



IT IS ORDERED as set forth below:

Date: June 27, 2008

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 05-80212

David Ronald Michal and Christine Renee
Michal,

CHAPTER 7

Debtors.

JUDGE MASSEY

Patricia A. McColm,

Plaintiff,

v.

ADVERSARY NO. 06-9036

David Ronald Michal, et. al.,

Defendants.

ORDER ON PLAINTIFF'S MOTIONS TO COMPEL
PROPER ANSWERS TO REQUESTS FOR ADMISSIONS AND TO COMPEL
SERVICE OF VERIFIED ANSWERS TO INTERROGATORIES

On June 2, 2008, Plaintiff filed two motions to compel discovery with respect responses of Defendants to Plaintiff's Request for Admissions and Interrogatories. In her motion to

compel “proper original responses” to Request for Admissions (document no. 87) , Plaintiff asserts that the responses served by Defendants did not bear their original signatures to which she is entitled. Plaintiff seeks sanctions of \$725, of which \$700 is her estimate of the value of her time and the balance for her estimate of copying, mailing and mileage.

In the second motion (document no. 89), Plaintiff seeks to compel discovery, Plaintiff asserts that Defendants’ answers to her interrogatories did not bear original signatures to which she is entitled. In that motion, she also seeks \$725, of which \$700 is for her time and \$25 is for her estimate of her costs for copying, mailing and mileage.

Prior to the revisions that became effective on December 1, 2007, Civil Rule 34(b), after requiring that answers be signed, provided in part in subparagraph (3) “The party on whom interrogatories have been served shall serve a copy of the answers” The recently superceded rule said nothing about service of answers bearing original signatures. The Advisory Committee Note to Rule 33, in referring to the changes that became effective last December, stated “These changes are intended to be stylistic only.”

Revised Civil Rule 34, like its predecessor, requires that each interrogator not objected to must be answered separately and fully in writing under oath. Fed. R. Civ. P. 34(b)(2). “The person who makes the answers must sign them, and the attorney who objects must sign any objections.” Fed. R. Civ. P. 34(b)(5). Civil Rule 34(b)(2) requires that the responding party “must serve its answers and any objection within 30 days after being served with the interrogatories.” Revised Civil Rule 34 also does not specifically state that the answers must bear the original signatures.

Revised Civil Rule 36 states, “A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer

or objection addressed to the matter and signed by the party or its attorney.” Like Civil Rule 34, Civil Rule 36, even as revised, does not specifically state that the service copy must bear original signatures. All it says is that the written answer must be signed.

In her motion with respect to interrogatory answers, Plaintiff contends that Bankruptcy Local Rule 7026.5 and Civil Rule 5 make the propounding party the custodian of original discovery. Plaintiff is mistaken. There is no BLR 7026.5 in this Court, and no Bankruptcy Rule 7026.5. Nothing in Civil Rule 5 makes the party propounding discovery the custodian. Plaintiff cited no other statute, rule or case supporting the proposition that serving a discovery response with a copy of original signatures violates the discovery rules in a manner that would warrant sanctions.

There is a rule in this Court, however, concerning original discovery responses.

Bankruptcy Local Rule 7026-3 provides:

BLR 7026-3. Service and Filing of Discovery Material.

(a) Filing Not Generally Required. Interrogatories, requests for documents, requests for admission, and answers and responses thereto shall be served upon other counsel or parties, but they shall not be routinely filed with the Bankruptcy Court. *The party responsible for service of the discovery material shall, however, file a certificate with the Bankruptcy Clerk indicating the date of service. The party shall also retain the original discovery material and become its custodian.* The original of all depositions upon oral examination shall be retained by the party taking the deposition.

(Emphasis added.) Thus, the practice in this Court, by Local Rule, is that the party responsible for service of discovery material retains the originals as custodian. Hence, counsel for Defendants properly retained the originals.

Plaintiff has not alleged that she has been in any way prejudiced by having received responses showing a copy of signatures.

This litigation has become too contentious. Even if Defendants are not required to serve answers to Interrogatories and Requests for Admission that contain original signatures, the Court directs the parties serving discovery responses to henceforth serve an original copy with original signatures on the opposing party and maintain a duplicate original for purposes of BLR 7026-3. The party receiving an discovery with original signatures shall likewise be a custodian of such documents.

Defendants have recently filed additional certificates of service of their discovery responses, but those documents do not indicate that they served Plaintiff with answers or responses that bear the original signatures. Consequently, if they have not already done so, Defendants are directed to serve on Plaintiff within 15 days of entry of this Order, their responses to Plaintiff's Interrogatories and Requests of Admission that are the subject of the motions in question (documents 87 and 89), which shall bear original signatures. Even if such original responses have already been served, Defendants are directed to file a new certificate of service showing that what was served bore original signatures and to file that certificate within 15 days of entry of this Order.

The Court will finally dispose of these motions in a future order.

The Clerk is directed to serve a copy of this Order on Plaintiff and on the attorney for the Defendant by mail without using the BNC and to file a certificate of service.

IT IS SO ORDERED.

END OF ORDER