

RECENT AMENDMENTS TO THE RULES OF PRACTICE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

By Tish L. Berard

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By Tish L. Berard¹

Introduction

The United States District Court for the District of Arizona has amended its Rules of Practice (hereinafter "Local Rules") effective September 15, 1999.² This constitutes the first amendment to the Local Rules in over five years. Although the General Order adopting the amended Local Rules indicates that the revised Local Rules apply to cases filed on or after September 15, 1999, it also reserves the right to the courts to apply the amendments to pending cases "to the extent it is practical and fair."³ Therefore, familiarity with these amendments is a must for every member of the Federal Bar.⁴

While some of the changes to the Local Rules were merely cosmetic, e.g., the addition of sub-headings to certain rules, there are a number of substantive changes that will affect the everyday civil practice of the federal court litigator.⁵ The purpose of this article is to identify and summarize substantive changes that will likely impact the routine practice of attorneys in the federal courts within the District of Arizona.

Amendments Of General Applicability

Assignment Of Cases To Divisions Within The District

Although the Local Rules pertaining to the assignment of cases to the various Divisions with the District of Arizona remain largely intact, Local Rule 1.1 has been

amended to address situations in which more than one Division may be implicated. If the case arises in more than one county, for example, the plaintiff may elect any of the appropriate divisions.⁶ Subject to the Court's discretion, a case shall be tried in the Division wherein it arose.⁷ Cases arising on the Tohono O'Odham Indian Reservation shall be tried in Tucson, and cases arising on the San Carlos Indian Reservation shall be tried in Phoenix.⁸

Assignment Of Magistrates

General Order 98-62, pertaining to Magistrate Judges, has been formally incorporated into the Local Rules. Under revised Local Rule 1.2, Magistrate Judges are included in the automated random selection process when a civil case is filed.⁹ The "opt out" provisions for electing not to have a Magistrate Judge preside over their case also has been formally added.¹⁰ A Magistrate Judge will not, however, be assigned in the event a motion for preliminary injunctive relief is filed with the complaint.¹¹

Form of Documents To Be Filed With The Court

A number of changes also have been made to the Local Rules as they relate to the form of documents that are filed with the Court. The pleadings and papers must be double-spaced (whereas formerly papers could be typed with a space-and-a-half) and shall not exceed 28 lines per page with font size no smaller than 13 point (formerly 11 point).¹² The left margin cannot be less than 1.5 inches and the right margin cannot be less than 0.5 inches.¹³ All parties named in the case caption shall be separated by semicolons on any document that adds, deletes or modifies the

named litigants, and proper capitalization and spacing to denote the correct spelling of party names must be used.¹⁴

In addition, the page limitation for motions, responses and replies have been expanded, although scarcely so. Motions and responses must be no longer than seventeen pages (an addition of two pages) exclusive of attachments and any required statement of facts and replies must not exceed eleven pages (an addition of one page), exclusive of attachments.¹⁵

Filing Of Papers With The Court

Local Rule 1.1 as amended now requires documents to be filed in the Division where the case is assigned. For example, if a case is assigned to the Phoenix division, documents cannot be filed with the Clerk of the Court located in Tucson.¹⁶ As to automatic disclosures made pursuant to Rule 26(a)(1)-(3) of the Federal Rules of Civil Procedure, they shall no longer be filed with the Court, but a Notice of Service shall be filed.¹⁷

Former General Order 216, which required the filing of a detailed statement in cases that contain claims¹⁸ filed pursuant to the Racketeer Influenced & Corrupt Organizations Act (“RICO”), has been incorporated into the Local Rules.

