

## WordPerfect Document Compare Summary

Original document: H:\AJP Court Forms\Local Civil Rule 33 w Committee Note ORIGINAL.wpd

Revised document: H:\AJP Court Forms\Local Civil Rule 33 w Committee Note REVISED.wpd

Deletions are shown with the following attributes and color:

~~Strikeout~~, **Blue** RGB(0,0,255).

Deleted text is shown as full text.

Insertions are shown with the following attributes and color:

Double Underline, Redline, **Red** RGB(255,0,0).

The document was marked with 20 Deletions, 20 Insertions, 0 Moves.

### Local Civil Rule 33.2. Standard Discovery in Prisoner Pro Se Actions

(a) This rule shall apply in any action commenced pro se in which the plaintiff's complaint includes any claim described in paragraph (b) of this rule ~~and in which any named defendant, including one or more current or former employees of New York State or New York City, is represented by the Office of the Attorney General or the Office of the Corporation Counsel and is sued in matters arising out of,~~ in which the events alleged ~~to have~~ in the complaint occurred while the plaintiff was in the custody of ~~either the Department of Corrections of the City of New York or the New York State Department of Correctional Services.~~ Such defendants shall, except as otherwise set forth herein, Corrections & Community Supervision, the Department of Correction of the City of New York, or any other jail, prison or correctional facility operated by or for a city, county, municipal or other local governmental entity (collectively, the "Department"). Defendants represented by the Office of the Attorney General, the Office of the Corporation Counsel of the City of New York, or counsel for or appointed by the Department responsible for the jail, prison or correctional facility (collectively, the "Facility"), shall respond to the standing discovery requests adopted by the Court, in accordance with the instructions and definitions set forth in the standing requests, unless otherwise ordered by the Court.

(b) The claims to which the standard discovery requests shall apply are Use of Force Cases, Inmate Against Inmate Assault Cases and Disciplinary Due Process Cases, as defined below, ~~in which the events alleged in the complaint have occurred while the plaintiff was in the custody of either the Department of Corrections of the City of New York or the New York State Department of Correctional Services.~~

(1) "Use of Force Case" refers to an action in which the complaint alleges that any employee of the Department or Facility used physical force against the plaintiff in violation of the plaintiff's rights.

(2) “Inmate against Inmate Assault Case” refers to an action in which the complaint alleges that ~~any defendant~~ an employee of the Department or Facility was responsible for the plaintiff’s injury resulting from physical contact with another inmate.

(3) “Disciplinary Due Process Case” refers to an action in which (i) the complaint alleges that a ~~defendant~~ employee of the Department or Facility violated or permitted the violation of a right or rights in a disciplinary proceeding against plaintiff, and (ii) the punishment imposed upon plaintiff as a result of that proceeding was placement in a special housing unit for more than ~~100~~ 30 days.

(c) If a response to the requests is required to be made on behalf of an individual defendant, represented by the Office of the Corporation Counsel ~~or~~ the Office of the Attorney General or counsel for or appointed by the Department responsible for the Facility, it shall be made on the basis of information and documents within the possession, custody or control of the ~~New York City Department of Corrections or New York State Department of Correctional Services~~ Department or Facility in accordance with the instructions contained in the requests. If no defendant is represented by ~~the Office of Corporation Counsel of the City of New York or the Office of the Attorney General~~ such counsel, responses based upon such information need not be made pursuant to this Local Rule, without prejudice to such other discovery procedures as the plaintiff shall initiate.

(d) The requests, denominated ~~Plaintiff’s~~ “Plaintiff’s Local Civil Rule 33.2 Interrogatories and Requests for Production of Documents,” shall be answered within 120 days of service of the complaint on any named defendant except (i) as otherwise ordered by the Court, for good cause shown, which shall be based upon the facts and procedural status of the particular case and not upon a generalized claim of burden, expense or relevance or (ii) if ~~as otherwise provided in the instructions to the requests~~ dispositive motion is pending. The responses to the requests shall be

served upon the plaintiff. Copies of the requests are available ~~through the Pro Se Office of~~from the Court, including the Court's website.

(e) Except upon permission of the Court, for good cause shown, the requests shall constitute the sole form of discovery available to plaintiff during the 120-day period ~~as~~ designated above.

(f) If the ~~Pro Se~~Clerk's Office determines that this rule applies, it shall provide copies of the standard requests ~~to those pro se plaintiffs~~ for service upon defendants together with the summons and complaint.

#### COMMITTEE NOTE

[December 2011 Note]: The Committee recommends extension of the rule to other prison facilities in addition to State and New York City prison facilities. Also, the trigger for a Disciplinary Due Process Case is reduced from 100 days in SHU to 30 days to better reflect the case law in this area.

[July 2011 Note]: Local Civil Rule 33.2 has worked well, and the Committee recommends its continuation. The Committee recommends that the rule be revised to make it applicable on the same basis in the Eastern District as in the Southern District. Because this Local Civil Rule and Local Civil Rule 33.3 are frequently cited, the Committee does not recommend that they be renumbered.