

FILED
Feb 15, 2013
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

IN RE:)
)
ADOPTION OF AMENDED LOCAL)
RULES 230 (Fed. R. Civ. P. 78), 403)
(Fed. R. Crim. P. 5), 460 (Fed. R. Crim.)
P. 32) AND 461 (Fed. R. Crim. P. 32))
_____)

GENERAL ORDER NO. 533

IT IS HEREBY ORDERED that the Judges of the Eastern District of California, after the notice and comment period provided by 28 U.S.C. §2071(b), adopt the attached Amended Local Rule 230 (Fed. R. Civ. P. 78) Civil Motion Calendar and Procedure, Amended Local Rule 403 (Fed. R. Crim. P. 5) Court Interpreter Services in Criminal Actions, Amended Local Rule 460 (Fed. R. Crim. P. 32, 18 U.S.C. §3152(c)) Disclosure of Presentence Reports, Pretrial Services Reports and Related Records and Amended Local Rule 461 (Fed. R. Crim. P. 32, 18 U.S.C. §3152(c)) Disclosure of Other Probation or Pretrial Services Records. These amended local rules shall take effect upon the filing of this general order.

DATED: February 15, 2013

FOR THE COURT:



MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT JUDGE

RULE 230 (Fed. R. Civ. P. 78)

CIVIL MOTION CALENDAR AND PROCEDURE

(a) Motion Calendar. Each Judge or Magistrate Judge maintains an individual motion calendar. Information as to the times and dates for each motion calendar may be obtained from the Clerk or the courtroom deputy clerk for the assigned Judge or Magistrate Judge.

(b) Notice, Motion, Brief and Evidence. Except as otherwise provided in these Rules or as ordered or allowed by the Court, all motions shall be noticed on the motion calendar of the assigned Judge or Magistrate Judge. The moving party shall file a notice of motion, motion, accompanying briefs, affidavits, if appropriate, and copies of all documentary evidence that the moving party intends to submit in support of the motion. The matter shall be set for hearing on the motion calendar of the Judge or Magistrate Judge to whom the action has been assigned or before whom the motion is to be heard not less than twenty-eight (28) days after service and filing of the motion. . Motions defectively noticed shall be filed, but not set for hearing; the Clerk shall immediately notify the moving party of the defective notice and of the next available dates and times for proper notice, and the moving party shall file and serve a new notice of motion setting forth a proper time and date. See L.R. 135.

(c) Opposition and Non-Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be filed and served not less than fourteen (14) days preceding the noticed (or continued) hearing date. A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect, specifically designating the motion in question. No party will be entitled to be heard in opposition to a motion at oral arguments if opposition to the motion has not been timely filed by that party. See L.R. 135. .

(d) Reply. Not less than seven (7) days preceding the date of hearing, the moving party may serve and file a reply to any opposition filed by a responding party.

(e) Related or Counter-Motions. Any counter-motion or other motion that a party may desire to make that is related to the general subject matter of the original motion shall be served and filed in the manner and on the date prescribed for the filing of opposition. If a counter-motion or other related motion is filed, the Court may continue the hearing on the original and all related motions so as to give all parties reasonable opportunity to serve and file oppositions and replies to all pending motions.

(f) Continuances. Requests for continuances of hearings on the motion calendar, upon stipulation or otherwise, shall be made to the Judge or Magistrate Judge on whose calendar the matter is set, at least seven (7) days before the scheduled hearing date. All stipulations for continuance shall be submitted for approval to the Court. See L.R. 143, 144.

(g) Hearing and Oral Argument. Upon the call of the motion, the Court will hear appropriate and reasonable oral argument. Alternatively, the motion may be submitted upon the record and briefs on file if the parties stipulate thereto, or if the Court so orders, subject to the power of the Court to reopen the matter for further briefs or oral arguments or both. Any party that believes that extended oral argument, more than 10 minutes per side or 20 minutes in the aggregate, will be required shall notify the courtroom deputy clerk so that the hearing may be rescheduled if deemed appropriate by the Court.

