

LR 7.1 Motion Practice; Length and Form of Briefs

- (a) Unless the court otherwise directs, or as otherwise provided in L.R. 56.1, an adverse party shall have fourteen (14) days after service of a motion in which to serve and file a response, and the moving party shall have seven (7) days after service of a response in which to serve and file a reply. Failure to file a response or reply within the time prescribed may subject the motion to summary ruling. Time shall be computed as provided in Fed. R. Civ. P. 6, and any extensions of time for the filing of a response or reply shall be granted only by order of the assigned or presiding judge or magistrate judge for good cause shown.
- (b) Each motion shall be separate; alternative motions filed together shall each be named in the caption on the face. Any motion under Fed. R. Civ. P. 12, motions made pursuant to Fed. R. Civ. P. 37, or for summary judgment pursuant to Fed. R. Civ. P. 56 shall be accompanied by a separate supporting brief.
- (c) Any defense raised pursuant to Fed. R. Civ. P. 12 must be briefed in accordance with this rule before the court will deem the defense submitted for ruling.
- (d) Except by permission of the court, no brief shall exceed 25 pages in length (exclusive of any pages containing a table of contents, table of authorities, and appendices), and no reply brief shall exceed 15 pages. Permission to file briefs in excess of these page limitations will be granted only upon motion supported by extraordinary and compelling reasons.

Briefs exceeding 25 pages in length (exclusive of any pages containing the table of contents, table of authorities, and appendices) shall contain (a) a table of contents with page references; (b) a statement of issues; and (c) a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited. Each brief shall be plainly written, or typed in the style and format set forth in L.R. 5.1(a). Where the document is typed or printed, (a) the size of the type in the body of the text shall be no less than 12 point, and in footnotes no less than 10 point and (b) the margins, left-hand, right-hand, top and bottom, shall each be 1 inch.

- (e) **All briefs shall cite to supporting legal authority.** ~~Ordinarily, copies of cited authorities need not be appended to court filings. However, a~~ A party citing a decision, statute, or regulation that is not available on Westlaw or Lexis/Nexis shall attach a copy to the document filed with the court. In addition, if a party cites a decision, statute, or regulation that is only available through electronic means (*e.g.* Lexis/Nexis, Westlaw or from the issuing court's website), upon request that party shall promptly furnish a copy to the court and other parties **requesting party.**

Committee Comments

The Committee proposes the addition of the first sentence to subsection (e) which affirmatively requires citation to legal authority in briefs filed with the Court. While the issue has not been a recurrent problem in the district, the Committee was of the opinion that having a local rule for judges to cite on the occasions where it occurs would be helpful to the Court. The Committee also proposes minor revisions to the remainder of subsection (e), including eliminating the statement that cited authorities generally need not be submitted to the court. The proposal also removes the costly and unnecessary requirement that parties furnish copies of authorities to the Court when those authorities are available to the Court through readily accessible electronic databases such as LEXIS or Westlaw, or on an issuing court's website. The Committee elected to retain, however, the requirement that if a party cites a decision, statute, or regulation that is only available through electronic means, that party shall, upon request, promptly furnish a copy to the requesting party.

LR 56.1 Summary Judgment Procedure

- (a) ~~In the text of the supporting brief or an appendix thereto, filed in support of a motion for summary judgment pursuant to L.R. 7.1, there shall be a “Statement of Material Facts,” supported by appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence, as to which the moving party contends there is no genuine issue. Any party opposing the motion shall, within twenty-eight (28) days from the date such motion is served upon it, serve and file any affidavits or other documentary material controverting the movant's position, together with a response that shall include in its text or appendix thereto a “Statement of Genuine Issues” setting forth, with appropriate citations to discovery responses, affidavits, depositions, or other admissible evidence, all material facts as to which it is contended there exists a genuine issue necessary to be litigated. Any reply shall be filed within fourteen (14) days from the date the response is served.~~

Moving Party's Obligations. The brief supporting a summary-judgment motion or the brief's appendix must include a section labeled “Statement of Material Facts” that identifies the facts that the moving party contends are not genuinely disputed.

- (b) ~~In determining the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are controverted in the “Statement of Genuine Issues” filed in opposition to the motion, as supported by the depositions, discovery responses, affidavits and other admissible evidence on file.~~

Opposing Party's Obligations.

- (1) **Required Filings.** A party opposing the motion must, within 28 days after the movant serves the motion, file and serve

(A) a response brief; and

(B) any materials that the party contends raise a genuine dispute.

