UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED by ____ D.C.

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IN RE: **Administrative Order 98-02**

AMENDMENTS TO THE LOCAL RULES

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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, 12.1, 16.1, 26.1, 88.5, 88.9, 88.10 and Appendices A and B, Local Admiralty and Maritime Rules A, B, C, D, E, F and Form 5, and Local Magistrate Judge Rules 1 and 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, 12.1, 16.1, 26.1, 88.5, 88.9, 88.10 and Appendices A and B, Local Admiralty and Maritime Rules A, B, C, D, E, F and Form 5, and Local Magistrate Judge Rules 1 and 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, 1998, 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 30th day of January, 1998.

EDWARD B. DAVIS
CHIEF UNITED STATES DISTRICT JUDGE

c: Honorable Joseph W. Hatchett, Chief Judge
United States Court of Appeals for the Eleventh Circuit
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, and the 1998 amendments shall take effect on April 15, 1998 and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

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RULE 5.1 FILING AND COPIES

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

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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 4 ~~F~~ B.

* * * * * * * *

RULE 12.1 CIVIL RICO CASE STATEMENT.

Except as otherwise ordered by a judge of this Court in a particular case or except pursuant to written stipulation of all affected parties, in all civil actions where a pleading contains a RICO cause of action pursuant to 18 U.S.C. §§ 1961 - 1968 or §§ 772.101 - 772.104, Fla.Stat., the party filing the RICO claim shall, within thirty (30) days of the filing (including filing upon removal or transfer), serve a RICO Case Statement.

Consistent with counsel's obligations under Fed.R.Civ.P. 11 to make a reasonable inquiry prior to filing a pleading, the RICO Case Statement shall include the facts relied upon to initiate the RICO claim. In particular, the statement shall be in a form which uses the numbers and letters set forth below, unless filed as part of an amended pleading (in which case the allegations of the amended pleading shall reasonably follow the organization set out below), and shall provide in detail and with specificity the following information:

1. State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c), and/or (d) or §§ 772.103(1), (2), (3) and/or (4), Fla.Stat. If you allege violations of more than one subsection of § 1962 or § 772.103, each must be treated or should be pled as a separate RICO claim.

2. List each defendant, and separately state the misconduct and basis of liability of each defendant.

3. List the wrongdoers, other than the defendants listed above, and separately state the misconduct of each wrongdoer.

4. List the victims, and separately state when and how each victim was injured.

5. Describe in detail the pattern of racketeering/criminal activity or collection of an unlawful debt for each RICO claim. A description of the pattern of racketeering/criminal activity shall:

a. separately list the predicate acts/incidents of criminal activity and the specific statutes violated by each predicate act/incident of criminal activity;

b. separately state the dates of the predicate acts/incidents of criminal activity, the participants and a description of the facts surrounding each predicate act/incident of criminal activity;

c. if the RICO claim is based on the predicate offenses of wire fraud, mail fraud, fraud in the sale of securities, fraud in connection with a case under U.S.C. Title 11, or fraud as defined under Chapter 817, Fla.Stat., the "circumstances constituting fraud or mistake shall be stated with particularity," Fed.R.Civ.P. 9(b) (identify the time, place, and contents of the misrepresentation or omissions, and the identity of persons to whom and by whom the misrepresentations or omissions were made);

d. state whether there has been a criminal conviction for any of the predicate acts/incidents of criminal activity;

e. describe in detail the perceived relationship that the predicate acts/incidents of criminal activity bear to each other or to some external organizing principle that renders them "ordered" or "arranged" or "part of a common plan"; and

f. explain how the predicate acts/incidents of criminal activity amount to or pose a threat of continued criminal activity.

6. Describe in detail the enterprise for each RICO claim. A description of the enterprise shall:

a. state the names of the individuals, partnerships, corporations, associations, or other entities constituting the enterprise;

b. describe the structure, purpose, roles, function, and course of conduct of the enterprise;

c. state whether any defendants are employees, officers, or directors of the enterprise;

d. state whether any defendants are associated with the enterprise, and if so, how;

e. explain how each separate defendant participated in the direction or conduct of the affairs of the enterprise;

f. state whether you allege (i) that the defendants are individuals or entities separate from the enterprise, or (ii) that the defendants are the enterprise itself, or (iii) that the defendants are members of the enterprise; and

g. if you allege any defendants to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the racketeering activity.

7. State whether you allege, and describe in detail, how the pattern of racketeering/criminal activity and the enterprise are separate or have they merged into one entity.

8. Describe the relationship between the activities and the pattern of racketeering/criminal activity. Discuss how the racketeering/criminal activity differs from the usual and daily activities of the enterprise, if at all.

9. Describe what benefits, if any, the enterprise and each defendant received from the pattern of racketeering/criminal activity.

