UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE:

Administrative Order 2008-41

AMENDMENTS TO THE LOCAL RULES - NOTICE OF PROPOSED AMENDMENTS, OF OPPORTUNITY FOR PUBLIC COMMENTS, AND OF HEARING TO RECEIVE COMMENTS

/

FILED by D.C.
NOV - 6 2008
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

The Court's Ad Hoc Committee on Rules and Procedures has recommended that this Court amend Local Rules 5.1, 7.1, 16.2, 26.1, 87.4, and 88.3, and the Discovery Practices Handbook. In accordance with Fed.R.Civ.P. 83(a)(1) and Fed.R.Crim.P. 57(a)(1), it is hereby

ORDERED that the Clerk of the Court is directed, for the next 30 days: (a) to publish this Order (without the attachments) three times per week in the Daily Business Review (in the editions published in Miami-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 proposed rule amendments.

IT IS FURTHER ORDERED that the Court will conduct an *en banc* public hearing on the proposed rule amendments on the 15th day of January, 2009, at 2:00 o'clock p.m. at the Wilkie D. Ferguson, Jr. United States Courthouse, 400 North Miami Avenue, Special Proceedings Courtroom, Room 13-3, Miami, Florida. Those who desire to appear and offer oral comments on the proposed rule amendments at this hearing shall file written notice to that effect with the Clerk of the Court no later than five days prior to the hearing. Those who desire to offer only written comments on the proposed rule amendments must file their written comments with the Clerk of the Court no later than ten days prior to the hearing.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida this 5th day of November, 2008.

FEDERICO A. MORENO
CHIEF UNITED STATES DISTRICT JUDGE

c: Honorable J. L. Edmondson, Chief Judge, Eleventh Circuit Court of Appeals
All Southern District Judges and Magistrate Judges
James Gerstenlauer, Circuit Executive, Eleventh Circuit
Steven M. Larimore, Court Administrator • Clerk of Court
Thomas Meeks, Chair, Ad Hoc Committee on Rules & Procedures
All members of the Ad Hoc Committee on Rules and Procedures
Library
Daily Business Review

LOCAL RULES
OF THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA

GENERAL RULES

RULE 1.1 SCOPE OF THE LOCAL RULES

A. Title and Citation. These Local Rules shall be known as the Local Rules of the United States District Court for the Southern District of Florida. They may be cited as "S.D. Fla. L.R."

B. Effective Date. These Local Rules became effective February 15, 1993, provided, however, that the 1994 amendments took effect on December 1, 1994, the 1996 amendments took effect on April 15, 1996, and each subsequent year's amendments take effect on April 15 of that year, and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

C. Scope of Rules. These Local Rules shall apply in all proceedings in civil and criminal actions except where indicated otherwise. Additional Local Rules governing procedures before Magistrate Judges and in admiralty may be found herein.

D. Relationship to Prior Rules. These Local Rules supersede all prior Local Rules promulgated by this Court or any Judge of this Court.

E. Rules of Construction and Definitions. Title 1, United States Code, Sections 1 to 5, shall, as far as applicable, govern the construction of these Local Rules.

F. Applicability of Rules to Pro Se Litigants. When used in these Local Rules, the word "counsel" shall be construed to apply to a party if that party is proceeding pro se.

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 1999; April 15, 2000; April 15, 2001; April 15, 2002; April 15, 2003; April 15, 2004; April 15, 2005; April 15, 2006; April 15, 2007; April 15, 2008~~.~~; April 15, 2009.

Authority

(1993) Model Rule 1.1 (All references to "Model Rules" refer to the Local Rules Project of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.)

Comment

(1994) The following Local Rules were amended or adopted by Administrative Order 94–51, In Re

Amendments to the Local Rules: Local Rules 1.1.B., 5.1.A.9., 5.2.D., 7.3., 16.1.B., 16.1.B.K., 26.1, 88.2 and 88.9; Local Magistrate Rule 4(a)(1); and Rule 4F of the Special Rules Governing the Admission and Practice of Attorneys.

RULE 5.1 FILING AND COPIES

A. Form of Conventionally Filed Documents. All civil and criminal pleadings, motions, and other papers tendered for conventional (non-CM/ECF) filing shall:

1. Be bound only by easily-removable paper or spring-type binder clips, and not stapled or mechanically bound or fastened in any way. Voluminous pleadings, motions, or documents may be bound with a rubber band. Attachments may not be tabbed; reference characters should be printed or typed on a blank sheet of paper separating each attached document.

2. ~~Be accompanied by one clear photocopy. The photocopy is not subject to the restrictions of section 1, *supra*. Although the photocopy must be in all other respects identical to the file copy, it should be bound or fastened, and tabbed, if appropriate, in a way that facilitates its use by the Judge.~~ When filing a civil complaint for which issuance of initial process is requested, ~~three additional copies~~one copy of the complaint must be submitted 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.~~

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

4. Be plainly typed or written on one side with 1" margins on top, bottom, and 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~~. All typewritten documents, except for quoted material of fifty words or more and footnotes, both of which may be single-spaced, shall have not less than one and one-half spaces between lines. Fonts for typewritten documents, including footnotes and quotations, must be no smaller than twelve point. All typewritten documents must be paginated properly and consecutively at the bottom center of each page. Only one side of the paper may be used.

5. Include a caption with:

(a) The name of the Court 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 of the Court 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) on whose behalf the document is submitted, centered across the page.

Exception:

The requirements of 3, 4 and 5(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; and (3) forms provided by the Court.

6. Include (a) a signature block with the name, street address, telephone number, facsimile telephone number, e-mail address, and Florida Bar identification number of all counsel for the party and (b) a certificate of service which refers to an attached Service List containing the name, street address, telephone number, facsimile telephone number, and e-mail address of all counsel for all parties, including the attorney filing the pleading, motion, or other paper. *See* Form following this Local Rule.

7. Not be transmitted to the Clerk of the Court or any Judge by facsimile telecopier.

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

B. Form of CM/ECF Filed Documents. Except those documents exempted under Section 5 of the CM/ECF Administrative Procedures, all documents required to be served upon a party after the complaint shall be filed in compliance with the CM/ECF Administrative Procedures; however, *pro se* parties are exempted from this requirement pursuant to Section 2C of the CM/ECF Administrative Procedures. The requirements of paragraphs A.2-A.5 above shall apply to documents filed via CM/ECF. *See* Section 3A of the CM/ECF Administrative Procedures.

C. Restriction on Courtesy Copies. Counsel shall not deliver extra courtesy copies to a Judge's Chambers except when requested by a Judge's office to deliver a courtesy copy to Chambers.

D. Notices of Filing; Form and Content. The title of a notice of filing shall include (a) the name and designation of the party (as plaintiff or defendant or the like) on whose behalf the filing is submitted, and (b) a description of the document being filed. A notice of filing shall identify by title the pleading, motion or other paper to which the document filed pertains and the purpose of the filing, such as in support of or in opposition to a pending motion or the like.

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1998; April 15, 1999; April

15, 2000; April 15, 2001; paragraph E added effective April 15, 2003; April 15, 2007~~.~~; April 15, 2009.

Authority

(1993) Former Local Rule 7; Model Rule 5.1; Administrative Order 90–64 (A.6, B).

Comments

(1993) Telecopies not permitted to be filed. Adds reference to number of copies required for issuance of summonses, per Clerk's Office. Adds restriction on courtesy copies.

(1994) The addition of counsel's facsimile telephone number in A.6. is consistent with the Local Rule amendment to permit counsel to serve each other via facsimile transmission. The other changes are grammatical or designed to make the Local Rule gender neutral.

(1996) In recognition of the logistical problems posed by the requirement that papers must be filed with the Clerk of the Court where the assigned Judge is chambered, the Local Rule is amended to make clear that filing within three business days after service is reasonable under Federal Rule of Civil Procedure 5(d). The pre–1993 version of Local Rule 7.B. required filing of papers either before service or within five days thereafter.

(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 Local Rule, replacing the old form. Despite a stylistic change, subsection C continues to refer to both District Judges and Magistrate Judges.