Amendments Relating To Bar Admission And Admission Pro Hac Vice

The Local Rules as they relate to the admission of attorneys to the Bar of the District Court also have been amended. As for general admission, an attorney must be an active member, in good standing, of the State Bar of Arizona in order to practice before the District Court.¹⁹ Under the former rules, admission to the State

Bar of Arizona was not required as long as an attorney was admitted in any Federal Court and did not reside in or maintain a law office in the State of Arizona.²⁰

Because attorneys are now required to be a member of the State Bar of Arizona prior to general admission to practice before the District Court, provisions for admission pro hac vice have been added for out-of-state²¹ attorneys.²² Attorneys seeking pro hac vice admission must be admitted to practice in another U.S. District Court and must be retained to appear in the District of Arizona.²³ An out-of-state attorney is not eligible for admission pro hac vice, however, if that attorney resides in Arizona, is regularly employed in Arizona or is regularly engaged in the practice of law in Arizona.²⁴ Also, a provision for the limited admission of tribal attorneys has been added.²⁵ The fee for admission to the Bar of the District Court has been increased from fifty dollars (\$50) to eighty dollars (\$80).²⁶

New Sanctions Provision

Perhaps the most significant change to Rule 1.5 is the addition of provisions related to the imposition of sanctions for noncompliance with the Local Rules or for failure to appear.²⁷ These sanctions are similar to those provided by Rule 11 of the Federal Rules of Civil Procedure. A party, however, may not apply for the imposition of these sanctions.²⁸ Only the Court, upon its own initiative, may impose sanctions under this provision.²⁹ However, in the event the Court determines disbarment, discipline or revocation of appointment³⁰ should be imposed, the Court must hold a hearing “as the Court may in each particular instance direct” prior to any such action.³¹

Amendments To The Rules Pertaining To Civil Proceedings

Form Interrogatories

One of the most noticeable amendments to the Local Rules is the deletion of the Uniform Interrogatories.³² It is uncertain whether this deletion was due to judicial disfavor with uniform interrogatories, non-use by practitioners, or simply streamlining of the Local Rules. Regardless of the reason, any forms utilized by practitioners that refer to or incorporate the Uniform Interrogatories should be modified to incorporate this amendment.

Transfers To Magistrate Judges

Although Magistrate Judges have now been included in the automated random selection process for the initial assignment of cases, parties that are before a District Court Judge may consent to have their proceeding transferred to a Magistrate Judge. Upon the filing of a complaint, the Clerk of the Court is to provide the plaintiff with a consent form³³ entitled "Consent to Exercise of Jurisdiction by a United States Magistrate Judge, formerly entitled "Notice of Right to Consent to Disposition of Civil Case by a Magistrate Judge."³⁴ After the consent form is filed with the Clerk of the Court, the District Judge is to determine whether the case should be reassigned, and if so, shall issue an order of reassignment, unless the matter has already been assigned to a Magistrate Judge.³⁵

Arbitration

The rules relating to arbitration also have been revised. Previously, any matter in which a party sought only monetary damages in an amount not in excess

of \$100,000, exclusive of interest and costs, was automatically referred to arbitration.³⁶ That amount has now been amended to \$150,000, exclusive of interest and costs.³⁷ In addition, any matter in which motions to dismiss, motions for judgment on the pleadings, motions to join parties or motions for summary judgment were filed "during a time period specified by the district court" shall not be referred to arbitration until such motions have been heard by the District Court Judge.³⁸

Previously, arbitration hearings had to commence within the time period prescribed in 28 U.S.C. §653(b). Arbitration hearings must now be within the time specified by the District Court, "but in no event later than 180 days after the filing of an answer" unless motions³⁹ have been filed.⁴⁰ Unless the parties consent, the arbitration hearing will not occur until thirty days after the disposition by the District Court of those motions.⁴¹ These periods can be modified by the Court for good cause shown.⁴²

The Local Rules no longer allow the contents of any arbitration award to be known to the judge presiding over the trial or ruling on potentially case dispositive motions for purposes of determining whether to assess costs or attorney fees.⁴³ In addition, former Rule 2.11(k)(5), which provided for the assessment of costs and fees in the event the judgment reached in a trial *de novo* was not substantially more favorable than the arbitrator's award, has been deleted.