- (2) **Content of Response Brief or Appendix.** The response brief or its appendix must include a section labeled “Statement of Genuine Disputes” that identifies the material facts that the party contends are genuinely disputed so as to make a trial necessary.

- (c) ~~All motions for summary judgment shall be considered as submitted for ruling without oral argument or hearing unless a request for such is granted under L.R. 7.5 or the court otherwise directs.~~

Reply. The movant may file a reply brief within 14 days after a response is served.

- (d) **Oral Argument.** The court will decide summary-judgment motions without oral argument unless a request under L.R. 7.5 is granted or the court directs otherwise.

(d) (e) **Disputes About Admissibility of Evidence.** Any dispute regarding the admissibility of evidence should be addressed in a separate motion in accordance with L.R. 7.1.

(e) (f) ~~(If a party is proceeding pro se and an opposing party files a motion for summary judgment, counsel for the moving party must serve a notice upon the unrepresented party as set forth in Appendix C.~~

Notice Requirement for *Pro Se* Cases. A party seeking summary judgment against an unrepresented party must serve that party with the notice contained in Appendix C.

Committee Comments

Due to anticipated amendments to Fed .R. Civ. P. 56, the Committee has revised L.R. 56.1 to comport with those changes. The proposals, while not substantive, are intended to significantly clarify the local rule and avoid repetition with the Federal Rule. In addition, the proposed amendments are consistent with the Restyling Project, the effort to make the local rules more clear, concise and readable, currently being undertaken by the Committee.

LR 200.1 Bankruptcy Cases and Proceedings

(a) Matters Determined by the Bankruptcy Judges.

- (1) Subject to paragraph (a)(3)(B), all cases under Title 11 of the United States Code, and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the bankruptcy judges. It is the intention of this court that the bankruptcy judges be given the broadest possible authority to administer cases properly within their jurisdiction, and this rule shall be interpreted to achieve this end.
- (2) Pursuant to 28 U.S.C. § 157(b)(1), the bankruptcy judges shall hear and determine all cases under Title 11 and all core proceedings (including those delineated in 28 U.S.C. § 157(b)(2)) arising under Title 11, or arising in a case under Title 11, and shall enter appropriate orders and judgments, subject to review under 28 U.S.C. § 158.
- (3) The bankruptcy judges shall hear all non-core proceedings related to a case under Title 11.
 - (A) **By Consent:** With the consent of the parties, a bankruptcy judge shall conduct hearings and enter appropriate orders or judgments in the proceeding, subject only to review under 28 U.S.C. § 158.
 - (B) **Absent Consent:** Absent consent of the parties, a bankruptcy judge shall conduct hearings and file proposed findings of fact and conclusions of law and a proposed order or judgment with the bankruptcy clerk. The bankruptcy judge may also file recommendations concerning whether the review of the proceedings should be expedited, and whether or not the basic bankruptcy case should be stayed pending district court termination of the non-core proceedings. The bankruptcy clerk shall serve copies of these documents upon the parties. Within 14 days of service, any party to the proceedings may file objections with the bankruptcy clerk. Any final order or judgment shall be issued by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected. (Review of interlocutory orders shall be had following the procedure specified in paragraph (d) of this rule.)
 - (C) **Signifying Consent:** At time of pre-trial, or earlier, upon motion of a party in interest, the parties shall:
 - (i) Stipulate in writing that the proceeding is a core proceeding:

- (ii) Stipulate in writing that the proceeding is a non-core proceeding, but that the bankruptcy judge can determine the matter and enter a final order subject to review pursuant to 28 U.S.C. § 158;
- (iii) Stipulate that the proceeding is a non-core proceeding, the bankruptcy judge finds the matter is a non-core proceeding and at least one party refuses to have the bankruptcy judge determine the matter; or
- (iv) State that there is no agreement between the parties as to whether the proceeding is a core or non-core proceeding and at least one party refuses to have the bankruptcy judge determine the matter if it is determined to be a non-core proceeding;

Attached as an Appendix to this rule is an example of a stipulated order which may be used at the pretrial conference.

(b) Matters to be Determined or Tried by District Judges.

