This compendium is advisory in nature and is only intended as a historical tool to assist in review of the Local Rules. Users should confirm the official text of the Local Rules.

COMPILED LOCAL RULES and COMMITTEE COMMENTS

of the

UNITED STATES DISTRICT COURT

for the

NORTHERN DISTRICT OF INDIANA

by

Roger B. Cosbey
Former Chairperson Local Rules Advisory Committee and United States Magistrate Judge

Effective Date:
January 1, 2014

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2008 ACKNOWLEDGMENT

The substantial body of work conducted by the Local Rules Advisory Committee over the years is revealed and memorialized in this compilation. If there is any praise due for the current state of this District's Local Rules, it belongs to the members of this Committee.

Particular recognition is due, however, to Professor Jay Tidmarsh of the University of Notre Dame Law School for his early and continuing contributions to the analysis, drafting and editing of the Local Rules, as well as all of the 1994 Comments.

Finally, appreciation is due to Committee member Lori Kuchmay, career law clerk to Judge William C. Lee, for her editing assistance and to Samantha Davis, intern in the chambers of Magistrate Judge Roger B. Cosbey, for her excellent word processing skills.

December 22, 2008.

Roger B. Cosbey
Chairperson Local Rules Advisory
Committee and Magistrate Judge
United States District Court
Northern District of Indiana

2009 ACKNOWLEDGMENT

In 2009, the Local Rules Advisory Committee conducted, through various sub-committees, a comprehensive review of the Court's local rules with particular attention devoted to the new time computation amendments imposed by the Federal Rules of Civil Procedure effective December 1, 2009. The Committee's hard work yielded an extensive series of amendments.

In addition, Professor Jay Tidmarsh was asked to canvass the local rules of some other districts to see if they have provisions we might want to use. His comprehensive report revealed, however, that our local rules require no augmentation, which is one reason why there are few, truly new local rules this year.

Finally, this year's Compilation benefitted from the excellent editing work of Michelle Floyd, a third year law student at Valparaiso University, and an intern with the Court. The Court is grateful for her assistance.

January 11, 2010

Roger B. Cosbey
Chairperson Local Rules Advisory
Committee and Magistrate Judge
United States District Court
Northern District of Indiana

2014 ACKNOWLEDGMENT

After five years of significant changes to the local rules it is time to update this Compilation. Perhaps the most important change during that half-decade was the complete re-styling of the local rules and the adoption of a new citation convention. An Explanatory Statement concerning the principles that guided the drafters of the restyling project is included at the outset of the Compilation. The final result is a set of local rules that are simpler to read and use. The Court acknowledges with appreciation the assistance of attorneys Tom Vetne and Brian Kubicki for their contribution to this ground-breaking effort.

In addition, grateful appreciation is extended to the District's Librarian, John Fox, for his assistance in bringing the changes current. And finally, the Court acknowledges the excellent work of Brett Barnett, law clerk to Magistrate Judge Roger B. Cosbey, for his careful attention to detail in the final review of the compilation and his overall editing assistance.

April 1, 2014

Roger B. Cosbey
Former Chairperson Local Rules Advisory
Committee and Magistrate Judge
United States District Court
Northern District of Indiana

EXPLANATORY STATEMENT CONCERNING THE COMPILATION

In 1986 the Judicial Conference of the United States authorized its Committee on Rules of Practice and Procedure to undertake a study of the local rules of the district courts. Just prior to that action, and after more than a year of study, this court adopted a new set of local rules with an effective date of January 1, 1987.

As instructed, the Committee on Rules of Practice and Procedure soon embarked on a Local Rules Project that resulted in some model rules and a suggested uniform numbering system. With these improvements in place, and recognizing that its local rules did not follow the recommended numbering convention, this court undertook a major effort to revise the local rules throughout the early 1990's. The result was a re-styled and recast set of local rules bearing an effective date of January 1, 1994.

The Advisory Committee Comments from the 1994 revision begin the comment section for each rule adopted on that date. To the extent that a present rule can trace its lineage to a rule before 1994, it is noted in the text of the Comments. If a rule was amended or added later, that too is noted in the Comments.

Editorial changes or explanatory notations that were necessary or desirable to the understanding or use of any original comment are illustrated by bracketing. In some instances, Committee Comments have been shortened for stylistic reasons, but with no change to their overall meaning. Longer editorial comments that offer some explanatory context to a local rule are denoted by brackets and with the notation "Compiler's Note". Finally, no effort was made to include comments concerning various General Orders that have from time to time altered certain court practices (particularly concerning Local Rule 16.1), as those were generally transient in nature and for the most part, eventually incorporated into the applicable rule with a Committee Comment.

The reader will note that the rules in this volume are in 14 point type with a Times New Roman font; the comments are in 12 point type and also use a Times New Roman font.

With this volume in hand, the Northern District practitioner will, for the first time, have a comprehensive set of Local Rules that traces the evolution and intent of each local rule and its amendments.

R.B.C.

Explanatory Statement Concerning the Restyling Project

The following principles guided the drafters of the restyled local rules. Each revision is consistent with one or more of these principles. The principles are listed in order of priority:

1. The substance of the rules should not change.
2. The style, organization, format, and terminology of the rules should be consistent with that of the Federal Rules of Civil Procedure.
3. The rules as a whole should be internally consistent in their use of words and their format.
4. The rules should follow generally accepted American-English grammar and usage rules except where generally accepted terms of art or legal conventions could be used without being likely to cause confusion.
5. Each rule should be only as long as is necessary to clearly convey the substance of the rule.

The drafters used the following nuts-and-bolts guidelines while restyling the rules. They are adapted from Joseph Kimble's article, *Drafting Lessons—Civil Rules*.

