UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE:

AMENDMENTS TO THE LOCAL RULES

/

Administrative Order 99-08

FILED by Cm D.C.
JAN 22 1999
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

THIS COURT has given notice and opportunity to be heard in accordance with Rule 83, Fed.R.Civ.P., has conducted an *en banc* hearing, and has considered the comments of the public and the Court's Advisory Committee on Rules and Procedures with regard to proposed amendments to Local General Rules 1.1, 5.1, 7.3, 7.5, 16.2, 87.3, 87.4, 87.5, 88.5 and Appendices A and C, and Local Magistrate Judge Rule 4 in the form attached. Upon consideration of the public comments received and the report of the Advisory Committee, it is hereby

ORDERED that Local General Rules 1.1, 5.1, 7.3, 7.5, 16.2, 87.3, 87.4, 87.5, 88.5 and Appendices A and C, and Local Magistrate Judge Rule 4 are amended in the form attached (with the language to be deleted ~~stricken~~ and the language to be added double underlined).

IT IS FURTHER ORDERED that the foregoing rule amendments shall take effect on April 15, 1999, and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

IT IS FURTHER ORDERED that the Clerk of the Court is hereby directed, for the next 60 days: (a) to publish this Order (without the attachments) twice a week in the Daily Business Review (in the editions published in Dade, Broward and Palm Beach Counties, Florida); and (b) to offer every person who files any papers in any action in this Court, and to give to anyone who so desires, a copy of this Order with the attached rule amendments.

DONE AND ORDERED at Miami, Florida this 21st day of January, 1999.

Edward B. Davis

EDWARD B. DAVIS
CHIEF UNITED STATES DISTRICT JUDGE

c: Honorable Joseph W. Hatchett, Chief Judge, Eleventh Circuit Court of Appeals
All Southern District Judges and Magistrate Judges
Norman E. Zoller, Circuit Executive, Eleventh Circuit
All Members of the Advisory Committee on Rules and Procedures
Brian F. Spector, Chair, Advisory Committee on Rules & Procedures
Library
Daily Business Review

GENERAL RULES

RULE 1.1 SCOPE OF THE RULES

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B. Effective Date. These rules become effective February 15, 1993, provided however, that the 1994 amendments shall take effect on December 1, 1994, ~~and~~ the 1996 amendments shall take effect on April 15, 1996, the 1997 amendments shall take effect on April 15, 1997, the 1998 amendments shall take effect on April 15, 1998, and the 1999 amendments shall take effect on April 15, 1999 and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

* * * * * * * *

RULE 5.1 FILING AND COPIES

A. Form. All civil and criminal pleadings, motions, and other papers tendered for filing shall:

1. Be accompanied by one clear photo~~static~~copy. When filing a civil complaint for which issuance of initial process is requested, three additional copies for each summons must be submitted.

Exceptions:

(a) Those litigants who have been allowed to proceed in forma pauperis shall not be required to submit duplicate copies. However, they are encouraged to do so.

(b) Transcripts of state court hearings/trials; administrative records in Social Security cases, and extensive exhibits to motions for summary judgment, unless otherwise directed by court order.

~~2. Be captioned in the name of the court including division, docket number, category (civil or criminal), assigned Judge's last name, Magistrate Judge's name, style of the action, and nature of the document. See sample following this rule.~~

~~3~~ 2. Be on standard size 8-1/2″ × 11″ white, opaque paper, to the extent practicable with a standard two hole punch located at the top center (required for original only).

~~4~~ 3. Be plainly typed or written on one side with 1" margins on each side, not less than one and one-half spaces between lines except for quoted material, and properly paginated at the bottom of each page.

4. Include a caption with:

(a) The name of the court including division, centered across the page;

(b) The docket number, category (civil or criminal), and the last names of the assigned District Judge and Magistrate Judge, centered across the page;

(c) The style of the action, which fills no more than the left side of the page, leaving sufficient space on the right side for the Clerk to affix a filing stamp; and

(d) The title of the document, including the name and designation of the party (as plaintiff or defendant or the like) in whose behalf the document is submitted.

Exception:

The requirements of 3 and 4(a)-(d) do not apply to: (1) exhibits submitted for filing; and (2) papers filed in removed actions prior to removal from the state courts.

~~9~~ 5. Include ~~in~~ a signature block with the name, address, telephone number, facsimile telephone number, e-mail address, and Florida Bar identification number of all counsel for the party ~~either the filing counsel or the local counsel designated by him under Admission and Practice Rule 4B~~.

