UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Administrative Order 2005-8

IN RE:
AMENDMENTS TO THE LOCAL RULES
_____/

THIS COURT has given notice and opportunity to be heard in accordance with Fed.R.Civ.P. 83 and Fed.R.Crim.P. 57, has conducted an *en banc* hearing, and has considered the comments of the public and the report of the Court's Ad Hoc Committee on Rules and Procedures with regard to proposed amendments, in the form attached, to Local General Rules 1.1, 5.4, 7.1, 7.3, 7.5, 16.2, 26.1, and 88.10. Upon consideration of the public comments received and the reports of the Ad Hoc Committee, it is hereby

ORDERED that the rules identified 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, 2005, 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 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 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 rule amendments.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this 21st day of January, 2005.

WILLIAM J. ZLOCH
CHIEF UNITED STATES DISTRICT JUDGE

c: Honorable J. L. Edmondson, Chief Judge, Eleventh Circuit Court of Appeals
All Southern District Judges
All Southern District Magistrate Judges
Norman E. Zoller, Circuit Executive, Eleventh Circuit
All members of the Ad Hoc Committee on Rules and Procedures
Brian F. Spector, Chair, Ad Hoc Committee on Rules & Procedures
Library
Daily Business Review

GENERAL RULES

RULE 1.1 SCOPE OF THE RULES

* * * * * *

B. Effective Date. These rules become effective February 15, 1993, provided however, that the 1994 amendments shall take effect on December 1, 1994, the 1996 amendments shall take effect on April 15, 1996, the 1997 amendments shall take effect on April 15, 1997, the 1998 amendments shall take effect on April 15, 1998, the 1999 amendments shall take effect on April 15, 1999, the 2000 amendments shall take effect on April 15, 2000, the 2001 amendments shall take effect on April 15, 2001, ~~and~~ the 2002 amendments shall take effect on April 15, 2002, ~~and~~ the 2003 amendments shall take effect on April 15, 2003, ~~and~~ the 2004 amendments shall take effect on April 15, 2004, and the 2005 amendments shall take effect on April 15, 2005, and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending

* * * * * *

RULE 5.4 FILINGS UNDER SEAL; DISPOSAL OF SEALED MATERIALS

* * * * * *

B. Procedure for filings under seal. ...

* * * * * *

3. Accompany the motion with a completed sealed document tracking form, which can be obtained from the Clerk's Office in any division or downloaded from the forms section of the Court's Website (www.flsd.uscourts.gov/). ~~File an "ORDER RE: SEALED FILING" in the form set forth at the end of this rule. The form is available at the Clerk's Office. The bottom portion should be left blank for the Judge's ruling.~~

Comment

(2005) The form order previously prescribed by the rule has been deleted. The local rule is intended to conform to current case law. *See, e.g., Press-Enterprise Co. v. Super. Ct.*, 478 U.S. 1 (1986); *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980); *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978); *United States v. Valenti*, 987 F.2d 708 (11th Cir. 1993); *Newman v. Graddick*, 696 F.2d 796 (11th Cir. 1983). The sealed document tracking form is an administrative requirement.

* * * * * *

The following is to be deleted:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. _____

_____
Plaintiff,

vs.

_____
Defendant.
_____/

ORDER RE: SEALED FILING

Party Filing Matter Under Seal

Name: _____

Address: _____

Telephone: _____

On behalf of (select one): ❑ Plaintiff ❑ Defendant

Date sealed document filed: _____

If sealed pursuant to statute, cite statute: _____

If sealed pursuant to previously entered protective order, date of order and docket entry: _____

The matter will remain sealed until

❑ Conclusion of Trial ❑ Arrest of First Defendant

❑ Case Closing ❑ Conclusion of Direct Appeal

❑ Other _____

❑ Permanently. Specify the authorizing law, rule, court order: _____

The moving party requests that when the sealing period expires, the filed matter should be (select one):

❑ Unsealed and placed in the public portion of the court file ❑ Destroyed ❑ Returned to the party or counsel for the party, as identified above

It is **ORDERED** and **ADJUDGED** that the proposed sealed document is hereby:

❑ Sealed ❑ NOT Sealed ❑ Other_____

The matter may be unsealed after:

❑ Conclusion of Trial ❑ Arrest of First Defendant ❑ Remain Sealed

❑ Case Closing ❑ Conclusion of Direct Appeal ❑ Other_____

DONE and ORDERED at _____, Florida this _____ day of _____, 20__.