1. Put the parts in logical order.
2. Use lists to the best advantage, including to
   a. organize complex information;
   b. break information into manageable chunks;
   c. avoid repetition; and
   d. prevent ambiguity.
3. Break up long sentences, including by
   a. converting a compound sentence using *and* into two sentences;
   b. pulling an exception into a new sentence (typically beginning with *But*);
   c. pulling a condition or conditions into a new sentence;
   d. repeating a key word from the previous sentence at or near the beginning of the new sentence; and
   e. using a vertical list.
4. Avoid needless repetition, including by
   a. using pronouns;
   b. shortening a second reference to the same thing (for example, *the magistrate judge's order* to *the order*);
   c. trying to merge two provisions that are essentially the same; and
   d. using vertical lists.
5. Don't state the obvious, including self-evident or redundant cross-references.
6. Say what you mean in normal English.
7. Keep the subject and verb—and the parts of the verb itself—close together.
8. Don't put the main clause late in the sentence unless the secondary clause is reasonably short.
9. Try to put statements in positive form.
10. Minimize cross-references.
11. Root out unnecessary prepositional phrases, including by

a. using the active voice;
b. using possessives; and
c. converting *of*-phrases to adjectives or into an *-ing* form.

12. Replace multiword prepositions (e.g. *for the purpose of* with *to*).
13. Collapse clauses into a word or two when possible.
14. Use informative headings and subheadings.
15. Be wary of intensifiers (e.g. applicable statute).
16. Replace nouns that take the place of strong verbs.
17. Simplify inflated diction (e.g. *effect service* to *serve*).
18. Banish *shall*.
19. Avoid hardcore legalese (e.g. *pursuant to*, *provided that*, and *herein*).

TABLE OF CONTENTS

N.D. Ind. L.R. 1-1[1] Citation and Scope of the Rules

(a) Citation.

(1) ***Civil Rules.*** The local civil rules of the United States District Court for the Northern District of Indiana may be cited as "N.D. Ind. L.R."

(2) ***Criminal Rules.*** The local criminal rules of the United States District Court for the Northern District of Indiana may be cited as "N.D. Ind. L. Cr. R."

(3) ***Patent Rules.*** The local patent rules of the United States District Court for the Northern District of Indiana may be cited as "N.D. Ind. L.P.R."

(b) Effective Date and Scope of Rules. These rules, as amended, take effect on January 1, 2014. They govern all civil and criminal cases on or after that date. But in cases pending when the rules take effect, the court may apply the former local rules if it finds that applying these rules would not be feasible or would be unjust.

(c) Modification or Suspension of Rules. The court may, on its own motion or at the request of a party, suspend or modify any rule in a particular case in the interest of justice.

Committee Comments

1994 Amendment

This rule is adopted from proposed Model Rules, with a slight change in subparagraph (c). The Committee intends these rules to apply to both civil and criminal cases, unless the context of a particular rule indicates that the rule applies to only civil or criminal cases.

2000 Amendment

The effective date of L.R. 1.1(b) was changed to reflect the current year. The Committee also changed the citation abbreviation for Federal Rules of Civil Procedure to Fed. R. Civ. P., throughout the local rules and has corrected these citations throughout.

[1] The restyled rules utilize a new numbering system to clearly denote where the relevant federal rule ends and the local rule begins. Thus, the numerals to the left of the en-dash refer to the federal rule, and those to the right refer to the local rule. This eliminates the anomaly—present in previous format—that L.R. 5.4 preceded L.R. 5.1.1.

2002 Amendment

The effective date of L.R. 1.1(b) was changed to reflect the current year.

2004 Amendment

The effective date of L.R. 1.1(b) was changed to reflect the current year.

2009 Amendment

In light of the new time calculations coming to the Federal Rules on December 1, 2009, the Committee recommended making any amendments contemporaneously effective as of that date. In addition, the phrase "as amended" was added to paragraph (b) to reflect prior and current amendments.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

2012 Amendment

The local rule was amended to reflect the Court's adoption of local patent rules.

N.D. Ind. L.R. 1-2 Availability and Amendments

(a) Availability. These rules and appendices may be purchased from the clerk's office or accessed for free on the court's web site at www.innd.uscourts.gov.

(b) Amendments. These rules may not be amended without public notice and an opportunity for public comment. Notice of proposed amendments:

(1) must be submitted for publication in *Res Gestae,* the Indiana State Bar Association's monthly publication; and

(2) may also be published elsewhere.

Committee Comments

1994 Amendment

Committee adopted this rule from the Local Rules Project's proposed Model Rules.

2000 Amendment

Because of the convenience and prevalence of the internet and the ability of the court to facilitate requests for general information via the internet, the Committee revised this rule to include the address of the court's website and to indicate that copies of the local rules are available on the website at no charge.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 1-3 Sanctions for Formatting Errors

(a) Non-Compliance. If a person files a paper that does not comply with the rules governing the format of papers filed with the court, the court may:

(1) strike the paper from the record; or

(2) fine the person up to $1,000.

(b) Notice. Before sanctioning a person under subdivision (a)(2), the court must:

(1) notify the person that the paper is noncompliant; and

(2) give the person the opportunity either to be heard or to revise the paper.

Committee Comments

Amendment in 1994

This [new] rule is intended to extend to attorneys, parties, and pro se litigants. The text is based on the Local Rule Project's proposed Model Rules, with some minor changes and the addition of the final sentence. The final sentence makes clear that the entry of a sanction is not the court's only remedy for non-conforming filings; the court can in proper circumstances order the clerk to strike the paper. In light of the recent amendment to Fed. R. Civ. P. 5(e) [now, Rule 5(d)(4)], however, the clerk will no longer have the power to strike non-conforming pleadings.

