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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Administrative Order 94-51
Amends Administrative Order 94-48

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CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

**IN RE AMENDMENTS
TO THE LOCAL RULES**

THIS COURT, having given notice and an opportunity to be heard in accordance with Rule 83, Fed.R.Civ.P., having conducted an en banc hearing, and having considered the comments of the public, the Civil Justice Expense and Delay Reduction Act Advisory Group, and this Court's Advisory Committee on Local Rules and Procedures with regard to proposed amendments to the Local Rules of the Court, has decided to make various changes to its local rules, including opting out of the provisions of Rule 26(a)(1)-(4) and Rule 26(d) of the Federal Rules of Civil Procedure as amended effective December 1, 1993. Therefore, upon consideration of the public comments received and the reports of the Advisory Group and the Advisory Committee, it is hereby

ORDERED that the following Local Rules of this Court are amended and/or adopted in the form attached: Local General Rules 1.1, 5.1, 5.2, 7.3, 16.1, 26.1, 88.2 and 88.9; Local Magistrate Rule 4; and Rule 4.F.2 of the Special Rules Governing the Admission and Practice of Attorneys.

IT IS FURTHER ORDERED that the foregoing Local Rule amendments shall take effect on December 1, 1994, 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 sixty (60) days: (1) to publish a copy of this Order (without the attachments) twice a week in the Daily Business Review; and (2) to provide one copy of this Order (without the attachments) to any person who files any papers in any action in this Court.

IT IS FURTHER ORDERED that the Civil Justice Expense and Delay Reduction Act Advisory Group and this Court's Advisory Committee on Local Rules and Procedures study the impact of the new local rules

and report to the Court no later than September 30, 1995 as to its findings and recommendations.

DONE AND ORDERED in Chambers at the United States District Courthouse, 299 East Broward Boulevard, Fort Lauderdale, Florida, this 12 day of October, 1994.



NORMAN C. ROETTGER
CHIEF UNITED STATES DISTRICT JUDGE

cc: Honorable Gerald B. Tjoflat, Chief Judge, Eleventh Circuit
All Southern District Judges and Magistrate Judges
Norman E. Zoller, Circuit Executive
Keenan G. Casady, Special Assistant
T. G. Cheleotis, Special Assistant

GENERAL RULES

RULE 1.1 SCOPE OF THE RULES

B. Effective Date. These Rules become effective February 1, 1993, provided however, that the 1994 amendments shall take effect on December 1, 1994, and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

...

D. Relationship to Prior Rules. These rules supersede all previous rules promulgated by this Court or any Judge of this court.

Comments

(1994) The following local rules were amended or adopted by Administrative Order 94- SI, In Re Amendments To The Local Rules: Local General 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. All civil and criminal pleadings, motions, and other papers tendered for filing shall:

...

9. Include in the 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 the filing counsel under Admission and Practice Rule 4F.

...

Comments

(1994) The addition of counsel's facsimile phone number in A.9. 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 rule gender neutral.

**RULE 5.2 PROOF OF SERVICE,
SERVICE BY PUBLICATION,
AND SERVICE OF PLEADINGS AND PAPERS
SUBSEQUENT TO ORIGINAL COMPLAINT**

D. Service of pleadings and papers subsequent to original complaint. Service of a pleading or paper subsequent to the original complaint may be made by transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, another copy shall also be served by any other method permitted by Fed.R.Civ.P. 5. Service by facsimile constitutes a method of hand delivery for the purpose of computing the time within which any response is required or allowed. Service by delivery after 5:00 p.m. shall be deemed to have been made on the next business day.

Authority

(1994) D. Rule 1.07(c), Local Rules, Middle District of Florida.

**RULE 7.3 ATTORNEYS
FEES AND COSTS**

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

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

Comments

(1994) The changes are designed to make certain portions of the local rule (but not the time period for filing) consistent with Fed.R.Civ.P. 54(d)(2)(B), as amended effective December 1, 1993, and to correct grammatical or typographical errors which appear in the current rule. Rule 54(d)(2)(B) as amended leaves the disclosure of the fee agreement to the discretion of the Court. This Local Rule directs disclosure in every case.

RULE 16.1 PRETRIAL PROCEDURE IN CIVIL ACTIONS

B. Scheduling Conference and Order. In lieu of compliance with Rule 26(f), Fed.R.Civ.P., within twenty (20) days after the filing of an answer by the last answering defendant, or within sixty (60) days after the filing of a complaint (whichever shall first occur) in all civil actions, except those specifically excluded by subpart 9 of this subsection, counsel for the parties (or the party if proceeding pro se) shall meet in person, by telephone, or by other comparable means, for the following purposes:

K. Exchange Reports of Expert Witnesses. Where expert opinion evidence is to be offered at trial, a resume of oral or written reports of the experts (including lists of expert's qualifications to be offered at trial, publications and writings, style of case and name of court and judge in cases in which the expert has previously testified and the subject of that expert testimony, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion) shall be exchanged by the parties no later than 60 days prior to pretrial conference, or if no pretrial conference, 60 days prior to the call of the calendar, provided, however, that if the expert opinion evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party, then the expert resume for such evidence shall be served no later than 30 days prior to the pretrial conference, or if no pretrial conference, 30 days prior to the call of the calendar. Resumes must disclose the expert opinion and its basis on all subjects on which the witness will be called upon to testify.