~~5. Contains sufficient space opposite the style for file stamping.~~

6. Not be transmitted to the Clerk or any Judge by facsimile telecopier.

7. Be submitted with sufficient copies to be filed and docketed in each matter if styled in consolidated cases.

~~8. State in the title the name and designation of the party (as plaintiff or defendant or the like) in whose behalf the paper is submitted.~~

~~9. Include in signature block the name, address, phone number, facsimile phone number and Florida Bar identification number of either the filing counsel or the local counsel designated by him under Admission and Practice Rule 4F.~~

~~10. The requirements of 2 3, 4 and 5 do not apply to: (1) exhibits submitted for filing; and (2) papers filed in removed actions prior to removal from the state courts.~~

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D. Restriction on Courtesy Copies. Counsel shall not deliver extra courtesy copies to a Judge's ~~or Magistrate Judge's Office~~ Chambers except when requested by a Judge's ~~or Magistrate's~~ office to deliver a courtesy copy to ~~that office~~ Chambers .

Comments

(1999) Subsection A has been rewritten to conform to current practice and the format of most word processors. The Clerk's Office prefers the new format because it reserves ample space for the filing stamp. Former subsections A.2, A.3 and A.4 are rewritten and renumbered, effecting changes in clarity, not substance. An updated sample form is appended to the rule, replacing the old form. Despite a stylistic change, subsection D continues to refer to both District Judges and Magistrate Judges.

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SAMPLE FORM FOLLOWING RULE 5.1

(Two-hole punched at top of page)
(1″ from top of page, and centered,
begin title of court)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
_____ DIVISION

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

A.B.,

Plaintiff, [Leave space for Clerk's filing stamp]

vs.

C.D.,

Defendant.

_____/

TITLE OF DOCUMENT

[Intentionally left blank]

~~(Two-hole punched at top of page)~~
~~(8 lines from top of page, and centered,~~
~~begin title of court)~~

~~UNITED STATES DISTRICT COURT~~
~~SOUTHERN DISTRICT OF FLORIDA~~

~~(6 lines from title of court begin case information)~~

~~Plaintiff)~~

~~) ___-CIV-(judge's last name)~~

~~) Case No. ___-CR-(judge's last name)~~

~~v.)~~

~~) (Case no. to right of style)~~

~~)~~

~~) Magistrate Judge _____~~

~~Defendant)~~

~~) Pleading and Form Format~~

~~_____) (Title of document to right of style)~~

~~At least 2 lines from style and title begin body of the document.~~

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RULE 7.3 ATTORNEYS FEES AND COSTS

Any motion for attorneys fees and/or to tax costs must specify: the judgment and the statute, rule, or other grounds entitling the moving party to the award; must state the amount or provide a fair estimate of the amount sought; shall disclose the terms of any agreement with respect to fees to be paid for the services for which the claim is made; shall be supported with particularity; shall be verified; and shall be filed and served within 30 days of entry of Final Judgment or other ~~dispositive~~ appealable order which gives rise to a right to attorneys fees or costs. Any such motion shall be accompanied by certification that counsel has fully reviewed the time records and supporting data and that the motion is well grounded in fact and justified. In addition, counsel filing the motion shall confer with counsel for the opposing party and shall file with the Court, within three (3) days of the motion, a statement certifying that counsel has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the motion, the results thereof and whether a hearing is requested.

The prospects or pendency of supplemental review or appellate proceedings shall not toll or otherwise extend the time for filing of a motion for fees and/or costs with the district court.

Comments

(1999) The rule has been amended to clarify that a motion for fees and costs must only be filed when a judgment or appealable order has been entered in the matter. A motion for fees and costs may be made before such a judgment or order has been entered where appropriate, such as when sanctions have been awarded during the course of such proceeding. However, in no event may a motion for fees or costs be made later than the date provided for in this rule.

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RULE 7.5 MOTIONS FOR SUMMARY JUDGMENT

Motions for summary judgment shall be accompanied by a memorandum of law, necessary affidavits, and a concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. The papers opposing a motion for summary judgment shall include a memorandum of law, necessary affidavits, and a single concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried. The statement of material facts submitted with a motion for summary judgment shall not exceed ten pages in length. All material facts set forth in the statement required to be served by the moving party will be deemed admitted unless controverted by the opposing party's statement. As oral argument is not always scheduled on motions for summary judgment, the briefing schedule in Local Rule 7.1 shall apply.

(Comments)

(1999) Adds a page limit for the statement of material facts and makes clear that only one such statement shall be submitted with a motion for summary judgment.

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RULE 16.2 COURT ANNEXED MEDIATION

B. Certification: Qualification and Compensation of Mediators.

6. *Compensation of Mediators.* Mediators shall be compensated (a) at the rate provided by standing order of the Court, as amended from time to time by the chief judge, if the mediator is appointed by the Court without input or at the request of the parties; or (b) at such rate as may be agreed to in writing by the parties and the mediator, if the mediator is selected by the parties. Absent agreement of the parties to the contrary, the cost of the mediator's services shall be borne equally by the parties to the mediation conference.