_____
United States District Judge

This document has been disposed of in the following manner _____ by _____ on _____.

15

RULE 7.1 MOTIONS, GENERAL

* * * * * *

C. Memoranda of Law. ...

* * * * * *

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.

Comment

(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.

* * * * * *

RULE 7.3 ATTORNEYS FEES AND COSTS

A. Upon Entry of Final Judgment or Order. Any motion for attorneys fees; ~~and/or to tax costs~~ must specify ÷ the judgment and the statute, rule, or other grounds entitling the moving party to the award; must state the amount or provide a fair estimate of the amount sought; shall disclose the terms of any agreement with respect to fees to be paid for the services for which the claim is made; shall be supported with ~~particularity~~ a detailed description of hours reasonably expended, the hourly rate and its basis, and a detailed description of all reimbursable expenses; shall be verified; and, along with an affidavit of an expert witness, shall be filed and served within 30 days of entry of Final Judgment or other appealable order ~~which~~ that gives rise to a right to attorneys fees ~~or costs~~. Any such motion shall be accompanied by a certification that counsel has fully reviewed the time records and supporting data and that the motion is well grounded in fact and justified. A bill to tax costs pursuant to 28 U.S.C. § 1920 shall be filed and served within 30 days of entry of Final Judgment or other appealable order which gives rise to a right to tax costs. ~~In addition, counsel~~ Prior to filing a motion for attorneys fees or bill to tax costs, counsel shall confer with opposing counsel and make a certified statement in the motion or bill in accordance with Local Rule 7.1.A.3. ~~for the opposing party and shall file with the Court, within three (3) days of the motion, a statement certifying that counsel has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the motion, the results thereof and~~ The motion or bill shall also state whether a hearing is requested. The

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

B. Prior to Entry of Final Judgment. Any motion for attorneys fees ~~and/~~ or bill to tax costs made before entry of final judgment or other appealable order must specify the statute, rule, or other grounds entitling the moving party to the award; must state the amount or provide a fair estimate of the amount sought; shall disclose the terms of any agreement with respect to fees to be paid for the services for which the claim is made; shall be supported with ~~particularity~~ a detailed description of hours reasonably expended, the hourly rate and its basis, a detailed description of all reimbursable expenses; and shall be verified along with an affidavit of an expert witness. Any such motion shall be accompanied by a certification that counsel has fully reviewed the time records and supporting data and that the motion is well grounded in fact and justified. ~~In addition, counsel~~ Prior to filing a motion for attorneys fees or bill to tax costs, counsel filing the motion shall confer with opposing counsel and make a certified statement in the motion or bill in accordance with Local Rule 7.1.A.3. ~~for the opposing party and shall file with the Court, within three (3) days of the motion, a statement certifying that counsel has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the motion, the results thereof and~~ The motion shall also state whether a hearing is requested.

Comment

(2005) The amendments are designed to provide attorneys with more particularized information as to what must be included and filed contemporaneously with a motion for attorneys fees. *See Norman v. Housing Auth.*, 836 F.2d 1292 (11th Cir. 1988), and progeny. The amendment to the rule separates a bill to tax costs from that of a motion for attorneys fees. The changes also require attorneys to confer in good faith prior to the filing of a motion for attorneys fees or a bill to tax costs, which is a change from the 1993 amendment.

* * * * * *

RULE 7.5 MOTIONS FOR SUMMARY JUDGMENT

A. Motions for Summary Judgment. Motions for summary judgment shall be accompanied by a memorandum of law, necessary affidavits, and a concise statement of the material facts as to which the ~~moving party~~ movant contends there is no genuine issue to be tried.

B. Opposition Papers. The papers opposing a motion for summary judgment shall include a memorandum of law, necessary affidavits, and a single concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

C. Statement of Material Facts. The statement of material facts submitted either in support of or in opposition to a motion for summary judgment shall:

1. Not exceed ten pages in length; and

2. Be supported by specific references to pleadings, depositions, answers to interrogatories, admissions, and affidavits on file with the Court.

