

United States District Court
Southern District of Florida

Administrative Order 2002-69

In Re:

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

FILED by W D.C.

DEC - 9 2002

CLARENCE MADDOX
CLERK U.S. DIST. CT.
S. D. OF FLA. - MIAMI

The Court's Ad Hoc Committee on Rules and Procedures has recommended that this Court amend Local General Rules 1.1, 5.1, 5.5, 7.2, 7.7, 26.1, 88.9, and 88.10 in the form attached. In accordance with Fed.R.Civ.P. 83(a)(1) and Fed.R.Crim.P. 57(a)(1), it is hereby

ORDERED that the Clerk of the Court is hereby directed, for the next 30 days: (a) to publish this Order (without the attachments) three times per week in the Daily Business Review (in the editions published in Dade, Broward and Palm Beach Counties, Florida); and (b) to offer every person who files any papers in any action in this Court, and to give to anyone who so desires, a copy of this Order with the attached proposed rule amendments.

IT IS FURTHER ORDERED that the Court will conduct an *en banc* public hearing on the proposed rule amendments on the 21st day of January, 2003, at 2:00 o'clock p.m. at the David W. Dyer Federal Building and United States Courthouse, 300 Northeast First Avenue, Central Courtroom, Miami, Florida. Those who want to appear and offer oral comments on the proposed rule amendments at this hearing shall file written notice to that effect with the Clerk of the Court no later than five days prior to the hearing. Those who want to offer only written comments on the proposed rule amendments must file their written comments with the Clerk of the Court no later than ten days prior to the hearing.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this 9th day of December 2002.


WILLIAM J. ZLOCH
CHIEF UNITED STATES DISTRICT JUDGE

Copies furnished as follows:
See attached mailing list

c: Honorable J. L. Edmondson, Chief Judge, Eleventh Circuit
All Southern District Judges and 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 shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

* * * * *

RULE 5.1 FILING AND COPIES

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

Comments

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

* * * * *

RULE 5.5 ELECTRONIC FILING

Pursuant to Fed.R.Civ.P. 5(e), the Clerk will accept in certain actions documents filed, signed, and/or verified by electronic means. The types of actions in which electronic filing will be permitted, the practices and procedures governing the electronic filing process, and the standards with which electronic filers must comply will be established by Administrative Order. A document filed by electronic means pursuant to this Rule and in compliance with

Court-established standards, processes, and procedures constitutes a written document for the purposes of applying these Rules and the Federal Rules of Civil and Criminal Procedure.

Comments

(2003) Federal Rule of Civil Procedure 5(e) gives the federal courts the authority to permit electronic filing. This Local Rule only authorizes the Clerk to accept electronic filings, leaving the processes, procedures, standards, etc, to be established by subsequent order of the Court. This was done in order to give the Court the flexibility to adapt, refine, and redefine the process as it grows in acceptance. Relevant Administrative Orders will be available on the Court’s Internet site (<http://www.flsd.uscourts.gov>) as they are issued. Upon payment of copying costs, copies also may be obtained at any courthouse or intake counter in the district or by mailing a written request to the following address: E-Filing Administrator, Office of the Clerk, U.S. District Court, 301 North Miami Avenue, Room 150, Miami, Florida 33128.

* * * * *

**RULE 7.2 MOTIONS PENDING ON
REMOVAL OR TRANSFER TO THIS COURT**

When ~~a court transfers or a party removes~~ an action or proceeding ~~is removed or transferred to this Court with and there is a pending motions on motion for~~ which memoranda ~~have not been the moving party has not submitted a memorandum,~~ the moving party shall file and serve a memorandum in support thereof ~~of its motion~~ within ~~five ten~~ days after the filing of the ~~petition for notice of~~ removal or ~~the entry of the~~ order of transfer, ~~or within five days after denial of any motion to remand.~~ Each party shall then comply with the briefing schedule provided in Rule 7.1.C. above.

Comments

(2003) Unifies the time within which a moving party must file a memorandum in support of a motion pending at the time of removal or transfer by eliminating the option of waiting until the Court denies a motion to remand. The moving party now has ten days from the date of the filing of the notice of removal or the entry of an order of transfer within which to file a supporting memorandum, irrespective of any motion to remand.

* * * * *

RULE 7.7 CORRESPONDENCE TO THE COURT

Unless invited or directed by the presiding judge, attorneys and any party represented by an attorney shall not: (a) address or present to the Court in the form of a letter or the like any application requesting relief in any form, citing authorities, or presenting arguments; and (b) shall not furnish the Court with copies of correspondence between or among counsel, or any party represented by an attorney, except when necessary as an exhibit when seeking relief from the Court. Rule 5.1.D. above governs the provision of "courtesy copies" to a judge.