Comments

(1999) [B.6] Language is added to clarify that mediators appointed by the Court without input by the parties are compensated at the rate set by the standing administrative order.

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RULE 87.3 MOTIONS FOR WITHDRAWAL OF REFERENCE OF CASE OR PROCEEDING FROM THE BANKRUPTCY COURT

A motion to withdraw the reference pursuant to 28 U.S.C. § 157(d) shall be filed with the clerk of the bankruptcy court in accordance with the requirements of local bankruptcy rule ~~511~~ 5011-1. Subsequently filed motions for withdrawal of reference in the same case or proceeding shall be regarded as similar actions and proceedings under Rule 3.9 and the attorneys of record shall notify the District Court of all such pending actions and proceedings in compliance with Rule 3.9.D. and, if applicable, provide the notice required by Rule 7.1.F.

Upon disposition of a motion for withdrawal of reference the District Court Clerk shall transmit a copy of the order to the clerk of the bankruptcy court.

Comments

(1999) Amended to reflect renumbered local bankruptcy rules effective December 1, 1998.

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RULE 87.4 BANKRUPTCY APPEALS

Bankruptcy appeals to the District Court are governed by the Federal Rules of Bankruptcy Procedure, particularly Rules 8001 through ~~8019~~ 8020, and the local rules of the bankruptcy court. As is authorized by Rule 8018, those rules are supplemented as follows:

* * * * * * * *

B. Limited Authority of Bankruptcy Court to Dismiss Appeals Prior to Transmittal of Record to District Court. The bankruptcy court is authorized and directed to dismiss an appeal for (1) appellant's failure to pay the prescribed filing fees; (2) failure to comply with the time limitations specified in Rule 8002, Fed.R.Bankr.P.; and (3) appellant's failure to file a designation of the items for the record or copies thereof or a statement of the issues as required by Rule 8006, Fed.R.Bankr.P. and local bankruptcy rule ~~806~~ 8006-1. The bankruptcy court is further authorized and directed to hear, under Rule 9006(b), Fed.R.Bankr.P., motions to extend the foregoing deadlines and to consolidate appeals which present similar issues from a common record. Bankruptcy court orders entered under this subsection may be reviewed by the District Court on motion filed in the District Court within 10 days after entry of the order sought to be reviewed pursuant to subsection C of this rule.

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D. Motions for Leave to Appeal. A motion for leave to appeal shall be filed in the bankruptcy court pursuant to local bankruptcy rule ~~803~~ 8003-1. Upon transmittal of the motion and related documents to the District Court the matter shall be assigned in the same manner as other miscellaneous motions described in subsection C above. . . .

Comments

(1999) Amended to reflect renumbered local bankruptcy rules effective December 1, 1998.

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RULE 87.5 DESIGNATION OF BANKRUPTCY JUDGES TO CONDUCT JURY TRIALS

The Bankruptcy Judges of this District are specially designated to conduct jury trials, with the express consent of all parties, in all proceedings under 28 U.S.C. § 157 in which the right to a jury trial applies. Pleading and responding to a jury trial demand in bankruptcy cases is governed by local bankruptcy rule 9015-1. Local Rule 47.1 shall apply to jury trials conducted by Bankruptcy Judges under this rule.

Comments

(1999) Incorporates the provisions of Administrative Order 96-03 "In re: Designation of Bankruptcy Judges to Conduct Jury Trials."

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RULE 88.5 SPEEDY TRIAL

A. Waiver of Sanctions. A court may accept a defendant's waiver of the provisions of the Speedy Trial Act if made either in writing or orally, in open court, on the record. A form written rights waiver is set forth in Appendix C to these rules.

Comments

(1999) A form rights waiver is included. Use of the form may require individuation, or time limits, on a case-by-case basis.

APPENDICES

APPENDIX A. DISCOVERY PRACTICES HANDBOOK

II. DEPOSITIONS

A. General Policy and Practice.

(4) *Length and Number of Depositions.* Local General Rule 26.1.K provides that unless agreed to by all parties and, with respect to depositions of non-party witnesses, as agreed to by the non-party witness, or unless ordered by the Court, no deposition of any party or witness shall last more than six (6) hours. Under Fed.R.Civ.P. 30(a)(2)(A), absent written stipulation of the parties or leave of Court, the number of depositions being taken by each party is limited to ten.

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IV. INTERROGATORIES

A. Preparing and Answering Interrogatories.

(2) *Scope of Interrogatories.* The Court will be guided in each case by the limitations stated in Fed.R.Civ.P. 26(b)(1) and Local General Rule 26.1.G., Southern District of Florida. Interrogatories initially are restricted to those seeking names of witnesses with knowledge or information relevant to the subject matter of the action, the nature and substance of such knowledge, the computation of each category of damage alleged and the existence, custodian, location and general description of relevant documents, including pertinent insurance agreements, other physical evidence, or information of a similar nature, and the names of expert witnesses and the substance of their opinions. Counsel's signature on interrogatories constitutes a certification of compliance with those limitations. See Fed.R.Civ.P. 26(g)(2). Interrogatories should be brief, simple, particularized and capable of being understood by jurors when read in conjunction with the answer. By the express terms of Local Rule 26.1.G.2, interrogatories propounded in the form set forth in Appendix B to the Local Rules comply with the limitations of that rule.