D. Effect Of Failure To Controvert Statement of Undisputed Facts. All material facts set forth in the movant's statement filed and supported as required by Local Rule 7.5.C ~~required to be served by the moving party~~ will be deemed admitted unless controverted by the opposing party's statement, provided that the Court finds that the movant's statement is supported by evidence in the record ~~if and only to the extend supported by specific references to pleadings, depositions, answers to interrogatories, admissions, and affidavits on file with the Court~~.

E. Briefing Schedule. As oral argument is not always scheduled on motions for summary judgment, the briefing schedule in Local Rule 7.1 shall apply.

Comment

(2005) Rule 7.5.D is amended to clarify that the Court will not grant summary judgment unless supported by a review of evidence in the record. *See United States v. One Piece of Real Prop. Located at 5800 S.W. 74th Ave., Miami, Fla.*, 363 F.3d 1099, 1103 n. 6 (11th Cir. 2004).

* * * * * *

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 ~~The~~ mediator is an attorney, certified by the chief judge in accordance with these 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 ~~only~~ to the presiding judge only as to whether the case settled (in full or in part)~~,~~ or was adjourned for further mediation ~~(by agreement of the parties), or that~~

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 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; ~~and~~ 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 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 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 ~~An~~ individual ~~who has~~ shall have completed a minimum of forty (40) hours in ~~the~~ a Florida Circuit Court Mediation Training c~~C~~ourse certified by the Florida Supreme Court and also: ~~may be certified to serve as a mediator if:~~ ~~(a)~~ ~~He or she~~ 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 ~~(b)~~ ~~He or she~~ is a retired federal judicial officer; or ~~(c)~~ ~~He or she~~ has been admitted to a State Bar or the Bar of the District of Columbia for at least ten (10) years and is currently admitted to the Bar of this Court~~;~~ ~~or (d)~~ The advisory committee ~~shall have determined~~ may recommend for certification an individual to serve as a mediator in this district if it determines that, for exceptional circumstances, an individual who does not otherwise qualify under ~~sections~~ the terms ~~(1), (2), or (3)~~ above should be certified ~~as a mediator~~.

Any individual who seeks certification as a mediator shall agree to accept at least two (2) 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 Standards of Professional Conduct in the Rules adopted by the Supreme Court of Florida for Certified and Court-Appointed Mediators.

~~4.~~5. *Oath Required.* Every certified mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 upon qualifying as a mediator.

~~5.~~6. *Disqualification of a Mediator.* Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144, and shall be disqualified in any case in which such action would be required ~~by~~ of a justice, judge, or magistrate judge governed by 28 U.S.C. § 455.

~~6.~~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 (45) 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, t~~T~~he following types of cases shall not be subject to mediation pursuant to ~~these rules~~ this rule:

1. Habeas corpus cases;

2. Motion to vacate sentence under 28 U.S.C. § 2255;

3. Social Security cases;

~~4. Foreclosure matters;~~

~~5.~~4. Civil forfeiture matters;

~~6.~~5. IRS summons enforcement actions;

~~7. Bankruptcy proceedings, including appeals and adversary proceedings;~~

~~8.~~6. Land condemnation cases;

~~9.~~7. Default proceedings;

~~10.~~8. Student loan cases;

~~11. VA loan overpayment cases;~~

~~12.~~9. Naturalization proceedings filed as civil actions;

~~13. Cases seeking review of administrative agency action;~~

~~14.~~ 10. Statutory interpleader actions;

~~15.~~11. Truth-in-Lending Act cases not brought as class actions;

~~16. Interstate Commerce Act cases (freight charges, railway freight claims, etc.);~~

~~17. Labor Management Relations Act and ERISA actions seeking recovery for unpaid employee welfare benefit and pension funds;~~

~~18. Civil penalty cases;~~

~~19.~~ 12. Letters rogatory; and

~~20.~~13. Registration of foreign judgments. ~~and~~

~~21 Any other case expressly exempted by Court order.~~

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

1. *Order of Referral.* In every civil case excepting those listed in 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 (60) 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 (15) 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 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 will designate a mediator from the aforementioned list of certified mediators on a blind random basis.