1996 Amendment

The rule was stylistically amended by incorporating the former last sentence ("nothing in this rule shall prohibit the court from ordering stricken from the record a paper which does not comply with these rules") into the first sentence and providing the requirement that there first be notice and an opportunity to be heard.

2000 Amendment

A minor editorial change was made.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

L.R. 4.3 PAYMENT OF FEES BY *IN FORMA PAUPERIS* STATUS (deleted 2009)

~~**N.D. Ind. L.R. 4.3: Payment of Fees by *in Forma Pauperis* Status**~~

~~An applicant who seeks leave to proceed *in forma pauperis* without prepayment of fees and costs may be required to make a partial payment of filing fees in an amount to be determined by the court. An applicant who is ordered to make a partial fee payment shall have thirty (30) days to show cause why he cannot make the partial fee payment.~~

Committee Comments

1994 Amendment

This [new] rule is intended to ensure that persons who wish to proceed *in forma pauperis* should pay at least an equitable portion of the filing fees in appropriate cases.

2009 Amendment

The Committee recommended deleting this rule because individual orders are entered in these types of cases addressing the partial payment requirement.

N.D. Ind. L.R. 5-1 Electronic Filing

(a) Electronic Filing Permitted. Papers may be filed, signed, and verified electronically when authorized by the court's CM/ECF User Manual.

(b) Effect of Electronic Filing. Electronically filed papers are written papers for the purposes of these rules, the Federal Rules of Civil Procedure, and the Federal Rules of Criminal Procedure.

Committee Comments

2003 Amendment

The Committee has modeled Local Rules 5.6 and 5.7 relating to electronic filing from the two enabling rules from the Middle District of Pennsylvania and believes that these two rules, with modifications, are the appropriate enabling rules to enact CM/ECF in this district. The Committee has omitted from the rule a reference to a "Standing Order regarding Electronic Case Filing Policies and Procedures" because the Committee is uncertain that the court needs a standing order or desires one.

In addition, the Committee added language to expressly state that the CM/ECF User Manual must be approved by the court. This language is proposed to alleviate a concern, expressed by some Committee members, that the CM/ECF User Manual would be enacted or modified without approval of the court.

2009 Amendment

The Committee recommended re-ordering the 5 series Local Rules to advance the electronic filing Local Rules for consistency with the Southern District and to give them more prominence. Correspondingly, Local 5.1 which largely deals with paper filing has been re-numbered to 5.4. This Local Rule was formerly 5.6, but has now been re-numbered to 5.1.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 5-2 Electronic Service

(a) Electronic Service Permitted. Electronically filed papers may be served electronically if service is consistent with the CM/ECF User Manual.

(b) When Electronic Service Is Deemed Completed. A person registered to use the court's electronic-filing system is served with an electronically filed paper when a "Notice of Electronic Filing" is transmitted to that person through the court's electronic filing-system.

(c) Serving Non-Registered Persons. A person who has not registered to use the court's electronic-filing system but who is entitled to service of a paper must be served according to these rules and the Federal Rules of Civil or Criminal Procedure.

Committee Comments

2003 Amendment

See Committee Comments relating to the 2003 adoption of L.R. 5.6.

2009 Amendment

The Committee recommended this Local Rule be re-numbered for the reasons set out in the comment concerning Local Rule 5.1. This Local Rule was formerly 5.7, but has now been re-numbered to 5.2.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

L.R. 5.2 PROTECTION OF CERTAIN PERSONAL IDENTIFIERS (deleted 2008)

~~**N.D. Ind. L.R. 5.2: Protection of Certain Personal Identifiers**~~

~~**(a) General rule.** The parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all papers filed with the court, including exhibits thereto, whether filed electronically or in paper:~~

~~**(1) Social Security numbers.** If an individual's social security number must be included in a paper, only the last four digits of that number should be used.~~

~~**(2) Names of minor children.** If the involvement of a minor child must be mentioned, then only the initials of that child, or some other means of identification approved by the court under seal, should be used to protect the child's anonymity.~~

~~**(3) Dates of birth.** If an individual's date of birth must be included in a paper, only the year should be used.~~

~~**(4) Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.~~

~~**(b) Sealing of unredacted papers.** A party wishing to file a paper containing the personal data identifiers listed above may:~~

~~**(1)** file an unredacted version of the document under seal, or~~

~~**(2)** file a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right. The unredacted version of the document or the reference list shall be retained by the court under seal as part of the record. This paper shall be retained by the court as part of the record. The court may, however, still require the party to file a redacted copy for the public file.~~

~~**(c) Social Security cases.** In cases filed under the Social Security Act, 42 U.S.C. § 405(g), there is no need for redaction of any information from the documents filed in the case.~~

~~**(d) Responsibility for redaction.** The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The clerk will not review each paper for compliance with this rule.~~

Committee Comments

2003 Amendment

The new rule is in response to the E-Government Act of 2002 which requires redaction of personal identifiers in filings. The Committee modified this rule from a proposed model rule endorsed by the Judicial Conference. Subsection (c) involves a special rule requiring both an unredacted and a redacted copy of the Complaint to be filed in social security cases. The unredacted version must be filed under seal. This provision is proposed in response to the Government's concern that the filing of redacted copies only would omit critical information such as the complainant's social security number, birth date and other identifiers which are necessary for the Government to accurately identify the complainant.

2005 Amendment

The revisions to the rule are in compliance with the policy of the Judicial Conference of the United States and E-Government Act of 2002, and intended to promote electronic access to case files while also protecting personal privacy and other legitimate interests. Subsection (c) is revised to reflect that there is no need for redaction of documents filed in social security cases since those cases are not electronically available to the public. In addition, the revisions are consistent with the Southern District's local rule 5.2.