10. Describe the effect of the enterprise's activities on interstate or foreign commerce.

11. If the complaint alleges a violation of 18 U.S.C. § 1962(a) or § 772.103(a), Fla.Stat., provide the following information:

a. describe the amount of income/proceeds derived, directly or indirectly, from a pattern of racketeering/criminal activity, or through the collection of an unlawful debt;

b. state who received the income/proceeds derived from the pattern of racketeering/criminal activity or through the collection of an unlawful debt and the date of that receipt;

c. describe how and when such income/proceeds were invested or used in the acquisition of the establishment or operation of the enterprise;

d. describe how you were directly injured by this investment or use; and

e. state whether the same entity is both the liable "person" and the "enterprise" under the § 1962(a)/§ 772.103(1) claim.

12. If the complaint alleges a violation of 18 U.S.C. §1962(b) or § 772.103(b), Fla.Stat., provide the following information:

a. describe in detail the acquisition or maintenance of any interest in or control of the enterprise;

b. describe when the acquisition or maintenance of an interest in or control of the enterprise occurred;

c. describe how you were directly injured by this acquisition or maintenance of an interest in or control of the enterprise; and

d. state whether the same entity is both the liable "person" and the "enterprise" under the § 1962(b)/§ 772.103(2) claim.

13. If the complaint alleges a violation of 18 U.S.C. § 1962(c) or § 772.103(c), Fla.Stat., provide the following information:

a. state who is employed by or associated with the enterprise;

b. describe what each such person did to conduct or participate in the enterprise's affairs;

c. describe how you were directly injured by each such person's conducting or participating in the enterprise's affairs; and

d. state whether the same entity is both the liable "person" and the "enterprise" under the § 1962(c)/§ 772.103(3) claim.

14. If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the conspiracy, including the identity of the co-conspirators, the object of the conspiracy, and the date and substance of the conspiratorial agreement.

15. Describe the injury to business or property.

16. Describe the nature and extent of the relationship between the injury and each separate RICO violation.

17. For each claim under a subsection of § 1962 or § 772.103, list the damages sustained by reason of each violation, indicating the amount for which each defendant is liable.

18. Provide any additional information you feel would be helpful to the Court in processing your RICO claim.

Comments

(1998) Rule 12.1, modeled on section 41.54 of the Manual for Complex Litigation, Third (1995), is designed to establish uniform and efficient procedures for handling civil RICO claims asserted under federal and Florida law.

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RULE 16.1 PRETRIAL PROCEDURE IN CIVIL ACTIONS

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B. Scheduling Conference and Order. [no change in B, or subparagraphs 1 through 5.]

6. *Complicated Case; Need For Rule Variations.* To discuss whether the action is sufficiently complicated so that all or part of the procedures of the Manual For Complex Litigation, Third (Federal Judicial Center 1995) should be used, and to discuss whether the provisions of these rules or the Federal Rules of Civil Procedure can and should be departed from in the action, for example, such as whether any depositions will require more than six hours to complete or whether more depositions than the number permitted under Fed.R.Civ.P. 30(a)(2)(A) should be allowed. Counsel may propose to the Court modifications of the

procedures in the Manual to facilitate the management of a particular action and any permissible departures from these rules or the Federal Rules of Civil Procedure.

7. *Scheduling Report and Order.* To prepare a Scheduling Report which shall include the following:

(a) a detailed schedule of discovery for each party;

(b) discussion of the likelihood of settlement;

(c) discussion of the likelihood of appearance in the action of additional parties;

(d) proposed limits on the time:

(i) to join other parties and to amend the pleadings;

(ii) to file and hear motions; and

(iii) to complete discovery.

(e) proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses;

(f) the necessity or desirability of amendments to the pleadings;

(g) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding authenticity of documents and the need for advance rulings from the Court on admissibility of evidence;

(h) suggestions for the avoidance of unnecessary proof and of cumulative evidence;

(i) suggestions on the advisability of referring matters to a magistrate judge or master;

(j) a preliminary estimate of the time required for trial;

(k) requested date or dates for conferences before trial, a final pretrial conference, and trial; and

(l) any other information that might be helpful to the Court in setting the case for status or pretrial conference.

Within ten (10) days after the meeting held pursuant to this subsection, those attending are mutually obligated to file the Scheduling Report of Scheduling Meeting. The Report shall be accompanied by a Joint Proposed Scheduling Order which shall contain the following information:

(a) Assignment of the case to a particular track pursuant to Local Rule 16.1.A.1 above;

(b) The detailed discovery schedule agreed to by the parties;

(c) A limitation of the time to join additional parties and to amend the pleadings;

(d) A space for insertion of a date certain for filing all pretrial motions;

(e) A space for insertion of a date certain for resolution of all pretrial motions by the Court;

(f) Any proposed use of the Manual on Complex Litigation and any other need for rule variations, such as on deposition length or number of depositions;

(g) A space for insertion of a date certain for the date of pretrial conference (if one is to be held); and

(h) A space for insertion of the date certain for trial.

