

Rule 1.10

MOTIONS - CIVIL AND CRIMINAL¹

(a) **Motions Shall be in Writing.** All motions, unless made during a hearing or trial, shall be in writing and shall be made sufficiently in advance of trial to comply with the time periods set forth in this Rule and to avoid any delays in the trial.

(b) **Memorandum by Moving Party.** Upon any motion, the moving party shall serve and file with the motions papers a memorandum setting forth the points and authorities relied upon in support of the motion.

(c) **Responsive Memorandum.** The opposing party shall, unless otherwise ordered by the Court and except as otherwise provided by Rule 56 of the Federal Rules of Civil Procedure and paragraph (1) of this Rule, have ten (10) days after service in a civil or criminal case within which to serve and file a responsive memorandum.

(d) **Reply Memorandum.** The moving party, unless otherwise ordered by the Court, shall have five (5) days after service of the responsive memorandum to file a reply memorandum if that party so desires.

(e) **Length of Motions and Memoranda.** Unless otherwise permitted by the Court, a motion including its supporting memorandum, and the response including its supporting memorandum, each shall not exceed seventeen (17) pages, exclusive of attachments and any required statement of facts. Unless otherwise permitted by the Court, a reply including its supporting memorandum shall not exceed eleven (11) pages, exclusive of attachments.

(f) **Oral Arguments.**

(1) Dispositive Motions. For motions filed pursuant to Rule 12(b) or Rule 56 of the Federal Rules of Civil Procedure, any party desiring oral argument shall secure a time of hearing from the District Judge or Magistrate Judge assigned to the case and

¹ The time periods prescribed in the Local Rules are to be computed in accordance with Rule 6, Federal Rules of Civil Procedure.

shall file with the motions or responses a separate notice of hearing setting forth the date, time, judge and location for the hearing. The date of the hearing shall be such as to give each party sufficient time to comply with this Rule and to allow the Court at least five (5) additional days prior to such hearing, unless otherwise directed by the Court.

(2) **All Other Motions.** There shall be a presumption of no oral argument on all other motions. Any party desiring oral argument shall request argument by placing "Oral Argument Requested" immediately below the title of such motion. If oral argument is granted, the Court shall cause a minute entry to be issued setting forth the date, time, judge and location for the hearing.

(g) **Telephone Argument and Conferences.** The Court may, in its discretion, order or allow oral argument on any motion or other proceeding by speaker telephone conference call, provided that all conversations of all parties are audible to each participant and the Court. Upon request of any party, such oral argument may be recorded by court reporter or other lawful method under such conditions as the Court shall deem practicable. Counsel shall schedule such calls at a time convenient to all parties and the Court. The Court may direct which party shall pay the cost of the call.

(h) **Submitted Motions.** It is presumed that motions, other than motions filed pursuant to Rule 12(b) or Rule 56 of the Federal Rules of Civil Procedure, will be considered and decided without oral argument, unless otherwise requested and permitted by the Court.

(i) **Briefs or Memoranda of Law; Effect of Non-Compliance.** If a motion does not conform in all substantial respects with the requirements of this Rule, or if the opposing party does not serve and file the required answering memoranda, or if counsel for any party fails to appear at the time and place assigned for oral argument, such non-compliance may be deemed a consent to the denial or granting of the motion and the Court may dispose of the motion summarily.

(j) **Civil Discovery Motions and All Criminal Motions.** No discovery motion filed in a civil case and no motion filed in a criminal case will be considered or decided unless a statement of moving counsel is attached thereto certifying that after personal consultation and sincere efforts to do so, counsel have been unable to satisfactorily resolve the matter. Any civil discovery or criminal motion brought before the Court without prior personal consultation with the other party and a sincere effort to resolve the matter, may result in sanctions.

(k) **Motions to Compel.** When a motion for an order compelling discovery is brought pursuant to Rule 37(a)(2) of the Federal Rules of Civil Procedure, the moving party shall set forth, separately from a memorandum of law, the following in separate, distinct, numbered paragraphs:

- (1) the question propounded, the interrogatory submitted, the designation requested or the inspection requested;
- (2) the answer, designation or response received; and
- (3) the reason(s) why said answer, designation or response is deficient

The foregoing requirement shall not apply where there has been a complete and total failure to respond to a discovery request or set of discovery requests.