2006 Amendment

The amendments to this rule are intended to conform the Northern District rule, at least in part, to the Southern District's rule. The Southern District recently amended its rule relating to the naming of minor children in a complaint due to its concern that the privacy rights of juveniles were compromised by referring to the child's initials, especially if the child's parents are required to be named, as the rule previously provided. The Southern District remedied this concern through use of court approved pseudonyms pursuant to a motion. The Committee's proposed revisions capture the essence of the Southern District's rule without adopting it verbatim. The Committee believed that the issue was properly addressed by a revision to subsection (a)(2). Further, the amendment is not intended to limit pseudonyms to only the name of the minor child; rather, it is contemplated that in some instances the parent's name should also appear as a pseudonym.

2008 Amendment

This rule captioned "Protection of Certain Personal Identifiers" was deleted by General Order 2008-12 on August 18, 2008. The rule was no longer considered necessary in light of Fed. R. Civ. P. 5.2 that became effective on December 1, 2007.

N.D. Ind. L.R. 5-3 Filing Under Seal or Ex Parte

(a) General Rule. The clerk may not maintain a filing under seal unless authorized to do so by statute, court rule, or court order.

(b) Filing Cases Under Seal.

(1) ***Papers Required.*** To seal a case, a party must:

(A) simultaneously file directly with the clerk:

(i) the initial pleadings;

(ii) a motion requesting that the court seal the case;

(iii) a proposed order; and

(B) otherwise comply with the CM/ECF User Manual.

(2) ***Treatment of Case Pending Ruling.*** When the clerk receives a new case with a motion to seal it, the clerk must seal the case pending a ruling on the motion.

(3) ***If Motion Is Denied.*** If the court denies the motion, the clerk must immediately unseal the case and may do so without first notifying the filing party.

(c) Ex Parte and Sealed Filings.

(1) ***In a Civil Case.*** To file a sealed document (other than an initial filing) or a document ex parte in a civil case, a party must file it electronically as required by the CM/ECF User Manual.

(2) ***In a Criminal Case.***

(A) The following documents may be filed under seal without motion or further order of the court provided counsel has a good faith belief that sealing is required to ensure the safety, privacy or cooperation of a person or entity, or to otherwise protect a substantial public interest:

(i) documents filed pre-indictment;

(ii) documents filed in a sealed case post-indictment and prior to the first defendant being arrested;

(iii) requests for search warrants, including warrants for tracking devices;

(iv) requests for interception of communications pursuant to 18 U.S.C. § 2516;

(v) requests for phone record information pursuant to 18 U.S.C. § 2703;

(vi) requests for tax return information pursuant to 26 U.S.C. § 6103;

(vii) motions for sentence variance or reduction based on substantial assistance pursuant to Fed. R. Crim. P. 35 or U.S.S.G. § 5K1.1, including supporting documents; and

(viii) motions for competency exam.

(B) When the documents identified above are filed under seal pursuant to this Rule, the filing party must place the words "under seal" below the case number on the document.

(C) Other than the documents identified above, documents may be sealed if and only if they are subject to a prior protective order or are accompanied by a contemporaneous motion to seal, which motions may be filed under seal if necessary, by using the following procedure:

(i) electronically file a "Notice of Manual Filing;"

(ii) affix the Notice of Electronic Filing (NEF) of Notice of Manual Filing to the envelope's exterior. The contents of the envelope should include:

(a) a motion for leave to file the document under seal;

(b) a proposed form of Order for the motion for leave to file the document under seal; and

(c) the motion or document to be filed under seal.

(iii) deliver the document to the clerk in an envelope without folding it; and

(iv) counsel must provide an original for the clerk's office and a copy for the judge of each of the documents contained within the envelope.

Committee Comments

2005 Amendment

This new Local Rule is adopted from the Court's General Order 2004-19. The Southern District has an identical local rule and the Committee concluded that the information in the General Order was well-suited for inclusion in the local rules for conformity with the Southern District. The Committee also concluded that conversion of the General Order to a local rule would call the information in the rule to the attention of the practicing bar. The Committee removed the phrase "by the assigned District Judge" from subparagraph (b); motions to seal may be granted by either a magistrate judge or district judge and thus the Committee removed the limiting language in that subparagraph.

2008 Amendment

In October 2007 the clerk began using the ability of the CM/ECF system to designate cases, docket entries and PDF documents as "sealed" or "ex parte," and to begin uploading these documents to the system in PDF format with access granted only to the appropriate parties, for civil cases only. All sealed and ex parte materials in both civil and criminal cases have previously been maintained on paper in the clerk's office and not uploaded to the system in PDF format. The proposed changes to L.R. 5.3 address the need to now distinguish between civil cases, where sealed and ex parte documents will be filed electronically, and criminal cases, where sealed and ex parte materials will still be maintained on paper. References to the CM/ECF User Manual, where attorneys can find detailed instructions for filing sealed and ex parte documents have also been added to the rule.

2011 Amendment

This Local Rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended

2012 Amendment

Local Rule 5-3(c)(2) was amended to conform to General Order 2012-8 which provided for the filing of certain documents under seal without motion in criminal cases.

N.D. Ind. L.R. 5-4 Format of Papers

(a) Generally. Any pleading, motion, brief, affidavit, notice, or proposed order, whether filed electronically or by delivering it to the clerk, must:

(1) be plainly typewritten, printed, or prepared by a clearly legible copying process;

(2) use 8.5" x 11" pages;

(3) have at least[2] 1-inch margins;

(4) use at least 12-point type in the body and at least 10-point type in footnotes;[3]

(5) be double spaced (except for headings, footnotes, and quoted material);

(6) have consecutively numbered pages;

(7) include a title on the first page;

(8) include a separate index identifying and briefly describing each exhibit if there are more than four exhibits; and

(9) except in proposed orders and affidavits, include the filer's name, address, telephone number, fax number (where available), and e-mail address (where available).