Within 40 days after the filing of an answer, or within 120 days after the filing of the Complaint (whichever shall first occur), each judge shall in all civil cases (except those expressly exempted below) enter a Scheduling Order. It is within the discretion of each judge to decide whether to hold a scheduling conference with the parties prior to entering the Scheduling Order.

Comments

(1998) Rule 16.1.B.6 is modified to make clear that, at the time of the scheduling conference, counsel should discuss whether there is a need to modify any standard procedure, not just whether the Manual for Complex Litigation should be used. Rule 16.1.B.7.(f) is modified to make clear that the Joint Proposed Scheduling Order should contain any joint or unilateral requests to exceed deposition limitations in length and number, as well as any other proposed variations from these rules or the Federal Rules of Civil Procedure that are not specifically addressed in other paragraphs of this rule.

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RULE 26.1 DISCOVERY AND DISCOVERY DOCUMENTS (CIVIL)

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G. Interrogatories and Document Requests.

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2. At the commencement of discovery, interrogatories will be 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, and other physical evidence, or information of a similar nature. Questions seeking the names of expert witnesses and the substance of their opinions may also be served. Interrogatories propounded in the form set forth in Appendix B to these rules shall comply with the limitations of this rule.

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 (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.

2. Motions to Compel. [No changes.]

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K. Length of depositions. 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.

Comments

(1998) 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 Rule 26.1.H, regarding motions to compel, is renumbered Rule 26.1.H.2. Rule 26.1.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. 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.

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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 ~~by a written waiver of the defendant or an oral waiver by the plaintiff in court~~ if made either in writing or orally, in open court, on the record.

Comments

(1998) Rule 88.5 A. is amended to correct a scrivener's error. The Advisory Committee on Rules and Procedure recommends, but the rule does not require, that an oral waiver of rights be accompanied by the execution of a form rights waiver. Such form rights waivers may be made available in courtrooms in this district by the clerk of the court.

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RULE 88.9 MOTIONS IN CRIMINAL CASES

C. Motions in criminal cases shall be filed within 28 days from the arraignment of the defendant to whom the motion applies, except that motions arising from a post-arraignment event shall be filed within a reasonable time after the event.

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997;April 15, 1998.

Comments

(1998) Rule 88.9 C is added to reflect the filing time previously prescribed by the Standing Order on Criminal Discovery of the Southern District, with additional flexibility for motions arising from later events.

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RULE 88.10 CRIMINAL DISCOVERY

N. The government shall, upon request of the defendant, disclose to the defendant a written summary of testimony the government reasonably expects to offer at trial under Rules 702, 703, or 705 of the Federal Rules of Evidence. This summary must describe the witnesses' opinions, the bases and the reasons therefor, and the witnesses' qualifications. If the defendant seeks and obtains discovery under this paragraph, or if the defendant has given notice under Rule 12.2(b) of the Federal Rules of Criminal Procedure, of an intent to present expert testimony on the defendant's mental condition, the defendant shall, upon request by the government, disclose

to the government a written summary of testimony the defendant reasonably expects to offer at trial under Rules 702, 703, ~~or~~ 705 or 12.2(b) ~~of the Federal Rules of Evidence~~, describing the witnesses' opinions, the bases and the reasons ~~therefor~~ for those opinions, and the witnesses' qualifications.

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Q. Schedule of Discovery.

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2. Discovery which is to be made in connection with trial shall be made not later than fourteen (14) days ~~from the date of this Order~~ after the arraignment, or such other time as ordered by the court.

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Comments

(1998) Section N. is revised to conform to amendments to Rules 16(a)(1)(E) and (b)(1)(C)(ii), Fed. R. Crim. P. Section Q.2 is amended to effectuate discovery within 14 days of arraignment, without the entry of a Court order, or within such other time period as the Court may order.

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APPENDIX A: DISCOVERY PRACTICES HANDBOOK

[No change in handbook.]

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APPENDIX B: STANDARD FORM INTERROGATORIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
_____ DIVISION

PLAINTIFF X, **Case No. _____**

Plaintiff, **Magistrate Judge _____**

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 (30) days of service pursuant to Fed. R. Civ. P. 33 and S.D. Fla. L.R. 26.1G.

DEFINITIONS

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

(b) The singular shall include the plural and vice versa; the terms "and" and "or" shall be both conjunctive and disjunctive; and the term "including" means "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 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,

(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 or oral communication.