(2000) Amendments to subpart 5(a) dispenses with the need for reference to the Division of the Court to avoid confusion resulting from the requirement to file papers, in accordance with Local Rule 5.1.B, in the Division where the assigned Judge is chambered, which is different from the Division in which the case is venued. A corresponding change is made to the sample form following the Local Rule.

(2001) The amendments to Subsection A are intended to facilitate the process of document imaging by reducing the time spent on disassembling documents in preparation for scanning and decreasing the frequency of equipment failure caused by undetected fastening material.

(2003) The addition of Local Rule 5.1.D is intended to assist the Court in understanding the purpose for which materials are filed.

(2007) Amended to conform to CM/ECF Administrative Procedures by making distinction between form required for papers filed conventionally and those filed electronically (paragraphs A & B), eliminating the reference to three-judge court filings (paragraph C), and renumbering the paragraphs

accordingly (D becomes C; E becomes D).

(2009) Amended to eliminate the requirement to file multiple copies of initial process, which CM/ECF renders unnecessary, and to supply additional formatting requirements for pleadings, motions, and other papers filed with the Court.

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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

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

A.B.,

Plaintiff

[Leave space for
Clerk of the Court's filing stamp]

vs.

C.D.,

Defendant.
_____/

TITLE OF DOCUMENT

Dat~~ed~~: Month, day, year
~~City, State~~

Respectfully submitted,

~~Firm Name~~
~~Attorneys for Plaintiff/Defendant [Party Name(s)]~~

_____
Attorney Name (Bar Number)
Attorney E-mail Address
Firm Name
Street Address
City, State, Zip Code
Telephone: (xxx)xxx–xxxx
Facsimile: (xxx)xxx–xxxx
Attorneys for Plaintiff/Defendant [Party Name(s)]

Certificate of Service

I hereby certify that on (date), I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified,

either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing. ~~a true and correct copy of the foregoing was served by [specify method of service] on [date] on all counsel or parties of record on the attached service list~~.

_____

~~Attorney Name~~[Name of Password Registrant]

= = = = = = = = = = = = = = = = =

Start new page

SERVICE LIST

[Plaintiff] versus [Defendant]

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

United States District Court, Southern District of Florida

Attorney Name	Attorney Name
Attorney E–mail Address	Attorney E–mail Address
Firm Name	Firm Name
Street Address	Street Address
City, State, Zip Code	City, State, Zip Code
Telephone: (xxx)xxx–xxxx	Telephone: (xxx)xxx–xxxx
Facsimile: (xxx)xxx–xxxx	Facsimile: (xxx)xxx–xxxx
Attorneys for Plaintiff/Defendant	Attorneys for Plaintiff/Defendant
[Party's Name(s)]	[Party's Name(s)]
[Method of Service]	[Method of Service]

Effective Dec. 1, 1994; amended effective April 15, 1999; April 15, 2000; April 15, 2006; April 15, 2007; April 15, 2009.

RULE 7.1 MOTIONS, GENERAL

A. Filing.

1. Every motion when filed shall include or be accompanied by a memorandum of law citing supporting authorities, except that the following motions need not be accompanied by a memorandum:

(a) petition for writ of habeas corpus ad testificandum or ad prosequendum;

(b) motion for out-of-state process;

(c) motion for order of publication for process;

(d) application for default;

(e) motion for judgment upon default;

(f) motion to withdraw or substitute counsel;

(g) motion for continuance, provided the good cause supporting it is set forth in the motion and affidavit required by Local Rule 7.6;

(h) motion for confirmation of sale;

(i) motion to withdraw or substitute exhibits;

(j) motion for extensions of time providing the good cause supporting it is set forth in the motion;

(k) motion for refund of bond, provided the good cause supporting it is set forth in the motion; and

(l) application for leave to proceed in forma pauperis.

2. Those motions listed in A.1 above shall be accompanied by a proposed order.

3. Pre-filing Conferences Required of Counsel. Prior to filing any motion in a civil case, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action, counsel for the movant shall confer (orally or in writing), or make reasonable effort to confer (orally or in writing), with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve by agreement the issues to be raised in the motion. Counsel conferring with movant's counsel shall cooperate and act in good faith in attempting to resolve the dispute. At the end of ~~time of filing~~ the motion, and above the signature block, counsel for the moving party shall certify~~file with the Clerk of the Court a statement certifying~~ either: (a) that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and has been unable to do so; or (b) that counsel for the movant has made reasonable efforts to confer with all parties or non-parties who may be affected by the relief sought in the motion, which efforts shall be identified with specificity in the statement, but has been unable to do so. If certain of the issues have been resolved by agreement, the ~~statement~~certification shall specify the issues so resolved and the issues remaining unresolved. Failure to comply with the requirements of this Local Rule may be cause for the Court to grant or deny the motion and impose on counsel an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred

because of the violation, including a reasonable attorney's fee. See sample forms following this Local Rule.

B. Hearings. No hearing will be held on motions unless set by the Court. Hearings shall be set by the Court under the following circumstances:

1. A party who desires oral argument or a hearing of any motion shall request it in writing by separate request accompanying the motion or opposing memorandum. The request shall set forth in detail the reasons why a hearing is desired and would be helpful to the Court and shall estimate the time required for argument. The Court in its discretion may grant or deny a hearing as requested, upon consideration of both the request and any response thereto by an opposing party.

2. Discovery motions may be referred to and heard by a United States Magistrate Judge.

3. With respect to:

a. any motion or other matter which has been pending and fully briefed with no hearing set thereon for a period of ninety days, and

b. any motion or other matter as to which the Court has conducted a hearing but has not entered an order or otherwise determined the motion or matter within ninety days of the hearing,

the movant or applicant, whether party or non-party, shall file and serve on all parties and any affected non-parties a "Notification of Ninety Days Expiring" which shall contain the following information:

(1) the title and docket entry number of the subject motion or other application, along with the dates of service and filing;

(2) the title and docket number of any and all responses or opposing memoranda, along with the dates of service and filing, or if no such papers have been filed, the date on which such papers were due;

(3) the title and docket entry number of any reply memoranda, or any other papers filed in connection with the motion or other matter, as well as the dates of service and filing; and

(4) the date of any hearing held on the motion or other matter.

The "Notification of Ninety Days Expiring" shall be filed within ten days of the expiration of the applicable ninety day period.

C. Memorandum of Law. Each party opposing a motion shall serve an opposing memorandum of law no later than ten days after service of the motion as computed in the Federal Rules of Civil Procedure. Failure to do so may be deemed sufficient cause for granting the motion by default.

The movant may, within five days after service of an opposing memorandum of law, serve a reply memorandum in support of the motion, which reply memorandum shall be strictly limited to rebuttal of matters raised in the memorandum in opposition without reargument of matters covered in the movant's initial memorandum of law. No further or additional memoranda of law shall be filed without prior leave of Court.

1. *Time.* Time shall be computed under this Local Rule as follows:

(a) If the motion or memorandum was served by mail or filed via CM/ECF, count ten days (five days for a reply) from the date the motion, response, or memorandum to which one is responding was certified as having been mailed or filed via CM/ECF. Do not include Saturdays, Sundays, or legal holidays. Beginning on the next calendar day, including Saturday, Sunday, or a legal holiday, count three days. The third day is the due date for the opposing memorandum or reply. If the third day falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.

(b) If the motion or memorandum was served by hand delivery, start counting ten or five days on the business day after receipt of the motion or memorandum, excluding Saturdays, Sundays and legal holidays. The tenth or fifth day is the due date for the opposing memorandum or reply, respectively.

2. *Length.* Absent prior permission of the Court, no party shall file any legal memorandum exceeding twenty pages in length, with the exception of a reply which shall not exceed ten pages in length. Title pages preceding the first page of text in a memorandum, signature pages, certificates of good faith conferences, and certificates of service shall not be counted as pages for purposes of this rule. The practice of filing multiple motions for partial summary judgment shall be prohibited, absent prior permission of the Court.

3. *Supporting and Opposing Materials.* To the extent a party wants the Court to consider affidavits, declarations, or other materials in support of or in opposition to the motion, then: (a) the movant must serve with the motion all such materials; and (b) the opposing party must serve with the opposing memorandum all such materials in opposition to the motion. The movant may serve a reply memorandum with affidavits, declarations, or other materials provided that all such materials are strictly limited to rebuttal of matters raised in the opposing memorandum.