Miscellaneous

Freedom of Information Act actions, Office of Navajo and Hopi Indian Relocation actions and Summons and Subpoena Enforcement actions have been added as cases which will be assigned to the Expedited Track in the District Court's Differentiated Case Management system.⁴⁴ And finally, a party must file with its Notice of Removal all pleadings filed with the state court, and must prepare a supplemental civil cover sheet for cases removed from another jurisdiction.⁴⁵

Summation

The foregoing amendments, in addition to those amendments not specifically addressed,⁴⁶ should be incorporated into every federal litigator's practice. However, only through feedback from members of the Federal Bar can the efficacy of these amendments be assessed. Attorneys seeking to propose additions to, deletions from, or modifications of the Local Rules are referred to the amended provisions of Local Rule 1.18, which provide for the rules committees of the Phoenix/Tucson Chapters of the Federal Bar Association and the State Bar of Arizona to provide comments and recommendations to the District Court.⁴⁷

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² General Order 99-15, dated September 10, 1999.

³ Id.

⁴ A copy of the Local Rules, as amended, is available through the District Court's website, www.azd.uscourts.gov.

⁵ Although there have also been changes to the Local Rules which relate to federal criminal proceedings and prisoner proceedings, for purposes of this article, those changes have not been addressed.

⁶ As provided in Rule 1.1, the District of Arizona is divided into three unofficial divisions, each comprised of several counties.

⁷ Rule 1.1(c).

⁸ Id.

⁹ Rule 1.2(e).

¹⁰ Id.
¹¹ Id.
¹² Compare Former Rule 1.9(c)(1) with Rule 1.9(c)(1).
¹³ Rule 1.9(c)(1).
¹⁴ Rule 1.9(a)(3), as amended by General Order 00-01, dated January 8, 2000.
¹⁵ Rule 1.10(e).
¹⁶ Rule 1.1(a).
¹⁷ Rule 1.2(a)(2).
¹⁸ “Claims” include cross-claims and counterclaims. Rule 1.2(i).
¹⁹ Rule 1.5(a).
²⁰ Former Rule 1.5(a).
²¹ Of course, if an out-of-state attorney is admitted to the State Bar of Arizona, that attorney could be admitted to the Bar of the District Court under the regular rule of admission contained in Rule 1.5(a).
²² Rule 1.5(b)(3).
²³ Id.
²⁴ Id.
²⁵ Rule 1.5(b)(2).
²⁶ Id.
²⁷ Rule 1.5(f).
²⁸ Rule 1.5(f)(4).
²⁹ Id.
³⁰ This appointment refers to admission pro hac vice as provided in Rule 1.5(b)(3).
³¹ Rule 1.6(a).
³² Former Rule 2.5(b) has been omitted pertaining to Uniform Interrogatories, as has Former Appendix A, which provided the substance of the Uniform Interrogatories.
³³ Prior to the amendments, the Clerk of the Court was to provide a plaintiff with a consent form, as well as an order of reference. However, the amendments no longer require the Clerk of the Court to provide an order of reference to the plaintiff. Rule 2.10(a).
³⁴ Id.
³⁵ Rule 2.10(b).
³⁶ Former Rule 2.11(b).
³⁷ Rule 2.11(b).
³⁸ Rule 2.11(c).
³⁹ These motions are those listed in Rule 2.11(c).
⁴⁰ Rule 2.11(i).
⁴¹ Id.
⁴² Id.
⁴³ Former Rule 2.11(j)(5)(C) which allowed for the unsealing of an arbitration award for purposes of determining whether to assess costs or attorney fees under 28 U.S.C. §655 has been omitted.
⁴⁴ Rule 2.12(b)(1)(A)(i).
⁴⁵ Rule 2.23.
⁴⁶ Amendments not addressed (listed numerically): Rule 1.2(c) and (d) (new); Rule 1.4(b) and (g) (new); Rule 1.12(d); Rule 1.13(g); Rule 1.14(d); Rule 1.15 (omission of former subparts (a), (b) and (e)); Rule 1.16(c) and (d); Rule 1.17(d)(9) and (10) (omitted); Rule 1.17 (d)(19), (29) and (34); Rule 1.19(c); Rule 2.2(a); Rule 2.10(c); Rule 2.11(a), (f) and (j)(4); Rule 3.1 (new); Rule 3.2; Rule 4.8(e)(2), (4), and (5); Rule 4.16(a) and (e); Rule 4.17; Appendix D (omitted).
⁴⁷ Rule 1.18(a).