Comments

(2003) Because correspondence between or among counsel may be relevant to a motion before the Court, e.g. compliance with the pre-filing conferences required of counsel, see S.D. Fla. L.R. 7.1.A.3, 26.1.I, copies of such correspondence may be appended as exhibits to motions or memoranda.

* * * * *

RULE 26.1 DISCOVERY AND DISCOVERY DOCUMENTS (CIVIL)

* * * * *

G. Interrogatories and Document Requests.

* * * * *

3. (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

1 (ii) The following information shall be provided in the objection,
2 unless divulgence of such information would cause disclosure of the allegedly
3 privileged information:
4

5 (A) For documents: (1) the type of document; (2) general subject
6 matter of the document; (3) the date of the document; (4) such other
7 information as is sufficient to identify the document for a subpoena
8 duces tecum, including, where appropriate, the author of the document,
9 the addressee of the document, and, where not apparent, the
10 relationship of the author and addressee to each other;

11
12 (B) For oral communications: (1) the name of the person making the
13 communication and the names of persons present while the
14 communication was made and, where not apparent, the relationship of
15 the persons present to the person making the communication; (2) the
16 date and the place of communication; (3) the general subject matter of
17 the communication.
18

19 (c) This rule requires preparation of a privilege log with respect to all
20 documents and oral communications withheld on the basis of a claim of privilege or work
21 product protection except the following: written and oral communications between a party
22 and its counsel after commencement of the action and work product material created after
23 commencement of the action.
24

25 **Comments**

26
27 (2003) The amendment to Rule 26.1.G.3 is based on N.D. Okla. Local Rule 26.4(b)
28 and eliminates the requirement to include on a privilege log (1) communications between a
29 party and its counsel after commencement of the action, and (2) work product material
30 created after commencement of the action.
31

32 * * * * *

33
34 **RULE 88.9 MOTIONS IN CRIMINAL CASES**

35
36 A. Motions in criminal cases are subject to the requirements of, and shall comply
37 with, Local Rule 7.1. with the following exceptions:

38
39 Section 7.1A(3). which is superseded by this Rule.
40

1 Section 7.1B. which pertains to hearings. Hearings on criminal motions may be set by
2 the Court upon appropriate request or as required by the Federal Rules of Criminal Procedure
3 and/or Constitutional Law.

4
5 In addition, motions in criminal cases shall be accompanied by a written statement certifying
6 that counsel for the moving party has conferred with opposing counsel in an effort in good
7 faith to resolve by agreement the subject matter of any motion, but has not been able to do
8 so. Further, the written statement shall specify the information that has been made available
9 to opposing counsel in lieu of filing the motion: at the time of filing motions in criminal
10 cases, counsel for the moving party shall file with the Clerk a statement certifying either: (a)
11 that counsel have conferred in a good faith effort to resolve the issues raised in the motion
12 and have been unable to do so; or (b) that counsel for the moving party has made reasonable
13 effort (which shall be identified with specificity in the statement) to confer with the opposing
14 party but has been unable to do so.

15
16 Comments

17
18 (2003) Subsection A amended for clarification and to harmonize with Rule 7.1.A.3.

19 * * * * *

20
21
22 **RULE 88.10 CRIMINAL DISCOVERY**

23 * * * * *

24
25
26 **B.** The defendant shall permit the government to inspect and copy the following
27 items, or copies thereof, or supply copies thereof, which are within the possession, custody
28 or control of the defendant, the existence of which is known or by the exercise of due
29 diligence may become known to the defendant:

30
31 1. Books, papers, documents, photographs or tangible objects which the defendant
32 intends to introduce as evidence in chief at trial.

33
34 2. Any results or reports of physical or mental examinations and of scientific tests
35 or experiments made in connection with this case which the defendant intends to introduce
36 as evidence in chief at trial, or which were prepared by a defense witness who will testify
37 concerning the contents thereof.

38
39 3. If a defendant intends to rely upon the defense of insanity at the time of the
40 alleged crime, or intends to introduce expert testimony relating to a mental disease, defect
41 or other condition bearing upon the issue of whether he had the mental state required for the

1 ~~offense charged, or defect or other mental condition bearing on guilt or, in a capital case,~~
2 punishment, he shall give written notice thereof to the government.

3
4 Comments

5
6 (2000) With regard to discovery practices related to search warrants in
7 criminal cases see September 7, 1999 letter from the then United States
8 Attorney ~~Thomas E. Scott~~ for the Southern District of Florida which has been
9 posted at the U.S. Attorney's web site at
10 http://www.usdoj.gov/usao/fls/Discovery_Practices.html.

11
12 (2003) B.3 amended to conform to 2002 amendment of
13 Fed.R.Crim.P. 12.2.