D. Orders Made Orally in Court. Unless the Court directs otherwise, all orders orally announced in Court shall be prepared in writing by the attorney for the prevailing party and taken to the Judge within two days thereafter.

E. Emergency Motions. The Court may, upon written motion and good cause shown, waive the time requirements of this Local Rule and grant an immediate hearing on any matter requiring such expedited procedure. The motion shall set forth in detail the necessity for such expedited procedure.

F. Applications Previously Refused. Whenever any motion or application has been made to any Judge or Magistrate Judge and has been refused in whole or in part, or has been granted conditionally, and a subsequent motion or application is made to a different District Judge or Magistrate Judge for the same relief in whole or in part, upon the same or any alleged different state of facts, it shall be the continuing duty of each party and attorney seeking such relief to present to the District Judge or Magistrate Judge to whom the subsequent application is made an affidavit setting forth the material facts and circumstances surrounding each prior application, including: (1) when and to what District Judge or Magistrate Judge the application was made; (2) what ruling was made thereon; and (3) what new or different facts and circumstances are claimed to exist which did not exist, or were not shown, upon the prior application. For failure to comply with the requirements of this Local Rule, any ruling made on the subsequent application may be set aside sua sponte or on ex parte motion.

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 2000; April 1, 2004; April 15, 2005; April 15, 2006; April 15, 2007; April 15, 2009.

Comments

(1996) The contemporaneous service and filing requirements have been relaxed in recognition of the logistical problems posed by the requirement of Local Rule 5.1.B. that papers must be filed with the Clerk of the Court where the assigned Judge is chambered. Under amended Local Rules 5.1.B. and 7.1.C., opposing and reply memoranda must be filed within three business days after service of the memoranda.

(1997) Addition of language to Local Rule 7.1.C.2. prohibiting the practice of filing multiple motions for summary judgment to evade page limitations.

(2000) The addition of subsection 7.1.A.3.(a) is intended to eliminate unnecessary motions and is based on M.D.Fla. Local Rule 3.01(g) and Local Rule 26.1.I. Subsection 7.1.A.3.(b) is intended merely to direct counsel to the pre-filing conference requirements of Local Rule 26.1.I for discovery motions.

(2004) Local Rule 7.1.A.3 is amended in conjunction with deletion of Local Rule 26.1.I's text to avoid confusion and clarify pre-filing conference obligations. Local Rule 7.1.A.4 is deleted in light of almost universal participation in the District's automated noticing program ("FaxBack"). The last sentence in Local Rule 7.1.C.2 is amended to prohibit, absent prior permission from the Court, the filing of multiple motions for partial summary judgment. This amendment is made in conjunction with the amendment of Local Rule 16.1.B.2 to emphasize the need to discuss at the scheduling conference of parties and/or counsel the number and timing of motions for summary judgment or partial summary judgment, and have the Scheduling Order address these issues.

(2005) The addition of subsection 7.1.C.3 is intended to clarify the procedure for filing materials in support of or in opposition to a motion.

(2006) Local Rule 7.1.B.3 is amended to assist the Court's expeditious determination of motions or other matters. Local Rule 7.1.C.1 is amended to correspond to Federal Rule of Civil Procedure 6(e).

(2007) Amended to conform to CM/ECF Administrative Procedures.

(2009) Amended to add a requirement for the completion of a separate Certificate of Good Faith Conference.

SAMPLE FORM FOLLOWING RULE 7.1

CERTIFICATE OF GOOD FAITH CONFERENCE

I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues but has been unable to do so or has made reasonable efforts to confer with all parties or non-parties who may be affected by the relief sought in the motion, but has been unable to do so.

_____

Attorney Name

ALTERNATIVELY,

CERTIFICATE OF GOOD FAITH CONFERENCE

I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues raised in the motion and states that the following issues have been resolved: _____. The following issues remain unresolved: _____.

_____

Attorney Name

RULE 16.2 COURT ANNEXED MEDIATION

A. General Provisions.

1. *Definitions.* Mediation is a supervised settlement conference presided over by a

qualified, certified, and neutral mediator, or anyone else whom the parties agree upon to serve as a mediator, to promote conciliation, compromise and the ultimate settlement of a civil action.

A certified mediator is an attorney, certified by the Chief Judge in accordance with these Local Rules, who possesses the unique skills required to facilitate the mediation process including the ability to suggest alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides, and keep order.

The mediation process does not allow for testimony of witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case. Absent a settlement, the mediator will report to the presiding Judge only as to whether the case settled (in full or in part) or was adjourned for further mediation, whether the mediator declared an impasse, and pursuant to Local Rule 16.2.E, whether any party failed to attend the mediation.

2. *Purpose.* It is the purpose of the Court, through adoption and implementation of this Local Rule, to provide an alternative mechanism for the resolution of civil disputes leading to disposition before trial of many civil cases with resultant savings in time and costs to litigants and to the Court, but without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial in the event of an impasse following mediation. Mediation also enables litigants to take control of their dispute and encourages amicable resolution of disputes.

B. Certification; Qualification of Certified Mediators; Compensation of Mediators.

1. *Certification of Mediators.* The Chief Judge shall certify those persons who are eligible and qualified to serve as mediators under this Local Rule, in such numbers as the Chief Judge shall deem appropriate. Thereafter, the Chief Judge shall have complete discretion and authority to withdraw the certification of any mediator at any time.

2. *Lists of Certified Mediators.* Lists of certified mediators shall be maintained in the offices of the Clerk of the Court and shall be made available to counsel and the public upon request.

3. *Qualifications of Certified Mediators.* An individual may be certified to serve as a mediator in this District provided that the individual shall:

(a) be an attorney who is currently a member in good standing and has been admitted for at least ten years ~~have completed a minimum of forty hours in a Florida Circuit Court Mediation Training course certified by the Florida Supreme Court and also: is a former state court judge who presided in a court of general jurisdiction and was also a member of the bar in the state in which he or she presided; or is a retired federal judicial officer; or has been admitted~~ to a State Bar or the Bar of the District of Columbia; and ~~for at least ten~~

~~years and is currently~~

(b) be admitted to the Bar of this Court or demonstrate knowledge of the Local Rules of this Court by passing the attorney admissions examination; and

(c) have substantial experience either as a lawyer or mediator in matters brought in any United States District Court or Bankruptcy Court; and

(d) have been certified and remain in good standing as a circuit court mediator under the rules adopted by the Supreme Court of Florida.

The advisory committee may recommend for certification an attorney~~individual~~ to serve as a mediator in this District if it determines that, for exceptional circumstances, ~~an individual who~~ the applicant should be certified who is~~does~~ not otherwise eligible for certification ~~qualify~~ under this section.~~the terms above should be certified.~~

Any individual who seeks certification as a mediator shall agree to accept at least two mediation assignments per year in cases where at least one party lacks the ability to compensate the mediator, in which case the mediator's fees shall be reduced accordingly or the mediator shall serve pro bono (if no litigant is able to contribute compensation).

The Chief Judge shall constitute an advisory committee from lawyers who represent those categories of civil litigants who may utilize the mediation program and lay persons to assist in formulating policy and additional standards relating to the qualification of mediators and the operation of the mediation program and to review applications of prospective mediators and to recommend certification to the Chief Judge as appropriate.

4. *Standards of Professional Conduct for Mediators.* All individuals who mediate cases pending in this District shall be governed by the Standards of Professional Conduct in the Florida Rules for Certified and Court–Appointed Mediators adopted by the Florida Supreme Court.

5. *Oath Required.* Every certified mediator shall take the oath or affirmation prescribed by Title 28, United States Code, Section 453 upon qualifying as a mediator.

6. *Disqualification of a Mediator.* Any person selected as a mediator may be disqualified for bias or prejudice as provided in Title 28, United States Code, Section 144, and shall be disqualified in any case in which such action would be required of a justice, judge, or Magistrate Judge governed by Title 28, United States Code, Section 455.

