



THE CIRCUIT COURT OF THE  
**FIFTEENTH JUDICIAL CIRCUIT**  
OF FLORIDA

CHAMBERS OF  
**PETER D. BLANC**  
CIRCUIT JUDGE

PALM BEACH COUNTY COURTHOUSE  
205 NORTH DIXIE HIGHWAY  
WEST PALM BEACH, FLORIDA 33401  
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February 8, 2017

Dear 15th Judicial Circuit Attorneys:

As you may recall, Local Rule 4 (Uniform Motion Calendar) was amended in 2015 with regard to the Meet and Confer requirement. Based upon feedback from judges and attorneys, additional revisions are being sought. The proposed amended version of the Rule is attached hereto with changes in bold print. This proposed amendment was overwhelmingly approved by the Judges earlier today. I am now submitting this proposed amendment for your review, input and consideration. Our deadline for submission to the Florida Supreme Court Local Rule Committee is February 28, 2017 so I ask that you act expeditiously to distribute this proposal to the appropriate committee or committees and to offer your input. Any written responses should be directed to the Chief Judge care of Amy Borman, General Counsel at [ABorman@pbcgov.org](mailto:ABorman@pbcgov.org)

Please allow me to provide you with some procedural information as well the history of the Rule and an explanation for the basis of this proposed amendment.

**LOCAL RULES/ADMIN ORDERS:** Local Rules, in contrast to Administrative Orders, require approval by a majority of judges within the circuit as well as approval by the Florida Supreme Court. As stated previously, this Local Rule was approved by the Judges of this circuit earlier today. The requirements of the Rule are similar to the standing discovery orders adopted by many of the United States District Court Magistrate Judges for the Southern District of Florida regarding discovery procedures and is also a simpler and less onerous version of Administrative Order 2012-03 from the Ninth Circuit in Orlando.

**LOCAL RULE 4:** As you may know, Local Rule 4 originated in 1990 under the direction of Chief Judge Daniel Hurley. At that time, the purpose of the Rule was to require attorneys to make a good faith effort to resolve contested motions before they were set for hearing. The Rule was amended in 2015. The purpose of the amendment was to define the phrase "attempt to resolve" as used in the original version of the Local Rule. This became necessary because technology had changed and it was apparent that attorneys were at best only exchanging e-mails and rarely speaking directly to each other as part of their attempt to resolve or narrow the issues. This limited communication resulted in fewer resolutions and frequently overcrowded UMC dockets, many unnecessary UMC hearings, and unnecessary preparation time for trial judges due, in part, to last-minute cancellations and/or submissions of agreed orders at hearings.

**FIRST AMENDMENT TO LOCAL RULE 4:** The practical goal of the 2015 amendment was to require attorneys to develop the habit of actually speaking to each other in an attempt to resolve motions before setting them for hearing. I remain convinced, based upon both common sense and experience, that such a practice creates a benefit to the attorneys, the clients, and the Court by increasing the number

of resolutions, improving the quality of practice in our legal community and raising the bar for professionalism, while creating no additional or unnecessary delay in resolution.

**BASIS FOR SECOND AMENDMENT:** Since the implementation of the 2015 amended Rule, it does seem that attorney communication has improved. However, there are still circumstances where attorneys come to court for motion calendar having never spoken to each other about the subject motion. Therefore, as the result of informal discussions I had with Amy Borman, Greg Coleman and Adam Rabin, we have proposed a second amendment to Local Rule 4 to further clarify the intent and requirements of the Rule, to clarify that the Rule does not apply when one of the parties is a pro se litigant and, based upon suggestions by other judges and attorneys, to expand the Rule's application to both specially set hearings and to hearings that occur in the County Courts.

Although use of e-mail is an excellent tool and is encouraged, this second proposed amendment clarifies that in those instances where the exchange of e-mails is unsuccessful, the attorneys still have an obligation to try to speak to each other in an effort to resolve or narrow the issues before the hearing is scheduled. The simplest way for the movant's attorney to comply, if e-mail exchange is unsuccessful, is to make a call to opposing counsel's office to either discuss the motion or to provide potential dates and times to receive a call back to do so. If nothing else happens, movant's counsel has complied with the Rule. **Because the obligations of the Rule are reciprocal**, if opposing counsel does not call back timely to confirm a date and time to speak, opposing counsel has not complied with the Rule. Further, there is nothing wrong with staff coordinating a time for the attorneys to speak by phone, but the Rule presumes that both sides will be reasonable in their efforts to timely schedule a time to speak and failure of either side to do so could be considered noncompliance with the Rule.

In the Circuit Civil divisions, many times the attorney appearing in court for hearing is not the same attorney who attempted to speak to opposing counsel unsuccessfully. The Rule, as amended, simply requires that, in those instances, the attorney attending the hearing is able to specify the efforts made to confer when the efforts have been unsuccessful. This improves the Court's ability to determine who is and who is not complying with the Rule, resulting in greater accountability.

This draft also proposes changes to the language in the certification that must appear on the Notice of Hearing. The language as proposed makes it clear that, again if e-mails are unsuccessful, at least one phone call is required as part of the good faith effort to resolve. The current version of the Rule already requires the phone call, but the proposed amendment makes clear that the attorney is certifying that the required phone call has been made. The proposed language also contains a third option to use when the opposing party is pro se and the requirements of the Rule do not apply.

**ENFORCEMENT OF RULE:** It is important to note that enforcement of the Rule will vary from judge to judge. Nonetheless, the Rule itself promotes improved communication and encourages the development of this practice as a benefit to us all.

**NEXT STEPS:** This proposal is a draft, subject to modification and revision. As stated previously, this proposal has been approved by the Judges, but it is with the understanding that the Bar will now have the opportunity for input before submission to the Supreme Court's Local Rule Advisory Committee and, thereafter, if approved, to the Supreme Court. To the extent possible, I am happy to appear before any of your committees to answer questions or further clarify the proposal. I thank you in advance for your consideration.



Peter D. Blanc, Circuit Judge