(l) **Motions for Summary Judgment.**

(1) Any party filing a motion for summary judgment shall set forth separately from the memorandum of law, and in full, the specific facts on which that party relies in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific portion of the record where the fact may be found (i.e., affidavit, deposition, etc.). Any party opposing a motion for summary judgment must comply with the foregoing in setting forth the specific facts, which the opposing party asserts, including those facts which establish a genuine issue of material fact precluding summary judgment in favor of the moving party. In the alternative, the movant and the party opposing the motion shall jointly file a stipulation signed by the parties setting forth a

statement of the stipulated facts if the parties agree there is no genuine issue of any material fact. As to any stipulated facts, the parties so stipulating may state that their stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.

(2) Notwithstanding the provisions of paragraphs (c), (d), and (f) above, the opposing party shall, unless otherwise ordered by the Court, have thirty (30) days after service within which to serve and file a responsive memorandum in opposition; the moving party, unless otherwise ordered by the Court, shall have fifteen (15) days after service of the responsive memorandum to file a reply memorandum. If oral argument is scheduled pursuant to paragraph (f) above, the time of hearing shall be set so as to give each party sufficient time to comply with these Rules and to allow the Court at least ten (10) days additional time prior to the hearing.

(m) **Motions to Dismiss for Lack of Jurisdiction.** The time schedule for response, reply, and oral argument for motions to dismiss for lack of jurisdiction shall be the same as for motions for summary judgment, as set forth in subparagraph (1)(2) above.

(n) **Motions/Requests for Extension of Time.**

(1) The time prescribed for the doing of any act may be enlarged by the Court. Such order must be made before the expiration of the time prescribed, except by motion where the failure to act was the result of excusable neglect. It shall be the duty of the party moving for an extension of time, whether by motion or stipulation, to disclose the existence of all previous extensions which have been granted concerning the matter for which an extension is sought. Immediately below the title of such motion or stipulation, there shall also be included a statement indicating whether it is the first, second, third, etc. requested extension, i.e.: "STIPULATION FOR EXTENSION OF TIME TO ANSWER (Second Request)."

(2) Except in all civil actions in which a party is an unrepresented prisoner, it is the duty of the moving party to state the position of each other party in all motions for extension of

time. If the moving party's efforts to determine the position of any other party are unsuccessful, a statement to that effect must be included in the motion.

(o) **Pending Motions Notification.** Whenever any motion or other matter has been taken under advisement by a District Judge or Magistrate Judge for more than one hundred and eighty (180) days, the attorneys of record in the case shall inquire of the Court, in writing, as to the status of the matter, and shall do so every fourteen (14) days thereafter until the submitted matter has been decided.

(p) **Motions for Reconsideration.** Motions for Reconsideration. No response to a motion for reconsideration or clarification and no reply to the response shall be filed unless ordered by the Court.

(q) **Motions for Leave to Amend.**

(1) Form; Attachments. A party who moves for leave to amend a pleading must attach a copy of the proposed amended pleading as an exhibit to the motion.

(2) Lodging of Original Proposed Amendments. A party who moves for leave to amend a pleading, or who otherwise seeks to amend a pleading by leave of court including by stipulation and order, must lodge with the Clerk of Court an original of the proposed amended pleading. The original must not be physically attached or made an exhibit to a motion to amend, a stipulation to amend, or any other pleading and must contain the original signature of the attorney or unrepresented party proposing the amendment. The amended pleading is not to incorporate by reference any part of the preceding pleading, including exhibits.

(3) Effective Date of Filing Amendments; Service. The entry of the order granting leave to amend the pleading constitutes the filing date of the amended pleading and the Clerk of Court shall file the lodged pleading once the order is entered. The filing date of the amended pleading always constitutes the act from which the time for service begins to run. Unless otherwise ordered

by the Court, or when the amendment adds a new party, the party who amended shall serve the amended pleading within ten (10) days of the filing date of such pleading and file a certificate of service.