7. *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. A mediator shall not negotiate or mediate the waiver or shifting of responsibility for payment of mediation fees from one party to the other. All mediation fees payable under this rule shall be due within forty-five days of invoice and shall be enforceable by the Court upon motion.

C. Types of Cases Subject to Mediation. Unless expressly ordered by the Court, the following types of cases shall not be subject to mediation pursuant to this rule:

1. Habeas corpus cases;

2. Motion to vacate sentence under Title 28, United States Code, Section 2255;

3. Social Security cases;

4. Civil forfeiture matters;

5. IRS summons enforcement actions;

6. Land condemnation cases;

7. Default proceedings;

8. Student loan cases;

9. Naturalization proceedings filed as civil actions;

10. Statutory interpleader actions;

11. Truth-in-Lending Act cases not brought as class actions;

12. Letters rogatory; and

13. Registration of foreign judgments.

D. Procedures to Refer a Case or Claim to Mediation.

1. *Order of Referral.* In every civil case excepting those listed in Local Rule 16.2.C., the Court shall enter an order of referral similar in form to the proposed order attached hereto which shall:

(a) Direct mediation be conducted not later than sixty days before the scheduled trial date which shall be established no later than the date of the issuance of the order of

referral.

(b) Direct the parties, within fifteen days of the date of the order of referral, to agree upon a mediator. The parties are encouraged to utilize the list of certified mediators established in connection with Local Rule 16.2.B. but may by mutual agreement select any individual as mediator. ~~The parties shall advise the Clerk's Office as to such choice within that period of time, failing which the Clerk of the Court will designate a mediator from the aforementioned list of certified mediators on a blind random basis.~~The parties shall a "Notice of Selection of Mediator" within that period of time. If the parties are unable to agree upon a mediator, plaintiff's counsel, or plaintiff if self-represented, shall file a "Request For Clerk To Appoint Mediator," and the Clerk will designate a mediator from the list of certified mediators on a blind, random basis.

(c) Direct that, at least ten days prior to the mediation date, each party give the mediator a confidential written summary of the case identifying issues to be resolved.

2. *Coordination of Mediation Conference.* Plaintiff's counsel (or another attorney agreed upon by all counsel of record) shall be responsible for coordinating the mediation conference date and location agreeable to the mediator and all counsel of record.

3. *Stipulation of Counsel.* Any action or claim may be referred to mediation upon stipulation of the parties.

4. *Withdrawal From Mediation.* Any civil action or claim referred to mediation pursuant to this rule may be exempt or withdrawn from mediation by the presiding Judge at any time, before or after reference, upon application of a party and/or determination for any reason that the case is not suitable for mediation.

E. Party Attendance Required. Unless otherwise excused by the presiding Judge in writing, all parties, corporate representative, and any other required claims professionals (insurance adjusters, etc.), shall be present at the mediation conference with full authority to negotiate a settlement. If a party to a mediation is a public entity required to conduct its business pursuant to Florida Statutes Chapter 286, and is a defendant or counterclaim defendant in the underlying litigation, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. The mediator shall report non-attendance and may recommend that the Court enter sanctions for non-attendance. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the Court.

F. Mediation Report; Notice of Settlement; Judgment.

1. *Mediation Report.* Within five days following the mediation conference, the mediator, if an authorized user of the Court's electronic filing system (CM/ECF), shall electronically

file a Mediation Report. If the mediator is not an authorized CM/ECF user, the mediator shall file the Mediation Report in the conventional manner. The report shall indicate whether all required parties were present and whether the case settled (in full or in part), whether the mediation was adjourned or whether the mediator declared an impasse.

2. *Notice of Settlement.* In the event that the parties reach an agreement to settle the case or claim, counsel shall promptly notify the Court of the settlement by filing a notice of settlement signed by counsel of record within ten days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.

G. Trial upon Impasse.

1. *Trial upon Impasse.* If the mediation conference ends in an impasse, the case will be tried as originally scheduled.

2. *Restrictions on the Use of Information Derived During the Mediation Conference.* All proceedings of the mediation shall be confidential and are privileged in all respects as provided under federal law and Florida Statutes Section 44.405. The proceedings may not be reported, recorded, placed into evidence, made known to the Court or jury, or construed for any purpose as an admission against interest. A party is not bound by anything said or done at the conference, unless a written settlement is reached, in which case only the terms of the settlement are binding.

H. Forms for Use in Mediation.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. _____–CIV–[JUDGE/MAGISTRATE]

_____	:
	:
	:
	:
CAPTION	:
	:
	:
	:
_____	__.

ORDER OF REFERRAL

Trial having been set in this matter for _____, 20___, pursuant to Federal Rule of

Civil Procedure 16 and Local Rule 16.2, it is hereby

ORDERED AND ADJUDGED as follows:

1. All parties are required to participate in mediation. The mediation shall be completed no later than sixty days before the scheduled trial date.

2. Plaintiff's counsel, or another attorney agreed upon by all counsel of record and any unrepresented parties, shall be responsible for scheduling the mediation conference. The parties are encouraged to avail themselves of the services of any mediator on the List of Certified Mediators, maintained in the office of the Clerk of the Court, but may select any other mediator. The parties shall agree upon a mediator within fifteen days from the date hereof. If there is no agreement, lead counsel shall promptly notify the Clerk of the Court in writing and the Clerk of the Court shall designate a mediator from the List of Certified Mediators, which designation shall be made on a blind rotation basis.

3. A place, date and time for mediation convenient to the mediator, counsel of record, and unrepresented parties shall be established. The lead attorney shall complete the form order attached and submit it to the Court.

4. Pursuant to Local Rule 16.2.E, the appearance of counsel and each party or representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjuster with authority up to the policy limits or the most recent demand, whichever is lower, shall attend.

5. All proceedings of the mediation shall be confidential and privileged.

6. At least ten days prior to the mediation date, each party shall present to the mediator a confidential brief written summary of the case identifying issues to be resolved.

7. The Court may impose sanctions against parties and/or counsel who do not comply with the attendance or settlement authority requirements herein who otherwise violate the terms of this Order. The mediator shall report non-attendance and may recommend imposition of sanctions by the Court for non-attendance.

8. The mediator shall be compensated in accordance with the standing order of the Court entered pursuant to Local Rule 16.2.B.6, or on such basis as may be agreed to in writing by the parties and the mediator selected by the parties. The cost of mediation shall be shared equally by the parties unless otherwise ordered by the Court. All payments shall be remitted to the mediator within forty-five days of the date of the bill. Notice to the mediator of cancellation or settlement prior to the scheduled mediation conference must be given at least three full business days in advance. Failure to do so will result in imposition of a fee for two hours.

9. If a full or partial settlement is reached in this case, counsel shall promptly notify the Court

of the settlement in accordance with Local Rule 16.2.F., by the filing of a notice of settlement signed by counsel of record within ten days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.

10. Within five days following the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present. The report shall also indicate whether the case settled (in full or in part), was adjourned, or whether the mediator declared an impasse.

11. If mediation is not conducted, the case may be stricken from the trial calendar, and other sanctions may be imposed.

DONE AND ORDERED this _____ day of _____, 20___.

_____
U.S. District Judge

Copies furnished:
All counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. _____–CIV–[JUDGE/MAGISTRATE]

_____

CAPTION

_____.

ORDER SCHEDULING MEDIATION

The mediation conference in this matter shall be held with _____ _____ on _____, 20___, at _____(am/pm) at _____ _____, Florida.

ENTERED this _____ day of _____, 20___.

_____
U.S. District Judge

Copies furnished:
All counsel of record

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 1999; April 15, 2004; April 15, 2005; April 15, 2007~~;~~ April 15, 2009.

Comments

(1996)[B.3(c).] Deletion of reference to Trial Bar to conform to new Local Rules 1 through 4 of the Special Rules Governing the Admission and Practice of Attorneys, effective January 1, 1996.

(1997)[C.] Letters rogatory and registrations of foreign judgment made exempt from mediation requirements as unnecessary.