(b) Manual Filings.

(1) ***Form, Style, and Size of Papers.*** Papers delivered to the clerk for filing must:

(A) be flat, unfolded, and on good-quality, white paper;

[2] The phrase "at least" has been added to give practitioners some formatting flexibility and to reflect what the committee believes is current practice allowing greater than 1-inch margins.

[3] The margin requirements in (a)(3) and the type-point requirements in this subdivision currently only apply to summary-judgment motions and briefs. The restyled rules would impose them on all papers. Doing so will not disturb practice generally and is consistent with the expectation of uniformity among filings.

(B) not have a cover or a back; and

(C) include the filer's original signature.

(2) ***Rubber-Stamped and Faxed Signatures***. An original paper with a rubber- stamped or faxed signature is unsigned for purposes of Fed. R. Civ. P. 11 and 26(g).

(3) ***Affidavits.*** Only the affiant need sign an affidavit.

(4) ***Filing with Clerk Required.*** Papers not filed electronically must be filed with the clerk, not a judge.

(5) ***Where to File.*** Papers not filed electronically must be filed in the division where the case is pending, unless:

(A) a person will be prejudiced if the paper is not filed the same day it is tendered; and

(B) it includes an adequately sized envelope addressed to the clerk's office in the division where the case is pending and with adequate postage.

(6) ***Return of File-Stamped Copies.*** A party who wants a file-stamped copy of a paper must include with the filing an additional copy of the paper and a self-addressed envelope with adequate postage.

(7) ***Recycled Paper.*** The court encourages using recycled paper.

(8) ***Form of Notices.*** Parties manually filing a paper that requires the clerk to give others notice, must give the clerk:

(A) sufficient copies of the notice; and

(B) the name and address of each person entitled to receive the notice.

(c) **Forms of Order.** Parties filing a paper that requires the judge or clerk to enter a routine or uncontested order must include a suitable form of order.

(d) **Notice by Publication**. When published notice is required:

(1) the clerk must send the notice to the party originating the notice; and

(2) the party must deliver the notice to the appropriate newspapers for publication.

Committee Comments

1994 Amendment

This rule derives primarily from present L.R. 7 [and prior to 1987, Rule 6] with L.R. 17 [new in 1987] included as the final sentence of sub-paragraph (d) [actually, (e)]. The provisions of this local rule will facilitate compliance with the technical requirements for filing and service of papers.

There are several changes from the present rules. First, the requirement that a pleading be filed in the "appropriate office of the clerk" has been deleted. While the Committee anticipates that filings on a case within a division will generally continue to be made with the office of the clerk in that division, it believes that filing with another office is a useful option for time-sensitive filings by practitioners whose offices are located closer to another office of the clerk. Second, the rule requires that the pages of a filing be consecutively numbered–a requirement which simply reflects presents practice. Third, an index must be included for papers which contain four or more exhibits. Next, attorneys and pro se litigants are now required to list their name, address, telephone number, and (in case of attorneys) bar association number on all filings other than affidavits–a requirement which again is largely reflective of existing practice. L.R. 7(e), which concerned the procedures for filing and service, was deleted in its entirety, due to its potential conflict with Federal Rules of Civil Procedure 5, 7(b), 8(e), and 10. Finally, all persons serving papers are now allowed to attach a certificate of service or acknowledgment rather than an affidavit.

1995 Amendment

Paragraph (b) of the rule was amended to clarify that on each pleading, motion, or "other paper" attorneys shall provide their bar association number.

1996 Amendment

[Compiler's Note: The last sentence of paragraph (e) was re-lettered paragraph (f) and given the caption "Form of Notices," and amended to its present language.]

2000 Amendment

The Committee added the requirement that filings shall be two-hole punched at the top. This requirement was recently added to the Southern District's Local Rule 5.1 to facilitate docket filings in the clerk's office. In view of the Committee's belief that conformity with the Southern District is beneficial, the Committee added the requirement to the present rules. In addition, the Committee added e-mail addresses, if available, to the list of identifying information required on pleadings and motions filed with the court. The addition of an e-mail address, although absent from the Southern District's rule, was added with some foresight in the event that the Northern District opts to permit electronic filings.

The Committee also added language to paragraph (d) prohibiting the filing of papers with chambers unless specific permission is granted from the court.

2002 Amendment

Because of concerns of identity fraud, the Committee struck language in paragraph (b) that requires attorneys to provide their attorney bar number on all the filings with the court. The Committee learned of one case where a pro se litigant fraudulently used an attorney bar number to make filings in state court and thus, the Committee concluded that requiring attorney bar numbers on all filings could facilitate fraud. The bar number is utilized by the clerk's office in its in-house database, but it obtains the number via the attorney admission forms submitted to the judicial officers so it never appears in a court file. Thus, the Committee saw no impediment to removing this requirement.

2007 Amendment

[Minor changes, (*e.g.*, the deletion of the requirement that all filings be two-holed punched at the top) were made in light of the use of electronic case filing.]

2009 Amendment

The Committee did not recommend any changes to this rule but did recommend re-ordering L.R. 5.1 through 5.7 in light of electronic filing. *See* Committee comments to Local Rule 5.1. This Local Rule was formerly 5.1, but now has been re-numbered to 5.4.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 5.1-1 Constitutional Questions

(a) When to File the Notice. A party required to file a notice of constitutional question under Fed. R. Civ. P. 5.1 must do so by the later of:

(1) the day the parties tender their proposed case-management plan (if one is required); or

(2) 21 days after filing the pleading, written motion, or other paper questioning the constitutionality of a federal or state statute.