(h) Use of Affidavits. Factual contentions involved in pretrial motions shall be initially presented and heard upon affidavits, except that the Court may in its discretion require or allow oral examination of witnesses. See L.R. 142.

(i) Failure to Appear. Absent notice of intent to submit the matter on the briefs, failure to appear may be deemed withdrawal of the motion or of opposition to the motion, in the discretion of the Court, or may result in the imposition of sanctions.

(j) Applications for Reconsideration. Whenever any motion has been granted or denied in whole or in part, and a subsequent motion for reconsideration is made upon the same or any alleged different set of facts, counsel shall present to the Judge or Magistrate Judge to whom such subsequent motion is made an affidavit or brief, as appropriate, setting forth the material facts and circumstances surrounding each motion for which reconsideration is sought, including:

(1) when and to what Judge or Magistrate Judge the prior motion was made;

(2) what ruling, decision, or order was made thereon;

(3) what new or different facts or circumstances are claimed to exist which did not exist or were not shown upon such prior motion, or what other grounds exist for the motion; and

(4) why the facts or circumstances were not shown at the time of the prior motion.

(k) Motions Before a Magistrate Judge. Only those motions in matters specified in L.R. 302 and 303 shall be noticed, briefed, and argued before a Magistrate Judge. All other motions shall be noticed, briefed and argued before a Judge.

(l) Motions in Prisoner Actions. All motions, except motions to dismiss for lack of prosecution, filed in actions wherein one party is incarcerated and proceeding in propria persona, shall be submitted upon the record without oral argument unless otherwise ordered by the Court. Such motions need not be noticed on the motion calendar. Opposition, if any, to the granting of the motion shall be served and filed by the responding party not more than twenty-one (21) days after the date of service of the motion. A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect, specifically designating the motion in question. Failure of the responding party to file an opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion and may result in the imposition of sanctions. The moving party may, not more than seven (7) days after the opposition **has been filed in CM/ECF**, serve and file a reply to the opposition. All such motions will be deemed submitted **when the time to reply has expired**.

RULE 403 (Fed. R. Crim. P. 5)

COURT INTERPRETER SERVICES IN CRIMINAL ACTIONS

(a) Courtroom Proceedings. Regardless of the presence of a private interpreter, only official, judicially-designated interpreters may interpret official courtroom proceedings in criminal actions, except as provided in 28 U.S.C. § 1827(f)(1).

(b) Notice of Need for Interpreter Services. Defense counsel in criminal actions shall promptly determine whether they will need interpreter services for any defendants or defense witnesses at future court proceedings and shall timely notify the court staff interpreter, and/or the courtroom deputy clerk for the Judge or Magistrate Judge assigned to hear the action, that an interpreter is needed. It may take up to one week to arrange for interpreter services in languages other than Spanish, and three court days for Spanish interpreter services. Notification of the need for interpreter services should include identification of the language required, any dialect, and any additional information that could assist the court staff interpreter. If a scheduled court proceeding is canceled or rescheduled, counsel shall promptly notify the staff interpreter and/or courtroom deputy to cancel or reschedule any accompanying interpreter arrangements. As to interpreters for Government witnesses, see 28 U.S.C. § 1827.

(c) Staff Interpreter. Pursuant to 28 U.S.C. § 1827(c), the Court employs a staff interpreter in both Sacramento and Fresno, who is responsible for securing the services of qualified interpreters. The staff interpreter can be reached through the Clerk.

(d) Sanctions. Unjustified failure to notify the staff court interpreters of the need for an interpreter or of a cancelled or rescheduled hearing may result in sanctions, including an order directing counsel for the party, or counsel calling a witness, requiring the interpreter to pay the cost of interpreter services.

RULE 460 (Fed. R. Crim.P. 32, 18 U.S.C. § 3153(c))

**DISCLOSURE OF PRESENTENCE REPORTS,
PRETRIAL SERVICES REPORTS AND RELATED RECORDS**

(a) Confidential Character of Presentence Reports, Pretrial Services Reports, and Related Records. The presentence reports, pretrial services reports, violation reports, and related documents are confidential records of the United States District Court. Unless further disclosure is expressly authorized by order of the Court or this rule, such records shall be disclosed only to the Court, court personnel, the defendant, the defendant's counsel, the defense investigator, if any, and the United States Attorney's Office in connection with the sentencing, detention/release, or violation hearing.