You are under a continuous obligation to supplement your answers to these interrogatories under the circumstances specified in Fed. R. Civ. P. 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 Fed. R. Civ. P. 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 damages 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 pertaining to each item of damages stated in your response to interrogatory no. 5 above.

7. Please identify each document (including pertinent insurance agreements) pertaining to any fact alleged in any pleading (as defined in Fed. R. Civ. P. 7(a)) filed in this action.

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ADMIRALTY AND MARITIME RULES

RULE A. GENERAL PROVISIONS

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Advisory Notes

(1998) These rules are amended in 1998 to correct scrivener's errors and to require the custodian or substitute custodian to comply with orders of the Captain of the Port, United States Coast Guard.

RULE B. ATTACHMENT AND GARNISHMENT: SPECIAL PROVISIONS

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(2) Verification of Complaint Required. In addition to the specific requirements of Local Admiralty Rule ~~1(c)~~ A(5), whenever verification is made by the plaintiff's attorney or agent, and that person does not have personal knowledge, or knowledge acquired in the ordinary course of business of the facts alleged in the complaint, the attorney or agent shall also state the circumstances which make it necessary for that person to make the verification, and shall indicate the source of the attorney's or agent's information.

(3) Pre-seizure Requirements. In accordance with Supplemental Rule (B)(1), the process of attachment and garnishment shall issue only after one of the following conditions has been met:

(a) *Judicial Review Prior to Issuance.* Except as provided in Local Admiralty Rule B(3)(b), a judicial officer shall first review the verified complaint, and any other relevant case papers, prior to the ~~clerk~~ Clerk issuing the requested process of attachment and garnishment. No notice of this pre-arrest judicial review is required to be given to any person or prospective party.

* * * * * * * * *

(6) Procedural Requirement for the Entry of Default ~~Judgment~~. In accordance with Rule 55, Fed.R.Civ.P., a party seeking the entry of default ~~judgment~~ in a Supplemental Rule (B) action shall file a motion and supporting legal memorandum and shall offer other proof sufficient to demonstrate that due notice of the action and seizure have been given in accordance with Local Admiralty Rule B(4).

Upon review of the motion, memorandum, and other proof, the Clerk shall, where appropriate, enter default in accordance with Rule 55(a), Fed.R.Civ.P. Thereafter, the Clerk shall serve notice of the entry of default upon all parties represented in the action.

(7) Procedural Requirements for the Entry of Default Judgment. Not later than five (5) days following notice of the entry of default, the party seeking the entry of default judgment shall file a motion and supporting legal memorandum, along with other appropriate exhibits to the motion sufficient to support the entry of default judgment. The moving party shall serve these papers upon every other party to the action and file a Certificate of Service indicating the date and manner in which service was perfected.

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Advisory Notes

(1993) **(a) General Comments.** Local Rule B is intended to enhance and codify the local procedural requirements uniquely applicable to actions of maritime attachment and garnishment under Supplemental Rule (B). Other local procedural requirements involving actions in rem and quasi in rem proceedings can be found in Local Admiralty Rule E.

When read in conjunction with Supplemental Rule (B) and (E), Local Admiralty Rules B and E are intended to provide a uniform and comprehensive method for constitutionally implementing the long-standing and peculiar maritime rights of attachment and garnishment. The committee believes that Local Admiralty Rules B and E correct the deficiencies perceived by some courts to exist in the implementation of this unique maritime provision. *Schiffahartsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion,* 552 F.Supp. 771 (S.D.Ga.1982); *Cooper Shipping Company v. Century 21,* 1983 A.M.C. 244 (M.D.Fla.1982); *Crysen Shipping Co. v. Bona Shipping Co., Ltd.,* 553 F.Supp. 139 (N.D.Fla.1982); and *Grand Bahama Petroleum Co. v. Canadian Transportation Agencies, Ltd.,* 450 F.Supp. 447 (W.D.Wa.1978), discussing Supplemental Rule (B) proceedings in light of *Fuentes v. Shevin,* 407 U.S. 67 [92 S.Ct. 1983, 32 L.Ed.2d 556] (1972) and *Sniadach v. Family Finance Corp.,* 395 U.S. 337 [89 S.Ct. 1820, 23 L.Ed.2d 349] (1969).

Although the Committee is aware of the Eleventh Circuit's decision in *Schiffahartsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion,* 732 F.2d 1543 (1984), the Committee believes that from both a commercial and legal viewpoint, the better practice is to incorporate the pre-seizure scrutiny and post-attachment review provisions provided by this rule. These provisions protect the rights of any person claiming an interest in the seized property by permitting such persons to file a claim against the property, and thereafter permitting a judicial determination of the ~~property~~ propriety of the seizure.

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RULE C. ACTION IN REM

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(4) Publishing Notice of the Arrest as Required by Supplemental Rule (C)(4).