Comments

(1994) K. This rule is based in part on the disclosure requirements of Federal Rule 26(a)(2), as amended effective December 1, 1993, and in part on superseded Federal Rule 26(b)(4)(1) concerning expert interrogatories.

RULE 26.1 DISCOVERY AND DISCOVERY DOCUMENTS (CIVIL)

A. Election to opt out of Rules 26(a)(1)-(4) and 26(d), Fed.R.Civ.P. The disclosure requirements imposed by Rule 26(a)(1)-(4), Fed.R.Civ.P., and the early discovery moratorium imposed by Rule 26(d), Fed.R.Civ.P., shall not apply to civil proceedings in this court, except as otherwise ordered by a judge of this court in a particular case or except pursuant to written stipulation of all affected parties, subject to court approval. This Local Rule 26.1.A. does not in any way affect the obligations imposed under Local Rule 16.1 or the limitations on discovery imposed by other parts of Local Rule 26.1.

B. Service and Filing of Discovery Material.

1. Depositions upon written questions,
 2. Responses or objections to depositions upon written questions,
 3. Written interrogatories,
 4. Answers or objections to written interrogatories,
 5. Request for production of documents or to inspect any intangible thing,
 6. Objections to requests for the production of documents or to inspect any tangible thing,
 7. Written requests for admission,
 8. Answers or objections to written requests for admission;
- shall be served upon counsel and parties but shall not be filed with the Court or the Clerk, nor proof of service thereof, unless on order of the Court or for use in the proceeding. The party responsible for service of the discovery material shall retain the original and become the custodian. *The original of all depositions upon oral examination shall be retained by the party taking such depositions.*

C. Discovery Material to Be Filed With Pretrial 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 rules by the party seeking to invoke the Court's relief.

D. Discovery Material to Be Filed at Trial. If depositions, interrogatories, requests for documents, requests for admission, answers or responses are to be used at trial or are necessary to a pretrial or post trial motion, the portions to be used shall be filed with the Clerk 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.

F. Timing of Discovery.

1. When Depositions May Be Taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination.

a. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to expiration of 30 days after service of the summons and complaint upon any defendant or service is made under Rule 4(e), Fed.R.Civ.P., except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) special notice is given as provided in subdivision b. of this rule.

b. Leave of court is not required for the taking of a deposition by the plaintiff if the notice of taking deposition (A) states that the person to be examined is about to go out of the district where the action is pending and more than 100 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and (B) sets forth facts sufficient to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11, Fed.R.Civ.P., are applicable to the certification. If a party shows that when the party was served with the notice under this subdivision b. the party was unable through the exercise of diligence to

obtain counsel to represent the party at the taking of the deposition. the deposition may not be used against the party.

2. When Interrogatories May Be Served Under Rule 33, Fed.R.Civ.P.
Interrogatories under Rule 33, Fed.R.Civ.P., may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party in accordance with the limitations imposed by Local Rule 26.1.G. A defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant.

3. When Requests May Be Served Under Rule 34 and 36, Fed.R.Civ.P.
Requests under Rules 34 and 36, Fed.R.Civ.P., may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. A defendant may serve a response within 45 days after service of the summons and complaint upon that defendant.

G. Interrogatories and Document Requests.

1. The presumptive limitation on the number of interrogatories (25 questions including all discrete subparts) which may be served without leave of court or written stipulation, as prescribed by Rule 33(a), Fed.R.Civ.P., shall not apply to actions in this Court. The limitations on interrogatories are set forth below in this Rule 26.1.G.

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.

3. During discovery, interrogatories other than those seeking information described in paragraph (a) above may only be served if they are a more practical method of obtaining the information sought than a request for production or a deposition.

4. At the conclusion of each party's discovery, and prior to the discovery cut-off date, interrogatories seeking the claims and contentions of the opposing party may be served unless the Court has ordered otherwise.

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

6. (a) Where an objection is made to any interrogatory or sub-part thereof or to any document request under Fed.R.Civ.P. 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 document 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 sub-part 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: (1) the type of document; (2) general subject matter of the document; (3) the date of the document; (4) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate, the author of the document, the addressee of the document, and, where not apparent, the relationship of the author and addressee 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; (3) the general subject matter of the communication.

7. 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.

8. Whenever a party answers any interrogatory by reference to records from which the answer may be derived or ascertained, as permitted in Fed.R.Civ.P. 33(c):

(a) The specification of documents 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 computerized 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 documents 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.

