

GENERAL ORDER NO. 39

RELATIONSHIP BETWEEN AMENDED FEDERAL RULES OF CIVIL PROCEDURE AND LOCAL RULES/GENERAL ORDER 34

I. PURPOSE

The purpose of this General Order is to clarify the relationship between the amendments to the Federal Rules of Civil Procedure that are effective on December 1, 1993, on the one hand, and, on the other, this Court's local rules and its General Order No. 34, which was adopted to meet in part this Court's obligations as a Demonstration District under the Civil Justice Reform Act of 1990.

Several of the amended Federal Rules give individual district courts discretion to adopt provisions that differ from the otherwise applicable national rules. That discretion is consistent with the mandates of the Civil Justice Reform Act, which requires this court to "experiment with various methods of reducing cost and delay in civil litigation . . ." 28 U.S.C. § 471 Note, sec. 104(a)(2).

It is in this setting that this Court is experimenting with procedural rules (some in the form of local rules and some in its Case Management Pilot Program under General Order No. 34) that differ in some respects from pertinent provisions in the Federal Rules of Civil Procedure. Drawing on experience under General Order No. 34 and this Court's local rules, and on experiences in other courts under the Civil Justice Reform Act, this Court will conduct a systematic review and reconsideration of all its local rules and general orders with the purpose of promulgating in due course one body of consistent, readily ascertainable procedural requirements that complement the Federal Rules of Civil Procedure. Until that process is completed, this General Order shall be controlling.

II. ADOPTION OF FEDERAL RULES OF CIVIL PROCEDURE, AS AMENDED

Except as otherwise specifically provided in this General Order or in General Order No. 34, all civil cases filed on or after December 1, 1993, and, insofar as practicable, all proceedings in civil cases then pending, shall be governed by the Federal Rules of Civil Procedure, as amended.

III. EFFECT OF AMENDED FEDERAL RULES OF CIVIL PROCEDURE ON GENERAL ORDER NO. 34

A. In cases governed by General Order No. 34, its provisions shall supersede any apparently conflicting or overlapping provisions of the Federal Rules of Civil Procedure, as amended.

B. Notwithstanding Rule 26(a)(4) of the amended Federal Rules of Civil Procedure, disclosures made pursuant to the Federal Rules or to General Order No. 34 shall not be filed with the Court.

IV. EFFECT OF AMENDED FEDERAL RULES OF CIVIL PROCEDURE ON LOCAL RULES

A. Rule 26(a)(3), Federal Rules of Civil Procedure, shall not apply to cases filed in this Court. Instead, parties shall comply with Local Rules 235-7, 235-8, 235-9, except to the extent those provisions are modified or extended by any standing or case specific orders that are issued by the judge to whom the case is assigned.

B. The following provisions of the Federal Rules of Civil Procedure, as amended, shall **not apply** to cases in the categories listed in Appendix A:

1. Rule 16(b), requiring an initial scheduling and planning order and fixing the deadline by which the order must issue;
2. Rule 26(a)(1) and 26(a)(2), requiring disclosures of certain kinds of information in specified time frames, absent contrary stipulations or court orders;
3. Rule 26(d)'s presumptive stay of discovery until completion of the meet and confer required by Rule 26(f). The remainder of Rule 26(d) shall apply to all cases filed in this court; and
4. Rule 26(f), requiring parties to meet and confer and to develop a discovery plan before the initial scheduling and planning order is to be issued by the court.

C. Except as otherwise ordered, the following provisions of the Federal Rules of Civil Procedure, as amended, shall **not apply** to any proceedings before the United States **Bankruptcy Court** for the Northern District of California:

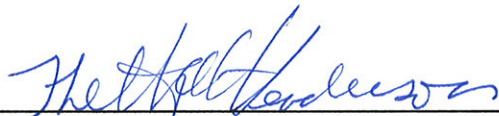
1. That portion of Rule 16(b) that fixes a deadline for entry of a scheduling order;
2. Rule 26(a)(1)-(4);
3. Rule 26(d)'s presumptive stay of discovery until completion of the meet and confer required by Rule 26(f);
4. Rule 26(f);
5. Rule 30(a)(2)(C);
6. Rule 31(a)(2)(C); and
7. Those portions of Rules 32(a), 33(a), 34(b), and 36(a) that incorporate the requirements of Rule 26(d).

V. EFFECT OF THIS GENERAL ORDER ON STANDING ORDERS OF INDIVIDUAL JUDICIAL OFFICERS

Nothing in this Order shall be construed to limit the power of judicial officers of this Court to order parties to follow particular procedures in a case pending before that judicial officer.

ADOPTED: December 1, 1993

FOR THE COURT



CHIEF JUDGE

APPENDIX A TO GENERAL ORDER NO. 39

(The numbers in parentheses refer to the Nature of Suit numbers on the Civil Cover Sheet.)

1. Bankruptcy appeals and withdrawals (Nos. 422 and 423)
2. Freedom of Information Act (No. 895)
3. In Forma Pauperis actions
4. Prisoner actions to vacate sentence, for habeas corpus, or for mandamus (Nos. 510 - 550)
5. Recovery of Defaulted Student Loans (No. 152)
6. Recovery of Overpayment and Enforcement of Judgment (No. 150)
7. Recovery of Overpayment of Veteran's Benefits (No. 153)
8. Reviews of Actions by Social Security Administration (Nos. 861-865)