

Western District Case Notes

■ Kevin Hogan And Sean McPhee [SPECIAL TO THE DAILY RECORD](#)

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PROCEDURAL REQUIREMENTS FOR REMOVAL

In *Hall v. City of Rochester*, 25-cv-06426-MAV (Mar. 31, 2026), a police officer commenced an action in state court against an individual who the police office alleged had resisted arrest (“Action 1”). After answering and asserting counterclaims for excessive force, assault, and battery, the municipal employer of the police officer filed a notice of appearance as the “real party in interest” to the counterclaims. The defendant in Action 1 then commenced a new lawsuit, again in state court, essentially repeating his counterclaims from Action 1, but against the police officer, the municipality, and several other police officers (“Action 2”). The individual then moved in Action 1 to consolidate the two lawsuits and served the motion on the defendants’ counsel in Action 2. When defendants in Action 2 sought to remove only that lawsuit to Federal Court, their notice did not reference or include anything pertaining to the



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pending motion to consolidate the two state court actions. Plaintiff moved to remand Action 2 on grounds that defendants’ notice of removal was procedurally deficient for failing to include the motion to consolidate. 28 U.S.C. § 1446 requires defendants to attach to their notice of removal “all process, pleadings, and orders served upon such defendant or defendants in such action.” Rule 81 of the Local Rules of Civil Procedure also requires defendants to file with the Court Clerk an index identifying each document filed and/or served in the state court action and copies of those documents tabbed and arranged in chronological order. Here, Defendants failed to include the motion to consolidate, associated affidavits of service, or the required index of all filed or served documents. Noting that it was required to construe the removal statute narrowly and resolve any doubts against removability, and that it lacked any “discretion to overlook or excuse prescribed procedures,” the Court concluded that even inadvertent non-compliance with the procedural requirements for removal was not a reasonable defense to a motion for remand and ordered that Action 2 be returned to state court.

MOTION TO DISMISS CLAIMS FOR CIVIL LIABILITY AGAINST LITIGATION ADVERSARY

In *Eckert v. DeLuca*, 26-cv-00206-JLS-MJR (Mar. 26, 2026), plaintiff filed a *pro se* complaint in state court asserting causes of action for fraud, intentional infliction of emotional distress, abuse of process, and civil violations of RICO, claiming that defendant should face civil liability for his conduct while acting as counsel for certain defendants in a separate civil action that plaintiff previously commenced. Defendant removed the matter from state court and then moved to dismiss plaintiff’s complaint, contending that plaintiff’s allegations did not satisfy the standard for holding counsel to litigation adversary civilly liable. Noting first that it has long been the rule that an attorney cannot be held civilly liable to a third party for his or her actions taken on behalf of a client except upon a showing of fraud, collusion, or a malicious or tortious act, the Court next recognized that claims waged against an adversary’s attorney are commonly dismissed in the absence of allegations that the adversary’s counsel was motivated by malicious intent or self-interest. The Court then found that plaintiff’s allegations were insufficient to meet the standard because plaintiff’s own allega-

tions confirmed that the challenged conduct—allegedly misrepresenting to the Court the scope of a state court stay order and omitting pleadings from the removal index in the separate action—was purportedly done “to obstruct justice and protect [defendant’s] clients from accountability.” Notably lacking from plaintiff’s complaint, however, were any plausible allegations that defendant was motivated by self-interest since plaintiff had not alleged that defendant had any interest in the outcome of his client’s litigation or motivation to collude or obstruct justice. Moreover, there was no claim that defendant acted outside the scope of his duties as an attorney or that he was motivated by personal gain in defending the underlying action. Accordingly, plaintiff’s claim could not succeed as a matter of law, but because the Second Circuit has instructed that a *pro se* complaint should not be dismissed without the Court granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated, and despite “serious doubts,” the Court gave plaintiff an opportunity to replead his claims if he is so inclined.

MOTION FOR RECONSIDERATION

In *Halftown v. County of Cayuga*, 24-cv-6420-MAV (Mar. 16, 2026), after the Court partially granted defendant’s motion to dismiss but declined to dismiss an equal protection claim, defendant moved for reconsideration. The Court began its decision by observing that the Federal Rules of Civil Procedure do not recognize a motion for “reconsideration,” but that such motions may be filed under Federal Rules of Civil Procedure 54(b), 59(e), or 60(b).

Here, because the Court’s decision on the motion to dismiss did not result in an appealable final judgment, Rule 54(b) governed the motion for reconsideration. The Court further noted it has inherent power under Rule 54(b) to reconsider its own orders prior to the entry of a judgment adjudicating all claims, but that the Second Circuit has limited that power by treating those earlier decisions as law of the case. Motions for reconsideration, therefore, should generally be denied “unless there is an intervening change of controlling law, the availability of new evidence, or the need to correct clear error or prevent manifest injustice,” and those criteria are strictly construed so as to avoid repetitive arguments on issues that already have been considered fully by the Court. With that backdrop, the Court went on to consider defendant’s arguments that plaintiff had not sufficiently alleged an injury in fact nor demonstrated redressability. In both cases, the Court disagreed and denied the motion for reconsideration.