(b) Service on Government Officials. The party must also serve the notice and the pleading, written motion, or other paper questioning the constitutionality of a federal or state statute on:

(1) the Attorney General of the United States and the United States Attorney for the Northern District of Indiana, if a federal statute is challenged; or

(2) the Attorney General for the state if a state statute is challenged.

(c) Method of Service on Government Officials. Service required under subdivision (b) may be made either by certified or registered mail or by e-mailing it to an address designated by those officials for this purpose.

Committee Comments

2009 Amendment

This rule supplanted local rule 24.1 and conformed to the Southern District's proposed Local Rule 5.1.1. The Southern District concluded that the local rule was necessary to clarify the meaning of the word "promptly" in Federal Rule of Civil Procedure 5.1(a) which implements 28 U.S.C. § 2403. That is, the local rule spells out just how "promptly" the party raising the constitutional challenge must give the required notice. It is also noteworthy that the two government entities most interested in this issue in the Southern District, the U.S. Attorney's office and the Attorney General of Indiana, both have come out strongly in favor of the proposed local rule.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory

Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 6-1 Extensions of Time

(a) By Motion. Ordinarily, requests for an extension of time not made in open court or at a conference must:

(1) be made by written motion;

(2) state the original deadline and the requested deadline; and

(3) either:

(A) state that there is no objection to the extension; or

(B) describe the requesting party's efforts to get opposing attorneys to agree to the extension if there is an objection.

(b) Automatic Initial Extension. The deadline to respond to a pleading or a discovery request–including requests for admission–is automatically extended when an extension notice is filed with the court and:

(1) the deadline has not been extended before;

(2) the extension is for 28 or fewer days; and

(3) the notice states:

(A) the original deadline

(B) the new deadline, and

(C) that all opposing attorneys the attorney could reach agreed to the extension; or that the party could not reach any other opposing attorneys despite due diligence.

(c) Pro Se Parties. The automatic initial extension does not apply to pro se parties.

Committee Comments

1994 Amendments

This [new] rule is derived from Judge Lee's present standing order. The rule permits the parties to obtain an initial extension for the filing of a responsive pleading or responses to written discovery or requests for admission of not more than 30 days. If the parties can agree upon an extension, the party seeking an extension must then memorialize the agreement in a letter to the opposing party. A copy of the letter shall also be filed with the clerk of the court. In the event that the parties cannot agree upon an extension, the party must seek leave of court for the extension. No extension will be granted by the court unless the party seeking the extension recites in the request the efforts made to obtain an extension from the opposing party. The parties' ability to extend deadlines is subject to L.R. 16.1(j) [now (i)], which requires an order of the court to extend pretrial proceedings or trial beyond the time specified in the pretrial order.

2000 Amendment

This rule is substantially similar to S.D. Ind. L.R. 6.1. The Committee substituted the words "extensions" in place of the words "initial enlargement" in the heading. The Committee believed this change more accurately reflected the purpose of the local rule and is uniform with S.D. Ind. L.R. 6.1.

The Committee also renumbered the three paragraphs (a), (b) and (c) with headings. Paragraphs (b) and (c) are similar to the Southern District's rule but have been phrased differently to provide clarity.

As part of paragraph (a), the Committee added language permitting counsel to file the motion for extension if the opposing counsel cannot with due diligence be reached. However, counsel must recite this fact within the substance of the notice to properly inform the court of the situation. The Southern District rule does not contain the final two sentences of paragraph (a). However, the Committee retained these two sentences, believing they accurately reflect existing practice.

2009 Amendment

The Committee recommended amending the Rule at paragraph (a) to reflect the anticipated time calculation amendments effective December 1, 2009, and for consistency with the Southern District. The initial extension of time by agreement shall now be twenty-eight days rather than thirty.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

2012 Amendment

Section (b) was amended to clarify that the automatic initial extension does not apply to pro se parties.

N.D. Ind. L.R. 7-1 Motion Practice

(a) Motions Must Be Filed Separately. Motions must be filed separately, but alternative motions may be filed in a single paper if each is named in the title following the caption.

(b) Brief Required for Certain Motions. Parties must file a supporting brief with any motion under:

(1) Fed. R. Civ. P. 12;

(2) Fed. R. Civ. P. 37;

(3) Fed. R. Civ. P. 56; or

(4) Fed. R. Civ. P. 65(b).

(c) Rule 12 Defenses. The court will not rule on a defense under Fed. R. Civ. P. 12 until the party who raised it files a motion and brief.

(d) Response-and Reply-Brief Deadlines.

(1) ***Summary-Judgment Motions.*** Summary-judgment motions are subject to the deadlines in N.D. Ind. L.R. 56-1(b) and (c).

(2) ***Other Motions*.**

(A) *Responses.* A party must file any response brief to a motion within 14 days after the motion is served.

(B) *Replies.* The moving party must file any reply brief within seven days after the response brief is served.

(3) ***Extensions.*** The court may extend response-and reply-brief deadlines, but only for good cause.

(4) ***Summary Rulings.*** The court may rule on a motion summarily if an opposing party does not file a response before the deadline.

(e) Page Limits.

(1) ***Rule.*** Supporting and response briefs (excluding tables of contents, tables of authorities, and appendices) ordinarily must not exceed 25 pages. Reply briefs must not exceed 15 pages.

(2) ***Exception.*** The court may allow a party to file a brief exceeding these page limits for extraordinary and compelling reasons. But if the court permits a brief to exceed 25 pages, it must include:

(A) a table of contents with page references;

(B) an issue statement; and

(C) a table of authorities including:

(i) all cases (alphabetically arranged), statutes, and other authorities cited in the brief; and

(ii) references to where the authorities appear in the brief.

(f) Authority Not Available Electronically. A copy of any decision, statute, or regulation cited in a motion or brief must be attached to the paper if—and only if—it is not available on Westlaw or Lexis. But if a copy of a decision, statute, or regulation is only available electronically, a party must provide it to the court or another party upon request.