- (1) Motions to withdraw cases and proceedings to the District Court.
 - (A) The district judge shall hear and determine any motion to withdraw any case, contested matter, or adversary proceeding pursuant to 28 U.S.C. § 157(d).
 - (B) All such motions shall be accompanied by a separate supporting brief and any appropriate affidavits. The motion shall be filed with the bankruptcy court and served upon all appropriate parties in interest. Unless the bankruptcy court directs otherwise, any response and opposing affidavits shall be served and filed within the time required by L.R. 7.1 and the movant may serve and file any reply thereto within the time provided in that rule.
 - (C) Upon the expiration of the time for filing briefs concerning the motion, the motion and all materials submitted in support thereof and in opposition thereto will be transmitted to the district court for a determination. The bankruptcy judge may submit a written recommendation concerning the motion, the effect of withdrawal upon the disposition of the underlying bankruptcy case, and whether the disposition of the motion should be expedited. Any such recommendation shall be served upon the parties in accordance with the procedures set forth in subparagraph (a)(3)(B) of this rule.
 - (D) Should the district judge grant the motion to withdraw, the case, contested matter or adversary proceeding may be referred back to the bankruptcy

judge for proposed findings of fact and conclusions of law and a proposed order or judgment in accordance with the procedures set forth in subparagraph (a)(3)(B) of this rule.

(2) **Personal Injury or Wrongful Death Tort Claims.**

- (A) **In proceedings involving an objection to a personal injury or wrongful death claim, the bankruptcy judge may hold a preliminary pre-trial or scheduling conference. At this conference, the parties may agree to the termination of the automatic stay to allow the claim to be determined in the state or federal court that would, absent bankruptcy, have jurisdiction over the action. In the absence of such an agreement, the bankruptcy judge, after consulting with the parties or their counsel, may issue a preliminary scheduling order. The matter shall then be transmitted to the clerk of the district court for such proceedings as may be appropriate.**
- ~~Trials and Pre-Trial Proceedings: In proceedings in which a personal injury or wrongful death tort claim is required under 28 U.S.C. § 157(b) to be tried in a district court, the proceeding shall be administered by the bankruptcy judge until it is ready for a final pre-trial conference before a district judge. The district judge shall conduct the trial of the proceeding.~~

~~The bankruptcy judge may submit a written recommendation concerning the effect of the proceeding upon the disposition of the underlying bankruptcy petition and whether the trial of the proceeding should be expedited, copies of which shall be served upon the parties in accordance with the procedures set forth in subparagraph (a)(3)(B) of this rule.~~

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- ~~(B) **Motions to Transfer Venue: The bankruptcy judges shall make a recommendation concerning a motion by a party under 28 U.S.C. § 157(b)(5) for a transfer of venue of personal injury or wrongful death tort claims. All such motions shall be filed with the bankruptcy court and shall first be heard by a bankruptcy judge, in accordance with such procedures as the bankruptcy court may, by rule, adopt. The bankruptcy judge shall make a recommendation concerning the disposition of the motion, copies of which shall be served upon the parties in accordance with the procedures set forth in subparagraph (a)(3)(B) of this rule. The district judge may accept, reject or modify, in whole or in part, the recommendation of the bankruptcy judge and shall determine the disposition of the motion.**~~

(c) **Jury Trial.**

- (1) **Jury Trial Before a Bankruptcy Judge: Jury trials before a bankruptcy judge are not permitted. Issues arising under section 303 of Title 11 shall be tried by the bankruptcy judge without a jury.**

(2) Jury Trials Before a District Judge:

(A) Where jury trials are not permitted before a bankruptcy judge, the party demanding a jury trial shall file a motion to withdraw the proceeding to the district court, in accordance with paragraph (b)(1) of this rule. The motion shall be filed at the same time as the demand for a jury trial. Unless excused by the district judge, the failure to file a timely motion to withdraw the proceeding shall constitute a waiver of any right to a trial by jury.

(B) In a personal injury or wrongful death tort claim, parties have the right to trial by jury. The demand for a jury trial must be properly made to preserve the right to a trial by jury.

(d) **Appeals to the District Court.** All appeals in core cases, in non-core cases heard by consent, and appeals of interlocutory orders entered by the bankruptcy judges in non-core cases heard by the bankruptcy court under subparagraph (a)(3)(B) of this rule shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by the Bankruptcy Rules.

(e) **Mandate Following a Decision on Appeal.** The court's mandate following a decision on appeal from the bankruptcy court consists of a certified copy of the court's judgment and the court's written opinion, if any. Unless the court orders otherwise, the clerk will issue the mandate to the clerk of the bankruptcy court:

(1) immediately, when an appeal is dismissed voluntarily;

(2) seven days after the expiration of the deadline for filing any notice of appeal from this court's decision, unless a notice of appeal is filed; or

(3) if a notice of appeal is filed, seven days after the conclusion of any proceedings undertaken as a result of the Seventh Circuit's mandate to this court, unless those proceedings result in the entry of an order that could be the subject of a further appeal.