H. 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 Rules 33, 34, 36 and 37, Fed.R.Civ.P., shall quote verbatim each interrogatory, request for admission or request for production and the response to which objections is 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 and may not be made generally.

I. Certificate of Counsel. Prior to filing any discovery motion, counsel for the moving party shall confer with counsel for the opposing party and file with the Clerk at the time of filing the motion, a statement certifying that he has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised and that counsel have been unable to do so. If certain of the issues have been resolved by agreement, the statement shall specify the issues so resolved and the issues remaining unresolved.

J. Reasonable Notice of Taking Depositions. Unless otherwise stipulated by all interested parties, pursuant to Rule 29, Fed.R.Civ.P., and excepting the circumstances governed by Rule 30(a), Fed.R.Civ.P., a party desiring to take the deposition within this State of any person upon oral examination shall give at least five (5) 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 (10) 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 Rule 32(a)(3), Fed.R.Civ.P., no deposition shall be used against a party who, having received less than eleven (11) calendar days' notice of a deposition as computed under Rule 6(a), Fed.R.Civ.P., has promptly upon receiving such notice filed a motion for protective order under Rule 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.

Comments

(1994) A., F., G.1., J. (third paragraph) The amendments are necessary in light of the December 1, 1993 amendment to Fed.R.Civ.P. 26, 32(a)(3), and 33(a).

RULE 88.2 HABEAS CORPUS AND CIVIL RIGHTS

A. The following kinds of petitions and complaints shall be on forms prescribed by the Court and obtained from the Clerk upon request:

1. Petitions for writs of habeas corpus pursuant to 28 U.S.C. §2241 (common law habeas corpus)
2. Petitions for writs of habeas corpus pursuant to 28 U.S.C. §2254 (state prisoner attacking conviction)
3. Motions to Vacate pursuant to U.S.C. §2255 (federal prisoner attacking conviction)
4. Civil rights complaint pursuant to 42 U.S.C. §1983 (Constitutional deprivation under color of state law)
5. Civil rights complaint pursuant to Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) (Constitutional deprivation under color of federal law)

An original and one copy of the petition, motion, or complaint, fully completed, signed and, with respect to those petitions and motions set forth in 1-3 above, verified, together with the filing fee, if any, shall be addressed to the appropriate division of the Clerk's office.

B. When a petition, motion to vacate, or complaint is submitted *in forma pauperis* the petitioner/plaintiff shall complete the *forma pauperis* affidavit attached to the forms and shall, under oath, set forth information which establishes that he or she is unable to pay the fees and costs of the proceedings referenced above.

Authority

(1993) Former Local Rule 18

Comments

(1994) Revised to add Bivens actions, delete implication that federal prisoners can attack prison conditions in a §2241 petition, and requiring verification of certain petitions.

RULE 88.9 MOTIONS IN CRIMINAL CASES

Motions in criminal cases shall be accompanied by a written statement certifying that counsel for the moving party, or the moving party if not represented by counsel, has conferred with opposing counsel or party, as the case may be, in an effort in good faith to resolve by agreement the subject matter of any motion, but has not been able to do so. In addition, the written statement shall specify the information that has been made available to opposing counsel or parties in lieu of filing the motion.

Authority

(1994) Formerly Local Rule 10G; inadvertently omitted in 1993 revision.

RULE 4F OF SPECIAL RULES GOVERNING THE ADMISSION AND PRACTICE OF ATTORNEYS

2. Any full-time U.S. Attorney, Assistant U.S. Attorney, Federal Public Defender and Assistant Federal Public Defender and attorney employed full-time by and representing the United States government, or any agency thereof, and any Attorney General and Assistant Attorney General of the State of Florida may appear and participate in particular

actions or proceedings on behalf of the attorney's employer in the attorney's official capacity without petition for admission. Any attorney so appearing is subject to all rules of this Court.

Comments

(1994) Expands right to practice to additional government lawyers.

MAGISTRATE JUDGE RULES

RULE 4. REVIEW AND APPEAL

(a) Appeal of Non-dispositive Matters; Government Appeal of Bond.

(1) *Appeal of Non-dispositive Matters -- 28 U.S.C. §636(b)(1)(A).* Any party may appeal from a Magistrate Judge's order determining a motion or matter under subsection 1(c) of these rules, supra, within ten (10) days after being served with the Magistrate Judge's order, unless a different time is prescribed by the Magistrate Judge or District Judge. Such party shall file with the Clerk of Court, and serve on all parties, written objections which shall specifically set forth the order, or part thereof, appealed from a concise statement of the alleged error in the Magistrate Judge's ruling, and statutory, rule, or case authority in support of the moving party's position. The District Judge shall consider the appeal and shall set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law. The District Judge may also reconsider sua sponte any matter determined by a Magistrate Judge under this rule.

Comments

(1994) Rule 4(a) now conforms to language of 28 U.S.C. § 636(b)(1)(A) and Federal Rule 72.