



**USFLMD PRO SE HANDBOOK
SECTION VII: PRETRIAL
(ALL-IN-ONE DOCUMENT)**

US DISTRICT COURT, FLORIDA, MIDDLE DISTRICT
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E: TextBookDiscrimination@gmail.com
W: www.TextBookDiscrimination.com

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PRO SE HANDBOOK
FROM THE US DISTRICT COURT, FLORIDA, MIDDLE DISTRICT

SECTION VII PRETRIAL

ITEMS 7.01 through 7.06



7.01 | FILING AND SERVING DOCUMENTS

Pretrial proceedings include exchanges of documents between the parties. The documents vary, but there are several rules to follow that never change during litigation:

- You must file original documents with the court. That includes documents you write (such as a motion and memorandum of law) and exhibits. You must sign documents you have written.
- You may file documents in the clerk's office in person or by mail. In-person filing must be done Monday through Friday, 8:30 a.m. to 4:00 p.m. The clerk's offices are closed on federal holidays and occasionally during an emergency. If you want a file-stamped copy of any document for your records, provide the clerk with a copy of that document (if you are not filing the document in person, you also need to provide a self-addressed, stamped envelope for a file-stamped copy).
- When you file a document, you must also mail or deliver a copy of that document to each other party's lawyers. If a party does not have a lawyer, you must instead mail or deliver a copy directly to that party. (There is a rare exception for an ex parte proceeding, meaning a proceeding that does not include the opposing party.)
- With every filing except the complaint, you must include a certificate of service stating when and how you served a copy of that document on each party or the party's lawyer. Here is an example of a certificate of service:

I, [name of person filing document], certify that on [month, day, year] I served a copy of this document on [name of other party's attorney or other party if not represented by an attorney] by [mailing, hand delivering, faxing] it to [him, her] at [address, fax number].

7.02 | RESPONDING TO THE COMPLAINT

After the plaintiff has finished service of process, the defendant has 21 days to respond, usually by an answer or motion to dismiss. More time may be given under certain statutes or if the defendant waived service of process. Rule 12 of the Federal Rules of Civil Procedure provides details. An answer includes the defendant's responses to the plaintiff's claims (he or she admits or denies each allegation), and any affirmative defenses (for example, a claim is barred by the statute of limitations). The defendant also may bring a counterclaim against the plaintiff.



7.03 | CASE MANAGEMENT

When an action is filed, Rules 16 and 26 of the Federal Rules of Civil Procedure and the Local Rules govern case management. Read those rules carefully for deadlines.

One obligation near the beginning of a lawsuit is to meet with the other party's lawyer (or, if unrepresented, the party) in person or by telephone, for a "case management conference" to develop a mutually agreeable discovery plan and mutually agreeable deadlines and dates as part of a "case management report" that must be filed with the court. In the report, the parties can also inform the court of any preliminary disputes or special considerations. The conference is also a good time to discuss how to resolve differences and settle without further court action. The conference is not meant to be adversarial; it is meant to be a cordial meeting of adults sharing a goal of the speedy, just, and inexpensive resolution of the dispute.

Once the report is filed, the court will use it to develop a "case management and scheduling order" that will govern the timeline for the action, including deadlines for completing discovery, deadlines for filing certain motions, and designation of the month and year in which the action will be tried (if not disposed of earlier).



7.04 | MOTIONS

A motion is a party's oral or written request to the court asking the court to do a particular thing or rule a particular way. You must file each written motion with the court and serve a copy on each other party's lawyer (or, if unrepresented, the party). Before filing a motion with the court, consult the rules regarding filing and serving a motion, paying particular attention to Local Rule 3.01. Violating a rule may cause the court to strike or deny your motion.

There are two types of motions: dispositive and non-dispositive. The Magistrate Judge assigned to an action can rule on a non-dispositive motion, which, if granted, affects the action but does not dispose of it or bring it to a close. Within a certain number of days, any party may request that the District Judge reconsider a Magistrate Judge's ruling on a non-dispositive motion but must show that the Magistrate Judge's ruling is clearly erroneous or contrary to law. A dispositive motion (a motion that can dispose of the action or bring it to a conclusion) is handled differently. A Magistrate Judge does not have the authority to rule on a dispositive motion unless the parties agree to allow their action to proceed entirely with the Magistrate Judge. If the parties do not agree, the Magistrate Judge instead, upon request from the District Judge, prepares a report and recommendation to be submitted to the District Judge who will make the final decision on the dispositive motion. Any party may object to the Magistrate Judge's report and recommendation within 14 days.

The parties can mutually consent to having the Magistrate Judge assigned to the action, as opposed to the District Judge assigned to the action, hear all matters, whether dispositive or non-dispositive. An advantage to consent typically is obtaining a set date (as opposed to a set term) for the trial to begin if the action proceeds to trial.

Usually, the court does not schedule a hearing on a motion. Instead, the court sends a written decision in an order to the parties. If a dispositive motion is submitted and the judge dismisses all claims, the written decision is a judgment. The judgment is final and concludes United States District Court proceedings but may be appealed to the United States Court of Appeals for the Eleventh Circuit within a specified number of days as stated in the Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure. More information about an appeal is below under the heading "Appeal."



To write a motion, it may help to begin with a form or sample that fits your situation. If you cannot find one which fits your situation, you may write your request yourself, including the relevant facts and citations to law as you need them. Motion forms can be found in books in law libraries. Here is the start of a typical motion:

[Name of party filing the motion] asks the court to [statement of the relief requested]. Below is a memorandum of law in support of this request.