(a) *Time for Publication.* If the property is not released within ten (10) days after the execution of process, the notice required by Supplemental Rule (C)(4) shall be published by the plaintiff in accordance with Local Admiralty Rule A(7). Such notice shall be published within seventeen (17) days after execution of process. The notice shall substantially conform to the form identified as SDF ~~6~~ 7 in the Appendix to these Local Admiralty Rules.

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(8) Procedural Requirements Prior to the Entry of Default. In accordance with Rule 55, Fed.R.Civ.P., a party seeking the entry of default in rem shall first file a motion and supporting legal memorandum.

The party seeking the entry of default shall also file such other proof sufficient to demonstrate that due notice of the action and arrest have been given by:

(a) Service upon the master or other person having custody of the property; and

(b) Delivery, or by certified mail, return receipt requested (or international effective equivalent), to every other person, including any known owner, who has not appeared or intervened in the action, and who is known to have, or claims to have, a possessory interest in the property.

The party seeking entry of default judgment under Local Rule ~~C(a)~~ C(8) may be excused for failing to give notice to such "other person" upon a satisfactory showing that diligent effort was made to give notice without success; and

(c) Publication as required by Supplemental Rule (C)(4) and Local Admiralty Rule C(4).

Upon review of the motion, memorandum, and other proof, the Clerk may, where appropriate, enter default in accordance with Rule 55, Fed.R.Civ.P. Thereafter, the Clerk shall serve notice of the entry of default upon all parties represented in the action.

(9) Procedural Requirements for the Entry of Default Judgment. Not later than five (5) days following notice of the entry of default, the moving party shall file a motion, and supporting legal documents, for the entry of default judgment pursuant to Rule 55(b), Fed.R.Civ.P. The moving party may also file as exhibits for the motion such other

documentation as may be required to support the entry of default judgment. Thereafter the court will consider the motion as indicated below:

(a) *When No Person Has Filed a Claim or Answer.* Unless otherwise ordered by the court, the motion for default judgment will be considered by the court without oral argument.

(b) *When Any Person Has Filed an Appearance, But Does Not Join in the Motion for Entry of Default Judgment.* If any person has filed an appearance in accordance with Local Admiralty Rule C(6), but does not join in the motion for entry of default judgment, the party seeking the entry of default judgment shall serve notice of the motion upon the party not joining in the motion, and thereafter the opposing party shall have five (5) days from receipt of the notice to file written opposition with the court.

If the court grants the motion and enters the default judgment, such judgment shall establish a right on the part of the party or parties in whose favor it is entered. The judgment shall be considered prior to any claims of the owner of the defendant property against which it is entered, and to the remnants and surpluses thereof; providing, however, ~~that such a judgment shall not establish any entitlement to the defendant property against which it is entered, and to the remnants and surpluses thereof; providing, however,~~ that such a judgment shall not establish any entitlement to the defendant property having priority over non-possessory lien claimants. Obtaining a judgment by default shall not preclude the party in whose favor it is entered from contending and proving that all, or any portion, of the claim or claims encompassed within the judgment are prior to any such non-possessory lien claims.

Advisory Notes

(1993) **C(2).** Well reasoned authority has upheld Supplemental Rule (C), specifically holding that a pre-seizure judicial hearing is not required where a vessel, freight, or intangible property is proceeded against to enforce a maritime lien. *Amstar Corporation v. S_S Alexandros T,* 664 F.2d 904 (4th Cir.1981); *Merchants Nat'l Bank v. Dredge Gen. G.L. Gillespie,* 663 F.2d 1338 (5th Cir., Unit A, 1981); *Schiffahartsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion,* 732 F.2d 1543 (11th Cir.1984).

The desirability of providing by local admiralty rule an available avenue for reasonably prompt and effective post-arrest judicial relief is indicated. *See, Merchants Nat'l Bank v. Dredge Gen. G.L. Gillespie,* supra, at 1334, 1350. This provision is incorporated in Local Admiralty Rule C(7).

This procedure made available through this rule has proven effective. *Maryland Ship Building & Dry-Dock Co. v. Pacific Ruler Corp.,* 201 F.Supp. 858 (S.D.N.Y. 1962). In fact, the procedure established by this local rule goes beyond that encountered in *Merchants Nat'l Bank*

v. Dredge Gen. G.L. Gillespie, supra, or *Maryland Ship Building & Dry-Dock Co. v. Pacific Ruler Corp.,* supra.

Under this rule, the claimant or intervenor may petition the Court to order the plaintiff to establish probable cause for the arrest of the property. Therefore at an early stage of the litigation, plaintiff can be required to establish a prima facie case that he is asserting a claim which is entitled to the dignity and status of a maritime lien against the arrested property. This rule contemplates the entry of an order with conclusory findings following the post-arrest proceedings. More detailed findings may be requested by any party.