(1997)[E.] Florida's "Government in the Sunshine" Law, Florida Statutes Section 286.011, as incorporated into the Florida Government Cooperation Act, Florida Statutes Section 164.016, does not permit public entities to settle litigation against them without a public hearing preceded by due public notice. Public entities have therefore at times found themselves unable to comply

with Local Rule 16.2.E. and have had to seek an exception from the rule in order to permit mediation. This amendment relaxes the requirement that parties be present with full authority to consummate a settlement where a public entity is a defendant, and provides instead that a representative be present who can negotiate settlement on the entity's behalf and recommend settlement to the entity.

(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.

(2005) [B.3 and B.4] In addition to the requirement of completing the forty hour Florida Supreme Court Circuit Court Mediation Training course, a mediator will now also be governed by the Standards of Professional Conduct in the Florida Rules for Certified and Court-Appointed Mediators, which provide ethical standards of conduct for certified and Court appointed mediators and incorporate procedures for the discipline and/or suspension of certified mediators or non-certified mediators appointed to mediate a case pursuant to Court rules. The purpose of these Rules of discipline, specifically under Part III, is to provide a means for enforcing the ethical requirements set forth therein.

[B.7] This revision is intended to prevent the parties from using mediator fees as a negotiating wedge. The mediator is now prohibited from engaging in fee shifting negotiations. In addition, a provision was added to assist the Court in enforcing payment of mediation fees.

[C.] This revision expands the types of cases subject to mediation based on experience demonstrating the effectiveness of mediation in resolving disputes.

[F.1] Under the Florida Rules for Certified and Court-Appointed Mediators, now adopted by these Local Rules, a mediator, pursuant to Rule 10.420(b) of the Florida Rules for Certified and Court-Appointed Mediators *shall* adjourn the mediation under any of five specified circumstances, four of which do not require the parties' consent.

[G.2] This revision makes "all proceedings" of the mediation confidential, leaving no room for misinterpretation of the definition of what is considered to be confidential. It is intended to broaden the confidentiality provision.

(2007) Amended to conform to CM/ECF Administrative Procedures.

[G.2] This revision is intended to make the privileges and confidentiality of mediation in the District consistent with state law. The adoption of what constitutes privileged and confidential information under Florida Statutes Section 44.405 is exclusive of any remedies.

<u>(2009) Local Rule 16.2.B.3 is amended to prescribe new qualifications for certification as a mediator in this District. Local Rule 16.2.D.1(b) is amended to clarify procedure for mediator selection by agreement of the parties or for mediator designation by the Clerk of the Court when the parties are unable to agree on a mediator.</u>

RULE 26.1 DISCOVERY AND DISCOVERY MATERIAL (CIVIL)

A. Initial Disclosures. Except in categories of proceedings specified in Federal Rule of Civil Procedure 26(a)(1)(E), or to the extent otherwise stipulated or directed by order, a party must comply with the disclosure obligations imposed under Federal Rule of Civil Procedure 26(a)(1), in the form prescribed by Federal Rule of Civil Procedure 26(a)(4).

B. Service and Filing of Discovery Material. In accordance with Federal Rule of Civil Procedure 5(d), disclosures under Federal Rule of Civil Procedure 26(a)(1) or (2), and the following discovery requests, ~~and~~ responses, and notices must not be filed with the Court or the Clerk of the Court , nor proof of service thereof, until they are used in the proceeding or the court orders filing: (i) deposition transcripts, (ii) interrogatories (including responses and objections), (iii) requests for documents, electronically stored information or things or to permit entry upon land (including responses and objections), ~~and~~ (iv) requests for admission (including responses and objections), and (v) notices of taking depositions or notices of serving subpoenas.

C. Discovery Material to Be Filed with Motions. If relief is sought under any of the Federal Rules of Civil Procedure, copies of the discovery matters in dispute shall be filed with the Court contemporaneously with any motion filed under these Local Rules by the party seeking to invoke the Court's relief.

D. Discovery Material to Be Filed at Outset of Trial or at Filing of Pre-trial or Post-trial Motions. If depositions, interrogatories, requests for production, requests for admission, answers or responses are to be used at trial or are necessary to a pre-trial or post-trial motion, the portions to be used shall be filed with the Clerk of the Court at the outset of the trial or at the filing of the motion insofar as their use can be reasonably anticipated by the parties having custody thereof.

E. Discovery Material to Be Filed on Appeal. When documentation of discovery not previously in the record is needed for appeal purposes, upon an application and order of the Court, or by stipulation of counsel, the necessary discovery papers shall be filed with the Clerk of the Court .

F. Timing of Discovery.

1. *When Discovery May Be Taken.* In accordance with Federal Rule of Civil Procedure 26(d), except in categories of proceedings exempted from initial disclosures under Federal Rule of Civil Procedure 26(a)(1)(E), or when authorized under the Federal Rules of Civil Procedure or by order or agreement of the parties, a party may not seek discovery from any source before the parties have conferred as required by Federal Rule of Civil Procedure 26(f).

a. Leave of Court is not required under Federal Rule of Civil Procedure 30(a)(2)(C) if a party seeks to take a deposition before the time specified in

Federal Rule of Civil Procedure 26(d) if the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the United States and be unavailable for examination in this country unless deposed before that time.

b. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. The deposition shall not be conducted until after the expert summary or report required by Local Rule 16.1.K. is provided.

2. *When Discovery Must Be Completed.* Discovery must be completed in accordance with the court-ordered discovery cutoff date. Written discovery requests and subpoenas seeking the production of documents must be served in sufficient time that the response is due on or before the discovery cutoff date. Depositions, including any non-party depositions, must be scheduled to occur on or before the discovery cutoff date. Failure by the party seeking discovery to comply with this paragraph obviates the need to respond or object to the discovery, appear at the deposition, or move for a protective order.

G. Interrogatories and Production Requests.

1. The presumptive limitation on the number of interrogatories (twenty-five questions including all discrete subparts) which may be served without leave of Court or written stipulation, as prescribed by Federal Rule of Civil Procedure 33(a), shall apply to actions in this Court. Interrogatories propounded in the form set forth in Appendix B to these Local Rules shall be deemed to comply with the numerical limitations of Federal Rule of Civil Procedure 33(a).

2. No part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory.

3. (a) Where an objection is made to any interrogatory or subpart thereof or to any production request under Federal Rule of Civil Procedure 34, the objection shall state with specificity all grounds. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be waived.

(b) Where a claim of privilege is asserted in objecting to any interrogatory or production demand, or sub-part thereof, and an answer is not provided on the basis of such assertion:

(i) The attorney asserting the privilege shall in the objection to the interrogatory or document demand, or subpart thereof, identify the nature of the privilege (including work product) which is being claimed and if the privilege is being asserted in connection with a claim or defense governed

by state law, indicate the state's privilege rule being invoked; and

(ii) The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

(A) For documents or electronically stored information, to the extent the information is readily obtainable from the witness being deposed or otherwise: (1) the type of document (e.g., letter or memorandum) and, if electronically stored information, the software application used to create it (e.g., MS Word, MS Excel Spreadsheet); (2) general subject matter of the document or electronically stored information; (3) the date of the document or electronically stored information; and (4) such other information as is sufficient to identify the document or electronically stored information for a subpoena duces tecum, including, where appropriate, the author, addressee, and any other recipient of the document or electronically stored information, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;

(B) For oral communications: (1) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (2) the date and the place of communication; and (3) the general subject matter of the communication.

(c) This rule requires preparation of a privilege log with respect to all documents, electronically stored information, things and oral communications withheld on the basis of a claim of privilege or work product protection except the following: written and oral communications between a party and its counsel after commencement of the action and work product material created after commencement of the action.

(d) If information (written documents, electronically stored information or otherwise) is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim, and the basis for it, and seek to retrieve the information and protect it from disclosure using the procedures set forth in Federal Rule of Civil Procedure 26(b)(5).

4. ~~Interrogatories shall be so arranged that following each question there shall be provided sufficient blank space for inserting a typed response. If the space allotted is~~

~~insufficient, the responding party shall retype the pages repeating each question in full followed by the answer or objection thereto.~~

~~5.~~ Whenever a party answers any interrogatory by reference to records from which the answer may be derived or ascertained, as permitted in Federal Rule of Civil Procedure 33(d):

(a) The specification of business records and materials to be produced shall be in sufficient detail to permit the interrogating party to locate and identify the records and to ascertain the answer as readily as could the party from whom discovery is sought.