* * * * * * * *

(7) *Form Interrogatories.* There are certain kinds of cases which lend themselves to interrogatories which may be markedly similar from case to case, such as employment discrimination and maritime cargo damage suits, for example, or diversity actions in which form interrogatories have been approved by state law. ~~Aside from such cases the use of "form" interrogatories is ordinarily inappropriate.~~ Except for the standard form interrogatories set forth

in Appendix B to the Local Rules, ~~Interrogatories~~ interrogatories which parties seek to propound under Local Rules 26.1.G.3 and 26.1.G.4 should be carefully reviewed to make certain that they are tailored to the individual case.

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VI. MOTIONS TO COMPEL OR FOR A PROTECTIVE ORDER

C. Time for Filing. Local General Rule 26.1.H(1) requires that all motions related to discovery, including but not limited to motions to compel discovery and motions for protective order, be filed within thirty (30) days of the occurrence of grounds for the motion. Failure to file a discovery motion within thirty (30) days, absent a showing of reasonable cause for a later filing, may constitute a waiver of the relief sought.

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APPENDIX C. FORM OF DEFENDANT'S WAIVER OF STATUTORY RIGHT TO SPEEDY TRIAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
_____ DIVISION

Case No. ____-Cr-(USDJ's last name/USMJ's last name)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

John Doe and Jane Doe,

Defendants.

_____/

DEFENDANT'S WAIVER OF STATUTORY RIGHT TO SPEEDY TRIAL

I am the defendant named above. I have been advised of my statutory right to a speedy trial under Title 18 United States Code, sections 3161-3174. I understand my right to a speedy trial under the federal statutes, yet I waive that right as permitted by the statute and SOUTHERN DISTRICT OF FLORIDA LOCAL RULE 88.5. I waive this right freely and voluntarily.

_____
Defendant

EXECUTED in Open Court in the Southern District of Florida, this _____ day of _____, 199 /20 .

Respectfully submitted,

_____
Counsel for the Defendant

MAGISTRATE JUDGE RULES

RULE 4. REVIEW AND APPEAL

(a) Appeal of Non-dispositive Matters--Government Appeal of Release Order.

(1) *Appeal of Non-dispositive Matters--28 U.S.C. § 636(b)(1)(A).* Any party may appeal from a Magistrate Judge's order determining a motion or matter under subsection 1(c) of these rules, supra, within ten (10) days after being served with the Magistrate Judge's order, unless a different time is prescribed by the Magistrate Judge or District Judge. Such party shall file with the Clerk of Court, and serve on all parties, written objections which shall specifically set forth the order, or part thereof, appealed from a concise statement of the alleged error in the Magistrate Judge's ruling, and statutory, rule, or case authority, in support of the moving party's position. Any party may respond to another party's objections within 10 days after being served with a copy thereof, or within such other time as may be allowed by the Magistrate Judge or District Judge. Absent prior permission from the Court, no party shall file any objections or responses to another party's objections exceeding twenty (20) pages in length. The District Judge shall consider the appeal and shall set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law. The District Judge may also reconsider sua sponte any matter determined by a Magistrate Judge under this rule.

* * * * * * * *

(b) Review of Case-Dispositive Motions and Prisoner Litigation -- 28 U.S.C. § 636(b)(1)(B). Any party may object to a Magistrate Judge's proposed findings, recommendations or report under subsections 1(d), (e), and (f) of these rules, supra, within 10 days after being served with a copy thereof, or within such other time as may be allowed by the Magistrate Judge or District Judge. Such party shall file with the Clerk of Court, and serve on all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made, the specific basis for such objections, and supporting legal authority. Any party may respond to another party's objections within 10 days after being served with a copy thereof, or within such other time as may be allowed by the Magistrate Judge or District Judge. Absent prior permission from the Court, no party shall file any objections or responses to another party's objections exceeding twenty (20) pages in length. A District Judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. The District Judge, however, need conduct a new hearing only in his discretion or where required by law, and may consider the record developed before the Magistrate Judge, making his own determination on the basis of that record. The District Judge may also receive further evidence, recall witnesses, or recommit the matter to the Magistrate Judge with instructions.

Comments

(1999) Rules 4(a)(1) and (b) amended to impose page limitations on objections, and responses to objections, to Magistrate Judges' non-dispositive orders under 28 U.S.C. § 636(b)(1)(A) and reports and recommendations under 28 U.S.C. § (b)(1)(B).