Committee Comments

1994 Amendment

This rule is a substantial revision to, and expansion of, prior rules 9 [Rule 7(b)(c) and (d) before 1987], 12 [which was new in 1987 and limited briefs to 25 pages], and 38. Under the revision, motions made pursuant to Fed. R. Civ. P. 37 are included on the list of motions covered by this rule. Second, the rule does not require that all Rule 12(b) defenses be separately briefed as a matter of course. However, the court retains the option of ordering a brief in a particular case. Nonetheless, a party raising a 12(b) defense must file a separate brief in order to obtain a ruling on the defense.

Third, the form of oversized briefs (i.e., those which exceed 25 pages) has been specified, and the standard for the granting of oversized briefs ("extraordinary and compelling reasons") has been specified.

Finally, the list of authorities that must be copied for the court's convenience has been changed. The rule requires that copies of all authorities supplied to the court must be provided to other counsel of record. The Committee anticipates that members of the bar can work cooperatively on this new requirement when all attorneys of record have access to the copied material in their own libraries.

1995 Amendment

Prior to the widespread use of online research, a party was required to supply a copy of any authority not published in recognized reporter systems. Paragraph (c) of the then existing version of the rule [now paragraph (e)] was amended to update and include Federal Reporter 3d as one of those recognized texts.

2000 Amendment

This rule revision reiterates that for all motions, except as provided in L.R. 56.1 or by court order, there shall be 15 days for a response and 7 days for a reply. [Compiler's Note: The 15-day, 7-day briefing schedule was adopted in 1987 in then Local Rule 9; previously, a 15/5 day schedule was employed.] In addition, the local rule establishes standard page limits, margin sizes, space limitations, etc. and specifically incorporates by reference the format and style preferences of L.R. 5.1(a). The Committee reorganized this rule for clarity and to alleviate some confusion among local practitioners as to the time limitations for the filing of briefs for motions not specifically listed in the rule.

Subpart (b) [formerly part of (a)] was reorganized to make it clear which motions must be accompanied by briefs. The Committee changed the former language which required that only a few Fed. R. Civ. P. 12 motions are accompanied by briefs so that it is now clear that all Rule 12 motions must be accompanied by separate supporting briefs.

The Committee also substantially revised subpart (c) [formerly part of (a)] to make it clear that any Fed. R. Civ. P. 12 defense must be fully briefed before it is deemed ripe for consideration. The Committee also removed some repetitive language in this subpart. [Former subpart (b) was re-lettered as (d) and brief formatting standards were imposed].

The Committee added language to subpart (b) in response to a proposal that motions requesting several forms of relief be separately captioned and that alternative motions filed together be jointly listed in the caption. This addition was made to facilitate the work of the clerk's office in tracking motions.

Finally, the Committee discussed subpart (e) [formerly subpart (c)] regarding publications that must be furnished to the court, and other parties, if cited in a brief. Since there were no substantial differences from what the Southern District proposed, the Committee adopted the Southern District's version for the sake of uniformity and because it added provisions relating to Westlaw and Lexis, currently excluded from the local rule.

2009 Amendment

The Committee recommended that the period allowed for filing a response in paragraph (a) be decreased from 15 to 14 days. This change not only comports with the anticipated changes to the time calculation in the federal rules effective December 1, 2009, but also will be consistent with the local rule changes in the Southern District. The Subcommittee in charge of reviewing this rule originally suggested a response deadline of 21 days and 14 days for a reply, but the Committee determined that an extended briefing schedule was not warranted particularly since an additional three days is provided by Federal Rule of Civil Procedure 6(d).

2010 Amendment

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.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 7-3 Social Security Appeals

(a) Opening Brief. A person challenging an agency determination regarding entitlement to Social Security benefits must file an opening brief within 42 days after the administrative record is filed.

(b) Response Brief. Any response brief must be filed within 42 days after the opening brief.

(c) Reply Brief. Any reply brief must be filed within 14 days after the response brief.

(d) Page Limitations. Briefs under this rule are subject to the page limitations in N.D. Ind. L.R. 7-1(e).

Committee Comments

1994 Amendment

This rule, drafted in response to the Northern District's Civil Justice Expense and Delay Reduction Plan, is designed to avoid unnecessary delay in the disposition of Social Security appeals. Prior to January 1, 1992, an appeal was brought to the court's attention through cross motions for summary judgment. Often there is a delay of several months before the motion was filed and the case was ready for decision. This rule reflects the practice in the district after implementation of the Plan on January 1, 1992, with the exception that the claimant now has 45 days within which to file its opening brief.

2000 Amendment

The Committee discussed a proposal to require the administrative record to be filed within 90 days of the date of the complaint. The Committee rejected this proposal because it was in contravention of 42 U.S.C §405(g) which requires that the administrative record be filed with the Commissioner's answer, which could, through extensions of time, extend beyond the 90 day period. The sole change to this rule was to renumber the paragraphs to be consistent with the format of the other rules.

2009 Amendment

The Committee recommended that the period for filing the opening brief and response be decreased to 42 days from 45 days and that the period for filing a reply be increased from 10 days to 14 days. The proposed amendments will ensure that all filings will be made on a weekday; one of the purposes for the recast time calculations effective on December 1, 2009.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 7-5 Oral Arguments and Evidentiary Hearings

(a) Oral Argument.

(1) ***How to Request.*** A party may request oral argument on a motion by filing and serving a separate document explaining why oral argument is necessary and estimating how long the court should allow for the argument.

(2) ***When to File Request.*** The request must be filed and served with the party's supporting brief, response brief, or reply brief.

(3) ***Additional Evidence Forbidden.*** Parties may not present additional evidence at oral argument.