(b) The producing party shall make available any electronically stored information or summaries thereof that it either has or can adduce by a relatively simple procedure, unless these materials are privileged or otherwise immune from discovery.

(c) The producing party shall provide any relevant compilations, abstracts or summaries in its custody or readily obtainable by it, unless these materials are privileged or otherwise immune from discovery.

(d) The business records and materials shall be made available for inspection and copying within ten days after service of the answers to interrogatories or at a date agreed upon by the parties.

~~6~~5. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Federal Rule of Civil Procedure 26(b)(2)(C). The Court may specify conditions for the discovery. Absent exceptional circumstances, the Court may not impose sanctions under these Local Rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

H. Discovery Motions.

1. *Time for Filing.* All motions related to discovery, including but not limited to motions to compel discovery and motions for protective order, shall be filed within thirty days of the occurrence of grounds for the motion. Failure to file discovery motion within thirty days, absent a showing of reasonable cause for a later filing, may constitute a waiver of the relief sought.

2. *Motions to Compel.* Except for motions grounded upon complete failure to respond to the discovery sought to be compelled or upon assertion of general or blanket objections to discovery, motions to compel discovery in accordance with Federal Rules of Civil Procedure 33, 34, 36 and 37, or to compel compliance with subpoenas for production or inspection pursuant to Federal Rule of Civil Procedure 45(c)(2)(B), shall, for each separate interrogatory, question, request for production, request for admission, subpoena request, or deposition question, state: (a) verbatim the specific item to be compelled; (b) the specific objections; (c) the grounds assigned for the objection (if not apparent from the objection); and (d) the reasons assigned as supporting the motion as it relates to that specific item. The party shall write this information in immediate succession (e.g., specific request for production, objection, grounds for the objection, reasons to support motion; next request for production, objection, grounds for the objection, reasons to support motion; and so on) to enable the Court to rule separately on each individual item in the motion.

3. *Motions for Protective Order.* Except for motions for an order to protect a party or other person from whom discovery is sought from having to respond to an entire set of written discovery, from having to appear at a deposition, or from having to comply with an entire subpoena for production or inspection, motions for protective order under Federal Rule of Civil Procedure 26(c) shall, for each separate interrogatory question, request for production, request for admission, subpoena request, or deposition question, state: (a) verbatim the specific item of discovery; (b) the type of protection the party requests; and (c) the reasons supporting the protection. The party shall write this information in immediate succession (e.g., specific request for protection, protection sought for that request for production, reasons to support protection; next request for production, protection sought for that request for production, reasons to support protection; and so on) to enable the Court to rule separately on each individual item in the motion.

I. Certificate of Counsel. See Local Rule 7.1.A.3 and Federal Rule of Civil Procedure 37(a)(2).

J. Reasonable Notice of Taking Depositions. Unless otherwise stipulated by all interested parties, pursuant to Federal Rule of Civil Procedure 29, and excepting the circumstances governed by Federal Rule of Civil Procedure 30(a), a party desiring to take the deposition within this State of any person upon oral examination shall give at least five working days' notice in writing to every other party to the action and to the deponent (if the deposition is not of a party), and a party desiring to take the deposition in another State of any person upon oral examination shall give at least ten working days' notice in writing to every other party to the action and the deponent (if the deposition is not of a party).

Failure by the party taking the oral deposition to comply with this rule obviates the need for protective order.

Notwithstanding the foregoing, in accordance with Federal Rule of Civil Procedure 32(a)(3), no deposition shall be used against a party who, having received less than eleven calendar days'

notice of a deposition as computed under Federal Rule of Civil Procedure 6(a), has promptly upon receiving such notice filed a motion for protective order under Federal Rule of Civil Procedure 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

K. Length of Depositions. Unless otherwise authorized by the Court or stipulated by the parties, a deposition is limited, under Federal Rule of Civil Procedure 30(d), to one day of seven hours.

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1998; April 15, 2001; paragraph G.3 amended effective April 15, 2003; April 15, 2004; April 15, 2005; April 15, 2007; April 15, 2009.

Authority

(1993) Former Local Rule 10I. New portions of Section E [1994, now Subsections G.2–8] are based on S.D.N.Y. local rule.

Comments

(1993) Section G [1994, now Section I] was modified to include all discovery motions at the recommendation of the Civil Justice Advisory Group.

(1994) A., F., G.1., J. (third paragraph). The amendments are necessary in light of the December 1, 1993 amendment to Federal Rules of Civil Procedure 26, 32(a)(3), and 33(a).

(1996)[F.1.] Local Rule 26.1.F.1. was added to make the timing of expert witness depositions consistent with that prescribed by Federal Rule of Civil Procedure 26(b)(4)(A).

(1996)[I.] The "attempt to confer" language is added to mirror the obligations imposed by Federal Rule of Civil Procedure 37(a)(2)(A) and (B) and in recognition of the circumstance in which counsel for the moving party has attempted to confer with counsel for the opposing party, who fails or refuses to communicate. Violations of the Local Rule, whether by counsel for the moving or opposing party, may be cause to grant or deny the discovery motion on that basis alone, irrespective of the merits of the motion, and may justify the imposition of sanctions. The sanctions language is modeled after Federal Rules of Civil Procedure 26(g)(3) and 37(a)(4).

(1998) Local Rule 26.1.G.2 is amended to reflect the Court's approval of "form" interrogatories which comply with the subject limitations of the rule. Prior Local Rule 26.1.H, regarding motions to compel, is renumbered Local Rule 26.1H.2. Local Rule 26.2.H.1 is added to ensure that discovery motions are filed when ripe and not held until shortly before the close of discovery or the eve of trial. Local Rule 26.1.K is added to limit depositions to six hours absent Court order or agreement of the parties and any affected non-party witness. The rule is adopted after an eighteen month pilot program was implemented pursuant to Administrative Order 96–26.

(2001) Local Rules 26.1.A, B, F, G and K are amended to conform with the December 2000 amendments to Federal Rules of Civil Procedure 5, 26 and 30. Local Rule 26.1.I is amended to make clear that the obligation to confer in advance of moving to compel production of documents, electronically stored information or things sought from a non-party by subpoena includes consultation with all parties who may be affected by the relief sought and with the non-party recipient of the subpoena.

(2003) The amendment to Local Rule 26.1.G.3 is based on N.D. Okla. Local Rule 26.4(b) and eliminates the requirement to include in a privilege log (1) communications between a party and its counsel after commencement of the action, and (2) work product material created after commencement of the action.

(2004) Local Rule 26.1.I is amended in conjunction with the amendment of Local Rule 7.1.A.3 to avoid confusion and clarify pre-filing conference obligations.

(2005) Local Rule 26.1.H.2 is expanded to apply to motions to compel compliance with subpoenas for production or inspection issued pursuant to Federal Rule of Civil Procedure 45(c)(2)(B).

(2007) Section H.3 added to apply to protective orders as well as motions to compel. Section H.2 clarified.

(2009) Local Rule 26.1.B amended to exempt notices of depositions and notices of serving subpoenas from the filing requirement. Local Rule 26.1.F.2 added to ensure that discovery is completed prior to the discovery cutoff date and to avoid a situation in which discovery requests are propounded just prior to the cutoff date or depositions are noticed to occur after the cutoff date. Local Rule 26.1.G.4 eliminated because word-processing technology renders the requirement to leave space following an interrogatory question unnecessary.

RULE 87.4 BANKRUPTCY APPEALS

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

A. Assignment. Appeals from orders or judgments entered by the Bankruptcy Court shall generally be assigned in accordance with Local Rule 3.4. Appeals from orders in a bankruptcy case or proceeding in which appeals have been taken from prior orders in the same case or proceeding shall be regarded as similar actions and proceedings under Local Rule 3.8 and it will be the continuing obligation of the Clerk of the District Court and the attorneys of record to comply with Local Rule 3.8.

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 Federal Rule of Bankruptcy Procedure 8002; 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 Federal Rule of Bankruptcy Procedure 8006, and Local Bankruptcy Rule 8006–1. The Bankruptcy Court is further authorized and directed to hear, under Federal Rule of Bankruptcy Procedure 9006(b), 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 ten days after entry of the order sought to be reviewed pursuant to subsection C of this Local Rule.