(c) Direct that, at least ten (10) 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 chapter 286, Florida Statutes, 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 (5) 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), whether the mediation was adjourned~~continued with the consent of the parties~~, 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 the filing of a notice of settlement signed by counsel of record within ten (10) 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 ~~conference, including statements made by any party, attorney, or other participant,~~ shall be confidential and are privileged in all respects. The proceedings may not be reported, recorded, placed into evidence, made known to the trial 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.

Language deleted ~~stricken~~	Language added double underlined

H. Forms for Use in Mediation.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____-CIV-[JUDGE / MAGISTRATE]

	:	
	:	~~Civil Action No.~~ _____
	:	
	:	
CAPTION	:	
	:	
	:	
	:	
_____:		

ORDER OF REFERRAL

Trial having been set in this matter for _____, 20 ___, pursuant to Federal Rule of Civil Procedure 16 and Southern District 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 (60) 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 this Court, but may select any other mediator. The parties shall agree upon a mediator within fifteen (15) days from the date hereof. If there is no agreement, lead counsel shall promptly notify the Clerk in writing and the Clerk 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, t~~T~~he 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~~discussions, representations and statements made at~~ the mediation ~~conference~~ shall be confidential and privileged.

6. At least ten (10) days prior to the mediation date, ~~all parties~~ each party shall present to the mediator a confidential brief written summary of the case identifying issues to be resolved. ~~Copies of these summaries shall be served on all other parties~~.

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 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 ~~30~~ forty-five (45) 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 (3)~~two (2)~~ full business days in advance. Failure to do so will result in imposition of a fee for two~~one~~ 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 (10) days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.

10. Within five (5) 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 ~~continued with the consent of the parties~~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

Language deleted ~~stricken~~	Language added <u>double underlined</u>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

<u>Case No. _____-CIV-[JUDGE / MAGISTRATE]</u>

_____	:	
CAPTION	:	~~Civil Action No. _____~~
_____:	:	

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; <u>April 15, 2005</u>.

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 § 286.011, as incorporated into the Florida Government Cooperation Act, Florida Statutes § 164.106, 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 (40) hour Florida Supreme Court Circuit Court mediation training course, a mediator will now also be governed by the Florida Rules for Certified and Court-Appointed Mediators Standards of Professional Conduct, 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 rules, a mediator, pursuant to Rule 10.420(b) *shall* adjourn the mediation under any of five (5) specified circumstances, four (4) 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.

Language deleted ~~stricken~~	Language added double underlined

RULE 26.1 DISCOVERY AND DISCOVERY DOCUMENTS (CIVIL)

* * * * * *

H. Discovery Motions.

* * * * * *

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 to Rules 33, 34, 36, and 37, Fed.R.Civ.P., or to compel compliance with subpoenas for production or inspection pursuant to Rule 45(c)(2)(B), Fed.R.Civ.P., shall quote verbatim each interrogatory, request for admission, or request for production or specifically identify the books, documents, or tangible things to be produced or the premises to be inspected and the response to which objections ~~is~~ are taken followed by (a) the specific objections, (b) the grounds assigned for the objection (if not apparent from the objection), and (c) the reasons assigned as supporting the motion, all of which shall be written in immediate succession to one another. Such objections and grounds shall be addressed to the specific interrogatory, ~~or~~ request, or production or inspection sought via subpoena, and may not be made generally.

Comment

(2003) The amendment to Rule 26.1.G.3 is based on N.D. Okla. Local Rule 26.4(b) and eliminates the requirement to include ~~on~~ 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.

(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 Rule 45(c)(2)(B), Fed.R.Civ.P.

* * * * * *

RULE 88.10 CRIMINAL DISCOVERY

* * * * * *

H. The government shall advise the defendant(s) of its intention to introduce ~~during case in chief proof of evidence,~~ extrinsic act evidence pursuant to Rule 404(b), Federal Rules of Evidence. The government shall provide notice regardless of how it intends to use the extrinsic act evidence at trial, i.e. during its case-in-chief, for impeachment, or for possible rebuttal.

Furthermore, the government shall apprise the defense of the general nature of the evidence of the extrinsic acts.

* * * * * *

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1998; April 15, 2000; April 15, 2003 ~~.~~; April 15, 2005.

* * * * * *

(2005) H amended to conform to 2004 amendment to Standing Discovery Order. *See United States v. Carrasco*, 381 F.3d 1237, 1240 n. 3 (11th Cir. 2004).