Court pursuant to Florida Rule of Judicial Administration 2.215(e). After the Local Rules Advisory Committee has issued its advisory, comments may be filed with the Florida Supreme Court. Pursuant to rule 2.215(e)(1)(B), comments from Bar sections and committees and other commenters must be filed with the Advisory Committee by March 15th. Although the joint comment is still being drafted, the Section and Committee will oppose the proposed local rule.

As drafted, the proposed local rule would deem abandoned certain motions that have not been heard within a particular time period. The consequence of such a rule is that it will create serious issues in determining the timing of an appeal and the appealability of any motion deemed abandoned. The proposed local rule would seem to be in conflict with the rules of appellate procedure and, for that matter, the rules of civil procedure because those rules may impact appeals. The Section and Committee are uniquely qualified to comment on this aspect of the proposed rule.

Tom Hall, a vice chair of the Committee and a member of the Executive Committee of the Section, has agreed to coordinate this effort on behalf of the two groups. If you need any additional information or have any questions, we would appreciate you contacting him. His email address is thall@mills-appeal.com. His phone number is 850-251-1972. An alternative email address where he may be reached is tom@tlhconsultinggroup.com.

THE FLORIDA BAR

Thank you for your consideration of this matter.

Sincerely,

Ceci Culpepper Berman
Chair of The Florida Bar's
Appellate Practice Section

Wendy Loquasto
Chair of the Appellate
Court Rules Committee

cc: (via email)

Kevin B. Cook, Chair
Civil Procedure Rules Committee

Hon. Samantha L. Ward, Chair
Criminal Procedure Rules Committee

Deborah A. Schroth, Chair
Juvenile Court Rules Committee

Murray B. Silverstein, Chair
Rules of Judicial Administration Committee

Lee F. Carney, Chair
Traffic Court Rules Committee

Daniel E. Nordby, Chair
Administrative Law Section

Michael H. Lax, Chair
Alternative Dispute Resolution Section

David B. Rothman, Chair
Criminal Law Section

Emily P. Graham, Chair
Entertainment, Arts & Sports Law Section

Norberto S. Katz, Chair
Family Law Section

Timothy M. Moore, Chair
Code & Rules of Evidence

Elizabeth A. Blackburn, Chair
Family Law Rules Committee

Sean W. Kelley, Chair
Florida Probate Rules Committee

Taras Rudnitsky, Chair
Small Claims Rules Committee

Mark A. Touby, Chair
Workers' Compensation Rules Advisory Committee

William A. VanNortwick, Jr., Chair
Business Law Section

Dana L. Crosby-Collier, Chair
City, County & Local Government Law Section

Jana McConnaughhay, Chair
Elder Law Section

Kelly K. Samek, Chair
Environmental & Land Use Law Section

Teresa B. Morgan, Chair
General Practice Solo & Small Firm Section

Ellen M. Simon, Chair
Government Lawyer Section

Peter A. Quinter, Chair
International Law Section

Michael A. Dribin, Chair
Real Property, Probate & Trust Law Section

William H. Rogner, Chair
Workers' Compensation Law Section

William P. Dillon, Chair
Health Law Section

Shane T. Munoz, Chair
Labor & Employment Law Section

Laura J. Boeckman, Chair
Public Interest Law Section

Cristin C. Keane, Chair
Tax Section

Hector A. More', Chair
Trial Lawyers Section

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Local Rule No. 9

IN RE: TIMELY SETTING OF HEARINGS

_____:

Pursuant to the authority conferred by rule 2.215(e), Fla. R. Jud. Admin., it is **ORDERED** as follows:

A party filing a motion in the circuit civil, county civil, family (domestic relations section), foreclosure and probate & guardianship divisions of the court, must schedule the motion for hearing and be heard on the motion within ninety (90) days of the motion's filing. Failure to have the motion set and heard by the trial court will result in the motion being deemed abandoned on the ninety-first (91) day unless leave of court to extend the ninety (90) days is obtained. Leave of court is granted for the party to re-file the motion. This rule does not apply to hearings on motions for summary judgment nor does it apply to hearings that require live testimonial evidence except for hearings on motions to quash service of process.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this _____ day of January, 2015.

_____
Jeffrey J. Colbath
Chief Judge

Amendments approved by the Supreme Court of Florida, INSERT DATE.

Amy Borman

From: John A. Tomasino [tomasino@flcourts.org]
Sent: Monday, February 02, 2015 12:11 PM
To: Amy Borman
Cc: Jeffrey Colbath; Vickie Van Lith
Subject: RE: Local Rule Submissions - 15th Judicial Circuit

Thanks Amy. Submission received.

From: Amy Borman [mailto:ABorman@pbcgov.org]
Sent: Monday, February 2, 2015 10:21 AM
To: John A. Tomasino
Cc: Jeffrey Colbath
Subject: FW: Local Rule Submissions - 15th Judicial Circuit

Dear Mr. Tomasino:

Attached please find two Local Rule Submissions that were sent to Judge Benton as the Chair of the Local Rules Advisory Committee on Friday, January 30, 2015 by Chief Judge Jeffrey Colbath of the Fifteenth Judicial Circuit.

I apologize for my misunderstanding on sending it to the Chair rather than to the Clerk of the Supreme Court.

If you have any questions, or need further information, please let me know.

Thank you,

Amy Borman

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

From: Amy Borman
Sent: Friday, January 30, 2015 3:43 PM
To: bentonb@1dca.org
Cc: Jeffrey Colbath; Barbara Dawicke
Subject: RE: Local Rule Submissions - 15th Judicial Circuit

Judge Benton -

Attached please find the complete package. I mistakenly only sent the cover letter.

Thank you.

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

From: Amy Borman
Sent: Friday, January 30, 2015 3:20 PM
To: 'bentonb@1dca.org'
Cc: Jeffrey Colbath; Barbara Dawicke
Subject: Local Rule Submissions - 15th Judicial Circuit

Dear Judge Benton:

On behalf of Chief Judge Jeffrey Colbath, attached please find two local rule submissions pursuant to Florida Rule of Judicial Administration 2.215(e). A hard copy will follow in the mail.

Should you have any questions, or need additional information, please let me know.

Thank you,

Amy Borman

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway - 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
aborman@pbcgov.org

Amy Borman

From: Kypreos, Theodore S. [TKypreos@jonesfoster.com]
Sent: Monday, February 02, 2015 6:02 PM
To: Jeffrey Colbath; Amy Borman
Cc: Patience Burns
Subject: Local Rule 9

Chief Judge Colbath and Amy,

As a member of the RPPTL section of The Florida Bar, I have been copied on a number of emails today that have raised concerns about the proposed local rule 9 and its impact to probate and trust proceedings. I have not read through all of them, but I wanted to reach out to you personally and see if you wanted me to pass them on to you. Let me know.

Theo

JONESFOSTER
JOHNSTON & STUBBS, P.A.

Theodore S. Kypreos Attorney
Direct Dial: **561.650.0406** | Fax: **561.650.5300** | tkypreos@jonesfoster.com

Jones, Foster, Johnston & Stubbs, P.A.
Flagler Center Tower, 505 South Flagler Drive, Suite 1100, West Palm Beach, Florida 33401
561-659-3000 | www.jonesfoster.com