The rule is not intended to provide a method for contesting the amount of security to be posted for the release of the vessel. Once a prima facie case for the maritime lien has been established, or the question of lien status remains uncontested, the matter of security is left to the provisions of Local Admiralty Rule ~~5~~ E.

C(3). Supplemental Rule (C)(3) also addresses the less commonly encountered action in rem to enforce a maritime lien against freights, proceeds or other intangible property. The revision to this rule designates the U.S. Marshal to take custody of all tangible and intangible properties arrested in accordance with this rule, and to bring these properties under the control of the Court. This is the practice in many other districts, and when implemented will provide the greatest uniformity in the treatment of tangible and intangible property.

C(4). The substance of former Local Rule 3(c) is continued.

C(5). Although this section is new to the local rules, it reflects the current local practice with respect to undertakings and stipulations in lieu of arrest. Such undertakings and stipulations have been held effective to permit a Court to exercise its in rem admiralty jurisdiction so long as either at the time the undertaking or stipulation is given, or at any subsequent time prior to the filing of the action, the vessel or other property is, or will be, present within the district.

C(6). The substance of former Local Rule 2(b) is continued.

C(7). See the comments for Local Admiralty Rule ~~3(b)~~ C(2).

C(8) and (9). These sections are designed to mesh Supplemental Rule (C) with Fed.R.Civ.P. 55. For purpose of default and default judgments, the rule recognizes two distinct groups of in rem claimants.

The first category of claimants include those who by ownership or otherwise, would, but for the arrest of the property, be entitled to its possession. Pursuant to Supplemental Rule (C)(6), these claimants must file a claim setting forth their interest in the property, demand their right to receive possession, and to appear and defend the action. In the case of such claimants, the

operation of standard default procedures foreclose their rights to contest positions of the party in whose favor the default is rendered, and the entry of default judgment is both fair and appropriate.

The second category of claimants embodies a potentially numerous and varying class of claimants. The claims of these other claimants do not give rise to a right of possession of the vessel from the marshal or other appropriate custodian, but rather invoke the power of the Court in admiralty to foreclose against the property by the ultimate rendering of a judgment in rem against property entitlements. Such judgments would be predicated upon non-possessory liens.

The time in which the second category of claimants may intervene is governed by the provisions of Local Admiralty Rule ~~5~~ E. Such lien claimants are not obligated, and indeed are probably not entitled to file a claim of possession to the vessel, or to answer and defend in the name of the vessel. As to them, in accordance with Fed.R.Civ.P. 8, the essential averments of all the complaints are taken as automatically denied.

No default judgments entered pursuant to this rule will operate to adjudicate priorities among competing non-possessory lien claimants.

In attempting to reconcile the traditional notions of default and default judgments with the concept of in rem proceedings, the final language has been formulated to maintain the efficacy of the default procedure without resulting in premature adjudication effecting priorities and distributions. The default procedure establishes in favor of the holder of such a default judgment, a lien position against the proceeds of the property, resulting from any sale or disposition, or, if currency is involved, the ultimate adjudication, inferior to all other competing priorities, except the otherwise escheating right of the property owner to the remnants and surpluses after all full-claims satisfactions. At the same time, the right of a person obtaining a default judgment to contend and compete with other claimants for priority distribution remains unaffected.

RULE D. POSSESSORY, PETITORY AND PARTITION ACTIONS

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Advisory Notes

(1993) This rule continues in substance ~~with~~ **the provisions of** former Local Admiralty Rule 15.

The rule recognizes the equity in allowing for a prompt resolution in possessory actions. Since a possessory action is brought to reinstate an owner of a vessel alleging wrongful

deprivation of property, rather than to allow original possession, the rule permits the Court to expedite these actions, thereby providing a quick remedy for the one wrongfully deprived of his rightful property, *Silver v. Sloop Silver Cloud,* 259 F.Supp. 187 (S.D.N.Y. 1966).

Since a petitory and possessory action can be joined to obtain original possession, *The Friendship,* Fed.Cas. No. 5,123 (CCD Maine, 1855), this rule contemplates that an expedited hearing will only occur in purely possessory actions.

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RULE E. ACTIONS IN REM AND QUASI IN REM: GENERAL PROVISIONS

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(3) Special Requirements for Salvage Actions. In cases of salvage, the complaint shall also state to the extent known, the value of the hull, cargo, freight, and other property salvaged, the amount claimed, the names of the principal salvors, and that the suit is instituted in their behalf and in behalf of all other persons associated with them.

In addition to these special pleading requirements, plaintiff shall attach as an exhibit to the complaint a list of all known salvors, and all persons believed entitled to share in the salvage. Plaintiff shall also attach a copy of any agreement of consortship available and known to exist among them collegially or individually.