C. Motions for Stay and Other Intermediate Requests for Relief. Motions for stay pending appeal pursuant to Federal Rule of Bankruptcy Procedure 8005, motions to review Bankruptcy Court orders entered under Federal Rule of Bankruptcy Procedure 9006(b), and other motions requesting intermediate relief as set forth in Federal Rule of Bankruptcy Procedure 8007(c), shall be accepted for filing in the District Court and shall be assigned a miscellaneous memo case number which will apply only to the motion. No filing fee shall be charged in the District Court. The Clerk of the District Court shall immediately notify the Clerk of the Bankruptcy Court of the assigned case number and Judge. When the record on appeal is transmitted it will be assigned a new case number but will be assigned to the same Judge who considered the motion. The movant shall provide copies of any relevant portions of the Bankruptcy Court record necessary for the District Court to rule on the motion. It shall be the duty of the Clerk of the District Court to immediately transmit a copy of the order ruling on said motion to the Clerk of the Bankruptcy Court.

Local Rule 7.1 shall apply to motions for stay and other motions seeking intermediate appellate relief from the District Court.

D. Motions for Leave to Appeal. A motion for leave to appeal shall be filed in the Bankruptcy Court pursuant to Local Bankruptcy Rule 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.

Upon disposition of the motion, the Clerk of the District Court shall immediately transmit a copy of the District Court order to the Clerk of the Bankruptcy Court. If the motion is granted the Clerk of the Bankruptcy Court will proceed to prepare and transmit the record on appeal. A new District Court case number will be assigned to the appeal but it will be assigned to the same Judge who granted the motion for leave to appeal.

E. Briefs.

1. *Briefing Schedule.* The briefing schedule specified by Federal Rule of Bankruptcy

Procedure 8009 may be altered only by order of the District Court. If the Clerk of the District Court does not receive appellant's brief within the time specified by Federal Rule of Bankruptcy Procedure 8009, and there is no motion for extension of time pending, the Clerk of the District Court shall furnish to the Judge to whom the appeal is assigned a proposed order for dismissal of the appeal.

2. *Length of Briefs.* Absent prior permission from the District Court, the appellant's initial or principal briefs and the appellee's response or principal brief shall not exceed twenty-five pages in length, and appellant's reply briefs, if any, shall not exceed fifteen pages.

F. Oral Argument. Any party requesting oral argument shall make the request within the body of the principal or reply brief, not by separate motion. The setting of oral argument is within the discretion of the District Court.

G. Judgment. Upon receipt of the District Court's opinion, the Clerk of the District Court shall enter judgment in accordance with Federal Rule of Bankruptcy Procedure 8016(a) and in accordance with Federal Rule of Bankruptcy Procedure 8016(b), shall immediately transmit to each party and to the Clerk of the Bankruptcy Court a notice of entry together with a copy of the District Court's opinion.

H. Appeal. If an appeal remains pending three months after its entry on the District Court docket, the appealing party shall file and serve on all parties a "Notice of 90 Days Expiring" in the manner prescribed by Local Rule 7.1.B.3. ~~Clerk of the District Court shall advise the Judge of the status of the appeal.~~

I. Notice. The Clerk of the Bankruptcy Court is directed to enclose a copy of this Local Rule with the notice of appeal provided to each party in accordance with Federal Rule of Bankruptcy Procedure 8004. Failure to receive such a copy will not excuse compliance with all provisions of this Local Rule.

J. Court Discretion. This Local Rule is not intended to exhaust or restrict the District Court's discretion as to any aspect of any appeal.

Former Local Rule 87.2 amended and renumbered as new Local Rule 87.4, effective April 15, 1996; amended effective April 15, 1999; April 15, 2007~~.~~; April 15, 2009.

Authority

Former Local Rule 27; (1996) renumbered from Local Rule 87.2 (1993).

Comments

(1996)A. This revision clarifies the procedure for assignment of appeals from subsequent orders

in a bankruptcy case or proceeding in which there have been appeals of prior orders. The appeals of subsequent orders will be randomly assigned but treated as "similar actions" under Local Rule.

B. This Local Rule has been amended to expand the Bankruptcy Court's authority to dismiss an appeal for the appellant's failure to pay the filing fee required for a notice of appeal and failure to provide copies of every item designated as required by Federal Rule of Bankruptcy Procedure 8006. It also clarifies the means for review of orders entered under Federal Rule of Bankruptcy Procedure 9006(b), by referencing new subsection C below.

C. This procedure provides a means for litigants to request intermediate relief from the District Court after the notice of appeal has been filed but before the record on appeal is transmitted to the District Court. It also clarifies that no fee will be charged in the District Court for these intermediate requests for relief.

This rule further provides for the subsequent assignment of the appeal to the same District Judge. This should conserve judicial resources since, for example, the disposition of a motion for stay pending appeal will usually require the District Judge to become familiar with the issues on appeal.

D. Adds reference to the local bankruptcy rule for filing motions for leave to appeal, provides for assignment in the District Court and clarifies that a new case number will be assigned for the appeal.

This rule further provides for the subsequent assignment of the appeal to the same District Judge. This should conserve judicial resources since the disposition of a motion for leave to appeal will usually require the District Judge to become familiar with the issues on appeal.

E. Replaces old Local Rule 87.2.C. Federal Rule of Bankruptcy Procedure 8010(c) provides authority to the District Court to specify different page limits for briefs. This rule supersedes the page limit specified in Federal Rule of Bankruptcy Procedure 8010. This Local Rule also distinguishes the page limitations for bankruptcy appellate briefs from memoranda of law as provided in Local Rule 7.1.C.2.

Also, minor stylistic revisions to entire Local Rule.

(1999) Amended to reflect renumbered Local Bankruptcy Rules effective December 1, 1998.

(2009) Amended to make 87.4.H consistent with Local Rule 7.1.B.3.

RULE 88.3 ~~PETTY~~CERTAIN OFFENSES PERTAINING TO ~~—~~PUBLIC BUILDINGS

A. Covered Offenses. This Rule shall apply to petty offenses, as defined in 18 U.S.C. Section 1, and to certain misdemeanors as shall be identified from time to time by the Court in collateral schedules. Collectively, these petty offenses and identified misdemeanors shall be

referred to for purposes of this Rule as "covered offenses."

B. Collateral and Mandatory Appearance.

1. ~~Petty~~Covered offenses~~, as defined in Title 18, United States Code, Section 19, which~~that are committed on or within the perimeter of Federally-owned or controlled buildings, for which collateral may be posted and forfeited in lieu of appearance by the person charged, together with the amount of collateral to be posted and offenses for which a mandatory appearance is required shall be in accordance with schedules which may from time to time be approved by the Court and filed with the Clerk of the Court.

2. Collateral may not be posted for any ~~designated~~covered offense if the alleged violator has previously been convicted of any such offense.

~~B~~C. Forfeiture of Collateral.

1. Any person issued a violation notice for a ~~petty~~covered offense for which collateral can be posted may, upon request of the issuing officer, post the required amount by placing cash, personal check or money order in the official violation notice envelope and, after sealing same, delivering it to authorized personnel at a designated office where a receipt will be given. All such envelopes received will be forwarded via mail each day, except for those containing cash which shall be personally delivered to the Clerk of the Court.

2. The posting of collateral shall signify that the offender does not wish to appear ~~contest the charge~~ nor request a hearing before the Judge. Collateral so posted shall be forfeited to the United States and the proceedings shall be terminated~~such forfeiture will be tantamount to a finding of guilt~~.

~~C~~D. Failure to Post Collateral.

1. If a person charged with a~~n~~ covered offense for which collateral is required fails to post and forfeit collateral, any punishment, including fine, imprisonment or probation may be imposed within the limits established by law upon conviction by plea or after trial.

2. No person shall be detained for failure to post collateral for a ~~petty~~covered offense for which collateral may be posted unless ~~he or she~~the person is placed under arrest.