The mandate is effective when issued.

(f) **Filing of Papers.** While a case or proceeding is pending before a bankruptcy judge, or prior to the docketing of an appeal in the district court as set forth in the Bankruptcy Rules, all pleadings and other papers shall be filed with the bankruptcy clerk. After the case or non-core proceeding is assigned to a district judge, or after the district clerk has given notice to all parties of the date on which the appeal was docketed, all pleadings shall bear a civil case number in addition to the bankruptcy case number(s) and shall be filed only with the district court clerk.

- (g) **Submission of Files to the District Court; Assignment to District Judges.** After the expiration of the time for filing objections under subparagraph (a)(3)(B), upon receipt of any order by a district judge pursuant to 28 U.S.C. § 157(d) or upon the docketing of an appeal in the district court as specified in paragraph (d), the bankruptcy clerk shall submit the file for the case or proceeding to the district court clerk. The district court clerk shall affix a civil number to each submission, and shall make the assignment to a district judge in accordance with the usual system for assigning civil cases.

- (h) **Local Bankruptcy Rules.** The bankruptcy judges are authorized to make and amend rules governing the practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction, in accordance with the requirements of Bankruptcy Rule 9029. Unless the district court orders otherwise, such rules shall also apply to any bankruptcy case or proceeding in which the order of reference has been withdrawn.

Committee Comment

The Committee proposes the redlined changes to 200.1(b)(2) which replace the current subsections (a) and (b). The proposals were recommended by the Bankruptcy Judges and the Bankruptcy Local Rules Committee and seek to expedite the handling of personal injury or wrongful death jury trial cases by removing the stay and transferring the cases to the District Court for prompt case management.

Appendix C. Notice to *Pro Se* Litigant

(This form may be downloaded from the Northern District of Indiana's internet website at www.innd.uscourts.gov)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
_____ DIVISION

_____,

Plaintiff

v.

_____ Civil Case No.

_____,

Defendant

NOTICE

~~_____ You are hereby notified that we have filed a motion for summary judgment in your case.~~

~~_____ Because you are not represented by counsel, you are hereby advised of your obligation to respond to the summary judgment motion.~~

~~_____ By the motion for summary judgment, we are asking to have this suit decided in our favor without a full scale trial, based on the evidence presented in the affidavits and documents attached to the motion. Any factual assertion in the affidavits will be accepted by the court as being true unless you submit your own affidavits or other admissible documentary evidence contradicting the assertion. Your failure to respond in that way would be the equivalent of failing to present any evidence in your favor at a trial.~~

~~_____ Rule 56 of the Federal Rules of Civil Procedure governs motions for summary judgment, and that rule must be complied with by you in submitting any further response to our motion. Rule 56~~

provides in part:

- ~~(c) (2) . . . The judgment shall be rendered if the pleadings, discovery and disclosure materials, on file, and any affidavits, show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law~~
- ~~(e) (1) A supporting and opposing affidavit shall be made on personal knowledge, set out such facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or additional affidavits.~~
- ~~(e) (2) When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must--by affidavits or as otherwise provided in this rule--set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.~~

Fed. R. Civ. P. 56 (emphasis added):

~~Under Rule 56 of the Federal Rules of Civil Procedure, you have a right to respond to our motion and accompanying sworn material by filing your own affidavit or other sworn responses. Although the mere filing of affidavits or other responsive materials will not guarantee the denial of our motion, your response will enable the court to consider more meaningfully all relevant factors. If you do not respond to the motion with your own affidavits or other admissible evidence to dispute the facts established by us, a summary judgment may be entered against you if, on the basis of the facts established by us, we are entitled to judgment as a matter of law. Unless you respond to this motion with sworn statements or other admissible evidence which contradicts important facts claimed by us in our sworn materials, the court will accept our uncontested facts as true. More~~

~~importantly, you will lose this lawsuit, in whole or in part, if the court determines that, under those unchallenged facts, we are entitled to judgment under the law.~~