(b) Requests for Disclosure. Any applicant seeking an order authorizing further disclosure of a presentence report or pretrial services report maintained by the probation or pretrial services offices shall file a written petition to the Court establishing with particularity the need for specific information in the records. Requests for disclosure made to probation or pretrial services officers are improper. Except as provided in (c) below, no further disclosure shall be made except upon an order issued by the Court.

(c) Exceptions. Nothing in this rule is intended to prohibit probation or pretrial services from disclosing records without court order as is authorized by statute, regulation, or formalized national policy.

(d) Availability of Proposed Presentence Report. A copy of the probation officer's proposed presentence report, including the probation officer's recommendations, shall be made available to the United States Attorney's Office and to defense counsel not less than thirty-five (35) days before the date set for sentencing hearing.

(e) Objections to the Report. Defense counsel shall discuss the presentence report with the defendant. Not less than twenty-one (21) days before the date set for the sentencing hearing, counsel for defendant and the Government shall each deliver to the probation officer and exchange with each other a written statement of all objections they have to statements of material fact, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the presentence report. These objections are not and shall not become part of the Court file. After receipt of the objections, the probation officer shall conduct any further investigation and make any necessary revisions to the presentence report.

(f) Submission to the Court. Not less than fourteen (14) days before the date set for the sentencing hearing, the probation officer shall submit the presentence report, including recommendations, to the sentencing Judge and make it available to counsel for the defendant and the Government. If the presentence report has not been revised, counsel may be so notified and not given a new report.

(g) Formal Objections to Report. Not less than seven (7) days before the sentencing hearing, counsel for the defendant and the Government shall each file and serve on each other and the probation officer, a concise memorandum of all objections and facts in dispute to be resolved by the Court. This memorandum must specifically identify each item in the report which is challenged as inaccurate or untrue, must set forth the remedy sought (i.e., specified findings or the Court's agreement to disregard the disputed information), and must set forth the reason that the contested information will affect the sentencing guideline, departure or adjustment in the particular action. This requirement is not satisfied by submission of the written objections to the probation officer as set forth in (d).

(h) Limitation on Objections. Except for good cause shown, no objections may be made to the presentence report other than those previously submitted to the probation officer pursuant to (d) and those relating to information contained in the presentence report that was not contained in the proposed presentence report.

(i) Resolution of Disputes. Except with regard to objections not yet resolved, the Court may accept the presentence report as accurate. In resolving any disputes concerning the report, the Court may consider any relevant information having sufficient indicia of reliability.

(j) Sentencing Proceedings. At the time set for imposition of sentence, if there are no material items in dispute, the Court may proceed with the imposition of sentence. If any material dispute remains with respect to the presentence report, the Court shall afford the parties adequate opportunity to present arguments and information on the matter. If the Court determines that the matter cannot be resolved without an evidentiary hearing, the action may be continued for a reasonable period if necessary to enable the parties to secure the attendance of witnesses and the production of documents at the hearing.

RULE 461 (Fed. R. Crim.P. 32, 18 U.S.C. § 3153(c))

DISCLOSURE OF OTHER PROBATION OR PRETRIAL SERVICES RECORDS

(a) Confidential Character of Probation or Pretrial Services Records. Probation or pretrial services records, maintained by the probation and pretrial services offices, are confidential records of the United States District Court. Such records shall be disclosed only to the Court, unless further disclosure is authorized by order of the Court or this rule.

(b) Requests for Disclosure. Any applicant seeking an order authorizing further disclosure of confidential records maintained by the probation or pretrial services offices shall file a written petition to the Court establishing with particularity the need for specific information in the records. Requests for disclosure made to probation or pretrial services officers are improper. Except as provided in (c) below, no disclosure shall be made except upon an order issued by the Court.

(c) Exceptions. Nothing in this rule is intended to prohibit probation or pretrial services from disclosing records without court order as is authorized by statute, regulation, or formalized national policy.