

2022 Amendments to the Southern District of Florida Local Rules

December 24, 2022

The local rules for the U.S. District Court for the Southern District of Florida were amended, effective Dec. 1. Lawyers who practice here should be aware of these amendments. They are summarized below.

Deadlines for Raising Discovery Disputes—Revisions to S.D. Fla. L.R. 26.1(g) and S.D. Fla. L.R. 26.1(e)(7)

As lawyers who regularly practice in the Southern District of Florida are aware, for many years there has been a rule which, colloquially summarized, requires discovery disputes to be brought to the court within 30 days. While that is a simple concept, it has been hard to stick to the landing. The rule was amended to provide a series of clarifications to S.D. Fla. L.R. 26.1(g) regarding deadlines and procedures for parties to bring discovery disputes to the court's attention.

First, the language has been added to remind litigants that there may be judge- or case-specific discovery procedures that are in place, which are common in the district. Next, the existing 30-day deadlines to 28 days to conform to current federal practice and other local rules. In addition, there is a new rule—S.D. Fla. L.R. 26.1(e)(7)—which now requires parties to serve a Notice of Completion to apprise other parties when all responsive documents that are not subject to an objection have been produced or made available. The service of that notice would trigger the deadline for objecting to an insufficient production.

Other revisions add objectivity into the computation of the deadlines to raise discovery disputes. These include the elimination of deadlines based upon when a party “should have learned of a purported deficiency,” which have injected excessive subjectivity into the rule and perhaps have resulted in unnecessary uncertainty and motion practice.

As the chair of the subcommittee of the Ad Hoc Committee on Rules and Procedures that proposed these amendments, I can report the intent to this suite of revisions is to bring clarity and objectivity to discovery motion practice while preserving each judge's prerogative to set their own discovery procedures and exercise discretion in connection with any deadline set forth in the rule.

Authorization of Mediation Via Videoconferencing—Revisions to Local Rule 16.2

Following the legal community's widespread embrace of mediation by videoconference during the COVID-19 pandemic, the local rules have been updated to codify the use of video technology in connection with mediation. The new rule and practice can be summarized as follows:

- If the parties agree—and the court has not entered an order precluding it—the parties can agree to conduct mediation by videoconference without a separate court order. This portion of the rule reaches the same result as the new Florida state court rule.
- If the parties are not in agreement—and the court has not entered an order precluding mediation by videoconference—the mediation will be conducted by videoconference, unless the party who wants an in person mediation seeks and obtains a court order requiring in person participation (in whole or part).

Nonetheless, individual judges retain the prerogative to require in person mediation—and the early reports (perhaps anecdotal) are that some of the judges are requiring that.

Expert Witness Disclosures in Criminal Matters—Revisions to Local Rule 88.10(o)

Recent amendments to Rule 16 of the Federal Rules of Criminal Procedure added requirements for detailed expert disclosures but provide that the deadlines for such disclosures must now be set by order or local rule. Accordingly, S.D. Fla. L.R. 88.10(o) has been amended to address the deadlines for those disclosures.

The amendment to S.D. Fla. L.R. 88.10(o) employs a two-tiered system of disclosure. The first would be an initial summary disclosure, which would be followed later by the new, more detailed disclosures required by the Rule 16 amendments. The revisions set forth default deadlines for those more detailed expert disclosures, which are modeled after the deadlines that the Federal Magistrate Judges Association proposed for inclusion in the amended Rule 16.

The revisions to Local Rule 88.10(o) also specify that the court may modify the default deadlines established by the revised local rule. The revised rule further directs a party seeking modification of the deadlines to furnish the specific reasons and underlying factual circumstances warranting such modification.

Pro Hac Vice Motions—Revisions to Rule of Attorney Conduct 4(b)(4)

Finally, the rules have been amended to clarify Rule 4 governing pro hac vice appearances, including by specifying the certification required from applicants and by making reference to the form for such motions that is available on the court's website. Most substantively, the amended rule now permits an attorney appearing pro hac vice in a matter to represent other parties in the same case who were not mentioned in the original pro hac vice motion simply by filing a notice of appearance pursuant to the original pro hac vice admission.

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