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(10) Custody and Safekeeping

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(b) *Limitations on the Handling, Repairing and Subsequent Movement of Vessels or Property.* Subsequent to the arrest or attachment of a vessel or property, and except as provided in Local Admiralty Rule E(10)(a), no person may handle cargo, conduct repairs, or move a vessel without prior order of the Court. Notwithstanding the foregoing, the custodian or substitute custodian is obligated to comply with any orders issued by the Captain of the Port, United States Coast Guard, including an order to move the vessel; and to comply with any applicable federal, state, or local laws or regulations pertaining to vessel and port safety. Any movement of a vessel pursuant to such requirements must not remove the vessel from the Southern District of Florida and shall be reported to the Court within twenty-four (24) hours of the vessel's movement.

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Advisory Notes

(1993) **E(1).** This section continues the provisions of former Local Rule 7(c).

E(2). This section is new. The rules do not require an intervening plaintiff to undertake the formal steps required to issue the original process of arrest or attachment pursuant to Local Admiralty Rule B(3) or C(2); rather the Committee believes that intervening parties need only apply for supplemental process, which in accordance with the August 1, 1985, amendments to Supplemental Rule (B) and (C), may be issued by the clerk without further order of the Court. The Committee recommends the re-arrest or re-attachment provisions of this rule in order to accommodate the administrative and records keeping requirements of the marshal's office.

The revision also reflects the elimination of the initial security deposit formerly required by Local Admiralty Rule 5(e). The Marshal shall, however, assess custodial costs against the intervening plaintiff in accordance with Local Admiralty Rule ~~5(f)(2)~~ E(5)(b).

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E(9). Section (9) is new. The provisions of Section (j) are expressly authorized by Supplemental Rule (E)(6) and offer some potential relief from the automatic operations and other provisions of Supplemental Rule (E) regarding security for value and interest. The decision in *Industria Nacional del Papel, C.A. M_V Albert F.*, 730 F.2d 622 ~~(1984)~~ (11th Cir. 1984) indicates that such an application must be made prior to the entry of judgment.

E(10) Section (10) is new. It is designed to reflect the actual practice in the district, and follows the rules promulgated in several other districts. In formulating this rule, the Committee studied Section 6.3 of the "Marshal's Manual", the internal operating guide for the United States Marshal's Service. Section 10(b) was amended in 1998 to permit substitute custodians to move arrested vessels, pursuant to an order of the United States Coast Guard Captain of the Port ("COTP"), without first obtaining permission from the Court. The change was prompted by instances where substitute custodians declined to obey a COTP order to move an arrested vessel, citing Local Admiralty Rule E (10)(b) and its requirement that Court permission be first obtained. Any movement of a vessel pursuant to a COTP order must not take the vessel out of the Southern District of Florida. A corresponding change was made in Form 5, paragraph (5).

E(11). Section (11) is new. It addresses areas which in recent litigation in the district have called excessively for interim judicial administration. While the subject matter is covered in the rules promulgated in other districts, section ~~(12)~~ (11) differs from the approach of other districts in providing for a more positive control of expenses being incurred in connection with vessels or other property in the custody of the Court, and is designed to avoid accumulated costs being advanced for the first time well after having been incurred.

E(12). Section (12) is new. It addresses a situation which has arisen in the district in the past and which can be foreseen as possibly arising in the future. While the subject is not addressed in other local rules studied by any oft-cited leading cases, it was the opinion of the Committee that the area should be addressed by local rule and that the provisions of Section (12) are both consistent with the general maritime laws of the United States and designed to permit efficient administration without the necessity for undue judicial intervention. As with the claims of intervenors and the allocation of deposits against custodial costs, the provisions of Section ~~(m)~~ (12), in keeping with the design of these local rules, are intended to be essentially self-executing, with the emphasis on the ministerial role of Court officers and services.

E(13). Section (13) continues the provisions of former Local Rule 17(a). It follows Rule 41, Fed.R.Civ.P., and addresses the necessarily greater concern for costs and expenses inherent in the in rem admiralty procedure.

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RULE F. ACTIONS TO LIMIT LIABILITY

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Advisory Notes

(1993) **F(1).** This section incorporates the publication provisions of Local Admiralty Rule A(7), and applies them to limitation of liability actions. The rule provides for the publication of the notice required by Supplemental Rule (F)(4) without further order of the Court. The Committee believes that this self-executing aspect of the rule will save judicial time and at the same time will not impair the rights of any party or claimant.

F(2). The Committee determined that filing proof of publication with the clerk was essential in order to establish an adequate record of the publication.

F(3). This section continues in substance ~~with~~ the provisions of former Local Admiralty Rule 10.