~~D~~E. Arrest. Nothing contained in these Local Rules shall prohibit a law enforcement officer from arresting an alleged violator for the commission of any offense, including those for which collateral may be posted or mandatory appearance required, and forthwith notifying a Magistrate Judge for the purpose of appearance or setting bail.

(Schedule of fines and mandatory appearance, on file with Clerk's Office and agencies charged with enforcement thereof.)

Effective Dec. 1, 1994; amended effective April 15, 2006; April 15, 2007; April 15, 2009.

Authority

(1993) Former Local Rule 22. Effective date of schedule updated.

Comment

(1993) Cash to be delivered to Clerk of the Court rather than Magistrate Judge.

(2009) Encompasses certain misdemeanors as well as petty offenses.

APPENDICES

APPENDIX A. DISCOVERY PRACTICES HANDBOOK

ADMINISTRATIVE ORDER 96–36. ADOPTION OF DISCOVERY PRACTICES HANDBOOK AS APPENDIX TO LOCAL RULES

The attached Discovery Practices Handbook was prepared by the Federal Courts Committee of the Dade County Bar Association for the guidance of the members of the Bar. The Court's Advisory Committee on Rules and Procedures has recommended that the Discovery Practices Handbook be adopted as a published appendix to the Local Rules. Upon consideration of this recommendation, it is hereby

ORDERED as follows:

1. This Order and the Discovery Practices Handbook, in the form attached to this Order, shall be published as an appendix to the Local Rules.

2. The practices set forth in the Discovery Practices Handbook shall not have the force of law, but may be looked to by practitioners for guidance in conducting discovery in this District.

3. In the event of any conflict between the provisions of the Discovery Practices Handbook and applicable case, rule, or statutory law, counsel should look first to the applicable authority to determine proper discovery practice.

4. No provision of the Discovery Practices Handbook shall limit the discretion of a District or Magistrate Judge to provide for different practices in cases before that Judge.

DONE AND ORDERED in Chambers at the United States Federal Building and Courthouse, 299 East Broward Boulevard, Fort Lauderdale, Florida this 27th day of June, 1996.

I. DISCOVERY IN GENERAL

E. Completion of Discovery.

(1) *Discovery Completion.* Local Rule 16.1.A sets discovery completion dates for differentiated case management tracks. The Judges may have individual methods extending the deadline, however, each Judge enforces Local Rule 26.1.F, which requires that discovery be completed and not merely propounded prior to the discovery cutoff date.~~follows the rule that the completion date means that all discovery must be completed by that date. For example, interrogatories must be served more than thirty days prior to the completion date to permit the opposing party to respond. Untimely discovery requests are subject to objection on that basis. Counsel may, by agreement, conduct discovery after the formal completion date but should not rely upon the Court to resolve discovery disputes arising after the discovery completion date.~~

~~Likewise, counsel should not rely upon the Court to permit use of untimely discovery materials at trial.~~

(2) *Extension of Time for Discovery Completion.* Occasionally, the Court will allow additional discovery upon motion, but counsel should not rely on obtaining an extension. When allowed, an extension is normally made only upon written motion showing good cause for the extension of discovery (including due diligence in the pursuit of discovery prior to completion date) and specifying the additional discovery needed and its purposes. Motions for extension of discovery time are treated with special disfavor if filed after the discovery completion date and will normally be granted only if it clearly appears that any scheduled trial will not have to be continued as a result of the extension.

APPENDIX B. STANDARD FORM INTERROGATORIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. ____–Civ or Cr–(USDJ's last name/USMJ's last name)

PLAINTIFF X

Plaintiff,

vs.

DEFENDANT Y

Defendant.

_____/

FIRST SET OF RULE 26.1.G INTERROGATORIES

[Plaintiff X or Defendant Y] propounds the following interrogatories upon [Plaintiff X or Defendant Y] and requests that they be answered separately, fully and under oath within thirty days of service pursuant to Federal Rule of Civil Procedure 33 and Local Rule 26.1.G.

DEFINITIONS

(a) The words "you," "yours" and/or "yourselves" means [Plaintiff X or Defendant Y] and any directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on behalf of [Plaintiff X or Defendant Y].

(b) The singular shall include the plural and vice versa; the terms "and" or "or" shall be both conjunctive and disjunctive; and the term "including" mean "including without limitation".

(c) "Date" shall mean the exact date, month and year, if ascertainable or, if not, the best approximation of the date (based upon relationship with other events).

(d) The word "document" shall mean any writing, recording, electronically stored information or photograph in your actual or constructive possession, custody, care or control, which pertain directly or indirectly, in whole or in part, either to any of the subjects listed below or to any other matter relevant to the issues in this action, or which are themselves listed below as specific documents, including, but not limited to: correspondence, memoranda, notes, messages, diaries, minutes, books, reports, charts, ledgers, invoices, computer printouts, microfilms, video tapes or tape recordings.

(e) "Agent" shall mean: any agent, employee, officer, director, attorney, independent contractor or any other person acting at the direction of or on behalf of another.

(f) "Person" shall mean any individual, corporation, proprietorship, partnership, trust, association or any other entity.

(g) The words "pertain to" or "pertaining to" mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts.

(h) The term "third party" or "third parties" refers to individuals or entities that are not a party to this action.

(i) The term "action" shall mean the case entitled Plaintiff X v. Defendant Y, Case No. _____, pending in the Unites States District Court for the Southern District of Florida.

(j) The word "identify", when used in reference to a document (including electronically stored information), means and includes the name and address of the custodian of the document, the location of the document, and a general description of the document, including (1) the type of document (e.g., letter or memorandum) and, if electronically stored information, the software application used to create it (e.g., MS Word or MS Excel Spreadsheet); (2) the general subject matter of the document or electronically stored information; (3) the date of the document or electronically stored information; (4) the author of the document or electronically stored information; (5) the addressee of the document or electronically stored information; and (6) the relationship of the author and

addressee to each other.

INSTRUCTIONS

If you object to fully identifying a document, electronically stored information or oral communication because of a privilege, you must nevertheless provide the following information pursuant to Local Rule 26.1.G.6.(b), unless divulging the information would disclose the privileged information:

(1) the nature of the privilege claimed (including work product);

(2) if the privilege is being asserted in connection with a claim or defense governed by state law, the state privilege rule being invoked;

(3) the date of the document, electronically stored information or oral communication;

(4) if a document: its type (e.g., letter or memorandum) and, if electronically stored information, the software application used to create it (e.g., MS Word or MS Excel Spreadsheet), and the custodian, location, and such other information sufficient to identify the material for a subpoena duces tecum or a production request, including where appropriate the author, the addressee, and, if not apparent, the relationship between the author and addressee;

(5) if an oral communication: the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and

(6) the general subject matter of the document, electronically stored information or oral communication.

You are under a continuous obligation to supplement your answers to these interrogatories under the circumstances specified in Federal Rule of Civil Procedure 26(e).

INTERROGATORIES

1. Please provide the name, address, telephone number, place of employment and job title of any person who has, claims to have or whom you believe may have knowledge or information pertaining to any fact alleged in the pleadings (as defined in Federal Rule of Civil Procedure 7(a)) filed in this action, or any fact underlying the subject matter of this action.

2. Please state the specific nature and substance of the knowledge that you believe the person(s) identified in your response to interrogatory no. 1 may have.

3. Please provide the name of each person whom you may use as an expert witness at trial.

4. Please state in detail the substance of the opinions to be provided by each person whom you may use as an expert witness at trial.

5. Please state each item of damage that you claim, whether as an affirmative claim or as a setoff, and include in your answer: the count or defense to which the item of damages relates; the category into which each item of damages falls, i.e. general damages, special or consequential damages (such as lost profits), interest, and any other relevant categories; the factual basis for each item of damages; and an explanation of how you computed each item of damages, including any mathematical formula used.

6. Please identify each document (including electronically stored information) pertaining to each item of damages stated in your response to interrogatory no. 5 above.

~~7. Please identify each document (including electronically stored information or pertinent insurance agreements) pertaining to any fact alleged in any pleading (as defined in Federal Rule of Civil Procedure 7(a) filed in this action.)~~

Effective April 15, 1998; amended effective April 15, 2007; amended effective April 15, 2009.