A motion has at least three parts but sometimes may include four. In the first part, the movant asks the court to act. If the court does as the party requests, the motion is granted; if the court does not do as the party requests, the motion is denied. A motion may be granted in part and denied in part.

The second part of a motion is a memorandum of law, which is required by the Local Rules. A memorandum of law is the section in which the movant provides the court with authority and argues why the court should allow the request under that authority. Citations to the law are included in a memorandum of law because whatever the party requests must be within the court's authority. If granting the request is not within the court's authority, the court is prohibited from granting it and therefore must deny it. A memorandum of law is part of the motion; not a separate document.

The third part of a motion is a "Rule 3.01(g) certificate." Local Rule 3.01(g) requires almost every motion to include (1) a statement from the moving party that the moving party has made a good-faith effort to confer with the other party to resolve the motion and (2) a statement that the other party either opposes it or does not oppose it. Rule 3.01(g) has additional requirements. Take a moment to read Rule 3.01(g) very carefully. Failing to comply with Rule 3.01(g) is the number one reason motions are denied.

Occasionally, as a fourth part of a motion, a sworn declaration or an affidavit may be included so the court has the facts to rule on the motion. A sworn declaration or an affidavit is not required for all motions.

Common types of motions include requests for compelling discovery, dismissing claims, and extending time.

A copy of motion papers must be sent to each party in the lawsuit to give the party a chance to oppose the motion. Opposing a motion



can be as much work as preparing a motion because the response must state why the court should deny the motion and also include a memorandum of law.

The motion process includes a deadline for a response. Days must be counted in a specific manner. Time periods vary, but a response to a motion is usually due within 14 days of the date stated in the motion's certificate of service. Rule 6 of the Federal Rules of Civil Procedure guides computing time, extending time, and motions.

Under the Local Rules, a party must obtain permission to file a reply to a response. If you file a reply without permission, the court likely will strike it or refuse to consider it.



7.05 | DISCLOSURES AND DISCOVERY

Disclosures of facts are often made during a lawsuit. Some disclosures are required while others are not. If you are wondering whether you or another party must disclose a fact, consult the rules and the law for guidance. Rule 26 of the Federal Rules of Civil Procedure is a good place to start.

Discovery is the process by which parties exchange facts relevant to the case. A party may not seek discovery from the court. A party may not seek discovery until after the case management conference discussed in the above section, "Case Management."

There are rules regarding discovery just as there are rules for other court processes. A party can get facts from another party by asking for them. There are several ways to do this:

- **Interrogatory.** An interrogatory is a written question to the other party for information that will prove or disprove a fact. A response to an interrogatory must be in writing and under oath. Interrogatories are governed by Rules 26 and 33 of the Federal Rules of Civil Procedure.
- **Request for Production.** A request for production is a written request to the other party for a copy of a document or access to any other tangible thing that will prove or disprove a fact. Requests for Production are governed by Rules 26 and 34 of the Federal Rules of Civil Procedure.
- **Deposition.** A deposition is an in-person, recorded, question-and-answer event used by a party to ask the other party or a witness questions about the facts surrounding the action. A party seeking the deposition of another party should try to work with the schedules of others and, at a minimum, must serve 14-days advance notice of its time and place. A party seeking the deposition of a non-party may request a subpoena from the clerk's office and serve the summons on the non-party. The party setting the deposition hires and pays for a court reporter to transcribe the deposition. Depositions are governed by Rules 26, 30, 31, 32, and 33 of the Federal Rules of Civil Procedure.
- **Request for Admission.** A request for an admission is just that – a written request to another party asking him or her to admit a fact important to proving a claim or narrowing the issues. A response to a request for admission must be in



writing and under oath. Requests for Admission are governed by Rules 26 and 33 of the Federal Rules of Civil Procedure.

A party must not file a discovery document with the court unless the document is used during a hearing or at trial, is necessary for a motion (such as a motion to compel discovery or for summary judgment), or the court orders the document to be filed.

Parties may share information informally, and they often do so when trying to negotiate a settlement of their claims so they can avoid the time and cost of continuing with the lawsuit.

The discovery process may not be used to harass; it must be used in a manner that is efficient, effective, and fair. Rule 26 of the Federal Rules of Civil Procedure requires that discovery be proportional, so the relevancy of the material, the burden of obtaining and producing the material, and the amount or importance of the action are all considered in determining whether the discovery is appropriate. If the court grants a motion to compel discovery, the court must order the other side to pay expenses in bringing the motion unless certain circumstances apply.

The court publishes a handbook on civil discovery practice. The handbook is not law, and therefore is not binding. But it is highly persuasive and, as a general overview of discovery practice in this court, serves as a helpful resource for litigants and lawyers alike. You can view the form at the clerk's office or on the court's website:

www.flmd.uscourts.gov/sites/flmd/files/documents/mdfl-guide-for-proceeding-without-a-lawyer.pdf

A party who violates disclosure and discovery obligations may be sanctioned. The sanctions vary but can include dismissal and an award of an attorney's fee to the other side.



7.06 | MEDIATION

A mediation is nothing more than a settlement conference presided over by a certified, qualified, neutral mediator. The goal of a mediation is to settle to avoid risk of loss and the additional time, cost, and burden of proceeding to trial. The Local Rules require most litigants to participate in mediation. Sometimes, a District Judge may ask a Magistrate Judge to conduct a settlement conference instead. A settlement conference is very similar to a mediation.



APPENDIX



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CONTACT INFORMATION

E: TextBookDiscrimination@gmail.com

W: www.TextBookDiscrimination.com

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