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FORM 5. MOTION FOR APPOINTMENT OF SUBSTITUTE CUSTODIAN

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(5) The substitute custodian has adequate facilities for the care, maintenance and security of the vessel. In discharging its obligation to care for, maintain and secure the vessel,

the Substitute Custodian shall comply with all orders of the Captain of the Port, United States Coast Guard, including but not limited to, an order to move the vessel; and any applicable federal, state, and local laws, regulations and requirements pertaining to vessel and port safety. The Substitute Custodian shall advise the Court, the parties to the action, and the United States Marshal, of any movement of the vessel pursuant to an order of the Captain of the Port, within twenty-four (24) hours of such vessel movement.

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MAGISTRATE JUDGE RULES

RULE 1. AUTHORITY OF UNITED STATES MAGISTRATE JUDGES

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(b) Disposition of Misdemeanor Cases-18 U.S.C. § 3401; Fed. R. Crim. P. 58. A Magistrate Judge may-

(1) Arraign and ~~T~~try persons accused of, and sentence persons convicted of, misdemeanors committed within this District in accordance with 18 U. S.C. § 3401 and Fed. R. Crim. P. 58.

Comments

(1998) Conforms Rule 1(b)(1) to 1997 amendments to Fed. R. Crim, P. 58.

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RULE 4. REVIEW AND APPEAL

(d) Appeal From Judgments in Misdemeanor Cases—18 U.S.C. § 3402 Deleted. Replaced by Fed.R.Crim.P. 58. ~~A defendant may appeal a judgment of conviction by a Magistrate Judge in a misdemeanor case by filing a notice of appeal within 10 days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the District Court to the Court of Appeals.~~

(e) Appeal From Judgments in Civil Cases Disposed of on Consent of the Parties—28 U.S.C. § 636(c).

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(2) *Appeal to a District Judge - Deleted. See Pub.L. No. 104-317 § 207, 110 Stat. 3847 (Oct. 19, 1996) (repealing 28 U.S.C. § 636 (c)(4) and (5).*

~~A. Notice of Appeal. In accordance with 28 U.S.C. § 636(c)(4), the parties may consent to appeal any judgment in a civil case disposed of by a Magistrate Judge to a District Judge of this Court, rather than directly to the Court of Appeals. In such case the appeal shall be taken by filing a notice of appeal with the Clerk of Court within 30 days after entry of the Magistrate Judge's judgment; but if the United States or any officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of entry of the judgment. For good cause shown, the Magistrate Judge or a District Judge may extend the time for filing the notice of appeal for an additional 20 days. Any request for such extension, however, must be made before the original time period for such appeal has expired. In the event a motion for a new trial is timely filed, the time for appeal from the judgment of the Magistrate Judge shall be extended to 30 days from the date of the ruling on the motion for a new trial, unless a different period is provided by the Federal Rules of Civil or Appellate Procedure.~~

~~B. Service of the Notice of Appeal. The Clerk of Court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for all parties other than the appellant, or if a party is not represented by counsel to the party at his last known address.~~

~~C. Record of Appeal. The record on appeal to a District Judge shall consist of the original papers and exhibits filed with the Court and the transcript of the proceedings before the Magistrate Judge, if any. Every effort shall be made by the parties, counsel, and the Court to minimize the production and costs of transcriptions of the record, and otherwise to render the appeal expeditious and inexpensive, as mandated by 28 U.S.C. § 636(c)(4).~~

~~D. Memoranda. The appellant shall within 30 days of the filing of the notice of appeal file a typewritten memorandum with the Clerk, together with two additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall also file a copy of the memorandum on the appellee or appellees. The appellees shall file an answering memorandum within 30 days of the appellant's memorandum. The Court may extend these time limits upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his memorandum within the time provided by this rule, or any extension thereof, the Court may dismiss the appeal.~~

~~E. Disposition of the Appeal by a Judge. The District Judge shall consider the appeal on the record, in the same manner as if the case had been appealed from a~~

~~judgment of the District Court to the Court of Appeals and may affirm, reverse, or modify the Magistrate Judge's judgment, or remand with instructions for further proceedings. The District Judge shall accept the Magistrate Judge's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity to the Magistrate Judge to judge the credibility of the witnesses.~~

~~F. Appeals From Other Orders of a Magistrate Judge. Appeals from any other decisions and orders of a Magistrate Judge not provided for in this rule should be taken as provided by governing statute, rule, or decisional law.~~

Comments

(1998) Rule 4(d) is deleted in favor of Fed. R. Crim. P. 58, but retains a modified title and a cross-reference to Rule 58 to avoid confusion about the proper procedure for misdemeanor appeals. Rule 4(e)(2) is deleted to conform to the 1997 amendments to Fed.R.Civ.P. 73(d), 74, 75 and 76, which abrogated the optional appeal route from a Magistrate Judge to a District Judge.

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