~~————— In the event you elect to respond to our motion, your response must include or be supported by sworn statements or other responsive materials. You cannot merely rely upon any conflict or inconsistency between the contents of the complaint and the affidavit(s) or other sworn materials filed in support of our motion. If you submit an affidavit or affidavits in support of your response, the facts in the affidavits must be personally known to the person making the affidavit and not be hearsay; the facts must be specific and not general. Merely denying the facts in the sworn material filed by us in support of our motion or giving opinions or beliefs is not enough.~~

~~————— If you oppose this motion for summary judgment, Northern District of Indiana Local Rule 56.1, states that you must file any response to the motion along with any supporting materials within twenty-eight (28) days from the date the motion is served. "Upon your written request, the Court may, but is not required to, enlarge the time within which to respond; that is, give you more time to respond. Any request for additional time to respond to this motion should be filed before the time to act expires."~~

NOTICE OF SUMMARY-JUDGMENT MOTION

A summary-judgment motion has been filed against you. Attached to this notice is a copy of the motion. The motion asks the court to decide all or part of your case without a trial. The party that filed this motion does not think that a full trial is necessary. The motion says that there should not be a full trial because you cannot win on some or all of your claims. The motion asks the court to enter judgment against you.

Rule 56 and Local Rule 56.1 are set forth below. You should read—and follow—all the rules carefully. The outcome of this case may depend on it. Following the rules does not

guarantee that the summary-judgment motion will be denied. But if you do not follow the rules, you may lose this case.

Before the court rules on the motion, you have the right to file a response. If you do not respond to the summary-judgment motion, you may lose this case. If you need more time to respond, you must file a motion asking for more time before the deadline expires. The court may—but is not required to—give you more time.

Fed. Rule Civ. Proc. 56. Summary Judgment

- (a) **Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense - or the part of each claim or defense--on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.
- (b) **Time to File a Motion.** Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.
- (c) **Procedures.**
 - (1) **Supporting Factual Positions.** A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
 - (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
 - (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.
 - (2) **Objection That a Fact Is Not Supported by Admissible Evidence.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.
 - (3) **Materials Not Cited.** The court need consider only the cited materials, but it may

consider other materials in the record.

- (4) **Affidavits or Declarations.** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.
- (d) **When Facts Are Unavailable to the Nonmovant.** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
- (1) defer considering the motion or deny it;
 - (2) allow time to obtain affidavits or declarations or to take discovery; or
 - (3) issue any other appropriate order.
- (e) **Failing to Properly Support or Address a Fact.** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
- (1) give an opportunity to properly support or address the fact;
 - (2) consider the fact undisputed for purposes of the motion;
 - (3) grant summary judgment if the motion and supporting materials--including the facts considered undisputed--show that the movant is entitled to it; or
 - (4) issue any other appropriate order.
- (f) **Judgment Independent of the Motion.** After giving notice and a reasonable time to respond, the court may:
- (1) grant summary judgment for a nonmovant;
 - (2) grant the motion on grounds not raised by a party; or
 - (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.
- (g) **Failing to Grant All the Requested Relief.** If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact--including an item of damages or other relief--that is not genuinely in dispute and treating the fact as established in the case.

- (h) **Affidavit or Declaration Submitted in Bad Faith.** If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court--after notice and a reasonable time to respond--may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

N.D. Ind. L.R. 56.1

- (a) **Moving Party's Obligations.** The brief supporting a summary-judgment motion or the brief's appendix must include a section labeled "Statement of Material Facts" that identifies the facts that the moving party contends are not genuinely disputed.
- (b) **Opposing Party's Obligations.**
- (1) **Required Filings.** A party opposing the motion must, within 28 days after the movant serves the motion, file and serve
- (A) a response brief; and
- (B) any materials that the party contends raise a genuine dispute.
- (2) **Content of Response Brief or Appendix.** The response brief or its appendix must include a section labeled "Statement of Genuine Disputes" that identifies the material facts that the party contends are genuinely disputed so as to make a trial necessary.
- (c) **Reply.** The movant may file a reply brief within 14 days after a response is served.
- (d) **Oral Argument.** The court will decide summary-judgment motions without oral argument unless a request under L.R. 7.5 is granted or the court directs otherwise.
- (e) **Disputes about Admissibility of Evidence.** Any dispute regarding the admissibility of evidence should be addressed in a separate motion.
- (f) **Notice Requirement for Pro Se Cases.** A party seeking summary judgment against an unrepresented party must serve that party with the notice contained in Appendix C.

Certificate of Service

On _____, 20____, I served a copy of this notice via
U.S. mail on _____, a *pro se* party at

[Attorney]