

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re: AMENDMENT OF LOCAL CIVIL
RULE 33.2
(Standard Discovery in Prisoner
Pro Se Actions)

ADMINISTRATIVE ORDER
2002-04

-----X

WHEREAS the Board of Judges has reviewed the amendments adopted by the Southern District of New York on July 1, 2002 to Joint Local Civil Rule 33.2 Standard Discovery in Prisoner Pro Se Actions, and

WHEREAS there is no objection to the adoption of an identical amendment to Local Civil Rule 33.2, it is now

ORDERED that Local Civil Rule 33.2, as amended (see the full text attached), is hereby adopted by the Eastern District of New York, effective immediately.

The text of amended Local Civil Rule 33.2 is attached.

SO ORDERED.

Dated: Brooklyn, New York
September ___, 2002

EDWARD R. KORMAN, Chief Judge

Att.

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 events alleged to 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. In each such action in the Southern District of New York, such defendants, shall, except as otherwise set forth herein, 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 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 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 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 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, 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 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, 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 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) as otherwise provided in the instructions to the requests. The responses to the requests shall be served upon the plaintiff and shall be filed with the Pro Se Office of the court. Copies of the request are available through the Pro Se Office of the court.

(c) 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 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.

Amended: September 24, 2002
Eastern District of New York