RULE 36 AND REQUESTS FOR ADMISSION

In *Shiloah v. GEICO Indemnity Co.*, 24-cv-06447-EAW-CDH (Mar. 13, 2026)—a putative class action for breach of contract based on plaintiff’s allegations that the defendant insurance company fails to pay sales tax as part of the “actual cash value” for total loss vehicles—plaintiff moved for an order requiring defendant to further respond to two of her requests for admission. Observing first that a request for admission under Fed. R. Civ. P. 36 is not a discovery device but instead has the purpose of reducing the cost of litigation by eliminating the necessity of proving facts that are not in substantial dispute,

the Court next explained that, if a party does not admit a matter, Rule 36 permits several alternative options for responding to the request. First, the responding party can specifically deny the matter. Alternatively, when good faith requires, the responding party can qualify an answer or admit only a part of a matter, but the responding party is not permitted to undermine the efficacy of the rule through “hair-splitting distinctions whose unarticulated goal is unfairly to burden an opposing party.” For yet another option, a responding party can state in detail why the party cannot truthfully admit or deny the matter, but only if the party states that it has made a reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny. Finally, a responding party can simply object to a request for admission where it is unduly burdensome; however, there is a strong disincentive to finding an undue burden where the responding party can make necessary inquiries without extraordinary expense. Regardless of the form of the response, a requesting party dissatisfied with it can move to determine the sufficiency of the response or objection, but the requesting party may not use a motion challenging the sufficiency to litigate its accuracy. Applying these principles, the Court found that defendant’s response to one of the two requests at issue was insufficient and required an amendment because defendant merely denied the request “based on” its objections. This was insufficient because such a “denial” makes it unclear whether the response is actually denying the substance of the request, or if it is merely interposing objections. The Court reached a different con-

clusion with respect to defendant's response to the other request at issue, however, despite the fact that defendant interposed a similar set of objections. This was because, in that response, defendant ultimately denied the request notwithstanding its objections, and Rule 36 "does not authorize the Court to prospectively render determinations concerning the accuracy of a denial." Instead, if the requesting party later proves the matter true, it may move for reasonable expenses, including attorneys' fees, incurred in making that proof. As a result, plaintiff's motion was granted in part and denied in part.

DISCOVERY MOTION FEE DISPUTES

In *Xerox Corp. v. Conduit Global, Inc.*, 21-cv-6467-EAW-MJP (Mar. 18, 2026), a fee dispute arose from the Court's decision denying i) defendant's combined motion to compel a deposition and for relief from a schedule order to pursue the otherwise untimely motion to compel and ii) plaintiff's cross-motion for a protective order to preclude the deposition. Before the parties filed their motions, the Court held a conference at which it noted that the deadline for motions to compel discovery had passed and an extension of that deadline would be necessary. The Court suggested that the parties first brief the deadline extension issue which, depending on its resolution, could obviate the subsequent discovery motion practice. Plaintiff, however, who was opposing the motion to compel, requested simultaneous briefing on the extension and the discovery motions, and defendant agreed that would be "most efficient." The Court accommodated simultaneous briefing request, and

then proceeded to deny the motion to extend the motion to compel deadline for lack of good cause, and denied both discovery motions as moot. As the prevailing party, plaintiff sought an award of its expenses under Rule 37(a)(5)(B). The Court noted that an award of reasonable expenses incurred opposing a discovery motion was mandatory unless the motion was substantially justified or other circumstances would make such an award unjust. After rejecting defendant's claim that the fee award was available only if the motion had been denied on the merits and not because it was untimely, the Court determined plaintiff was entitled to substantially less than it sought because plaintiff had unnecessarily incurred the majority of its expenses by requesting the simultaneous briefing on the combined motions, rather than heeding the Court's advice to first determine if the discovery motions would even be allowed.

MOTION FOR CONFIRMATION OF ARBITRATION AWARD

In *Walborn v. CVS Albany LLC*, 23-cv-06173-EAW (Apr. 21, 2026), plaintiff commenced an action in state court arising from his employment with defendant and alleging that defendant defamed him and engaged in a conspiracy to terminate his employment. Defendant removed the matter on the basis of diversity of citizenship and filed a motion to dismiss or in the alternative, to stay the action and compel arbitration based on plaintiff's written employment agreement, which provided that employment-related disputes would be submitted to arbitration. Plaintiff did not oppose arbitration, and the Court stayed the litigation and di-

rected the parties to report on the outcome of the arbitration following a decision. The parties then proceeded to arbitration and, in a "status update" to the Court, defendant informed the Court that the arbitrator granted defendant's motion to dismiss the arbitration demand with prejudice. Noting that the federal action remained pending despite the arbitrator's final decision to dismiss the arbitration, the Court directed defendant to file an appropriate motion addressing the federal action and including a copy of the arbitrator's written opinion. In response, defendant moved to confirm the arbitration award and dismiss the lawsuit with prejudice, which plaintiff did not oppose. In deciding the motion, the Court first observed that, while the Federal Arbitration Act does not independently confer subject matter jurisdiction on the federal courts, an independent basis of jurisdiction must exist before a district court can entertain a petition to confirm or vacate an arbitration award. The Court then found that defendant adequately demonstrated the existence of subject matter jurisdiction based on diversity of citizenship, and by failing to oppose the motion, plaintiff consented to judicial confirmation of the arbitration award. As a result, the Court granted defendant's motion and directed the Clerk to close the case.

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