(b) Evidentiary Hearings.

(1) ***How to Request.*** A party may request an evidentiary hearing by filing and serving a separate document explaining why the hearing is necessary and estimating how long the court should allow for it.

(2) ***Authorization Needed to Specify Hearing Date.*** The party must not specify a hearing date in the notice of a motion or petition unless the court or the clerk has authorized it.

(c) Court's Authority. The court may:

(1) grant or deny a request for oral argument or an evidentiary hearing in its discretion;

(2) set oral argument or an evidentiary hearing without a request from a party; or

(3) order any oral argument or evidentiary hearing to be held anywhere within the district regardless of where the case will be tried.

Committee Comments

1994 Amendment

The rule modifies former L.R. 10 [L.R. 7(a) prior to 1987] to more clearly distinguish between oral arguments and hearings, and by requiring the requesting party to "set forth specifically the purpose of the request and an estimate of the time reasonably required . . . ." The

rule also now makes clear that oral argument is not for the presentation of additional evidence and that the court can direct oral argument on its own initiative.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 8-1 Pro Se Complaints

Parties representing themselves must prepare the following types of complaints on clerk-supplied forms:

- Complaints alleging claims arising under The Civil Rights Act, 42 U.S.C. § 1983.
- Complaints alleging claims arising under The Social Security Act, 42 U.S.C. § 405(g).
- Complaints alleging employment discrimination under a federal statute.

Committee Comments

1994 Amendment

The rule modified former L.R. 33 [L.R. 6A prior to 1987] and added a clerk supplied form for complaints under the Age Discrimination Employment Act, 29 U.S.C. § 621. The rule also requires verified complaints, a power granted to district courts under Fed. R. Civ. P. 11(a).

1996 Amendment

The rule was amended to remove former subpart (a) requiring that all pro se complaints be verified. The amendment was presumably recommended and adopted because the court supplied forms do not provide for a verification and instead, utilize the "under penalty of perjury" language specified in 28 U.S.C. §1746.

2000 Amendment

S.D. Ind. L.R. 8.1 has a similar rule which significantly broadens the types of employment discrimination complaints which must be on court-approved forms. The Northern District's prior version of this rule required only that Title VII and Age Discrimination cases be filed on court-approved forms. The court-approved forms requiring pro se litigants to indicate whether the administrative requirements have been met will aid the court in determining whether the complaint is validly filed.

Despite the fact that the former local rule specifically requires pro se litigants to file Title VII and age claims on court-approved forms, the only forms available to pro se litigants from the clerk relate to Title VII actions, 42 U.S.C. §1983 actions, and actions under the Social Security Act. The clerk's office maintained no form for age discrimination claims and the Title VII form in use does not contain a space for age claims. This situation created a problem for pro se litigants who sought to file these types of complaints. Further, since the last revision to the local rules, Congress passed the Americans with Disabilities Act which has similar administrative requirements to Title VII and age discrimination cases. The rule now encompasses this type of claim.

The Committee also concludes that this rule is not an attempt to circumvent the requirement of Fed. R. Civ. P. 8(a) which mandates that a complaint merely be a "short and plain statement of the claim." Complaints submitted on non-approved forms will be filed; however, the court will request pro se litigants who file complaints on their own forms to resubmit the complaint on a court-approved form.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

L.R. 8.2 CORPORATE DISCLOSURE
(deleted 2003)

~~N.D. Ind. L.R. 8.2: Corporate Disclosure~~

~~Any nongovernmental corporate party to an action in this court shall file a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party's stock. A party shall file the statement with its initial pleading filed in the court and shall supplement the statement within a reasonable time of any change in the information.~~

Committee Comments

2000 Amendment

This proposed rule is new to the local rules and is in response to a proposal by Circuit Judge Manion advocating that courts adopt an interim local rule requiring corporate disclosure by nongovernmental corporate parties. Canon 3(C)(1)(c) of the Code of Conduct for United States Judges and Advisory Opinion No. 57 advise that judges should recuse when they own stock in a parent company whose subsidiary appears as a party before the judge. The intent of the new local rule is to assist judges in identifying financial conflicts of interest that may require recusal. The Judicial conference Committee on Codes of Conduct is currently pressing for a national disclosure rule, similar to the above local rule, to assist judges in meeting their recusal responsibilities. However, such a rule, as indicated by Judge Manion, may not come into fruition for several years. In the interim, the Codes of Conduct Committee recommended that courts adopt the above language as in interim local rule. The Southern District has also adopted the proposed national rule as a local rule.

2002 Amendment

The Committee adopted minor changes to make the purpose of the rule clear and to make disclosures more comprehensive by encompassing entities such as limited liability companies.

2003 Amendment

The Committee eliminated L.R. 8.2 in light of Fed. R. Civ. P. 7.1 which now provides that non-governmental corporate parties must file "two copies of a statement that identifies any parent corporation that owns 10% or more of its stock or states that there is no such corporation." Fed. R. Civ. P. 83 expressly provides that local rules "shall be consistent with-but not duplicative of" any federal statute. As currently written, L.R.8.2 is broader than Fed. R. Civ. P. 7.1 in that it requires all "non-governmental parties" rather than "non-governmental corporate parties" to file

such a statement. However, the Committee believes that the broader requirement in the local rule is unnecessary and that the purpose of the local rule is served by Fed. R. Civ. P. 7.1.

N.D. Ind. L.R. 9-2 Request for Three-Judge Court

(a) Procedure. If a party believes the law requires a three-judge court in a case or proceeding, the party must:

(1) print "Three-Judge District Court Requested" or the equivalent immediately following the title on the first pleading asserting a claim requiring a three-judge court; and

(2) set forth the basis for the request in the pleading or in a short statement attached to the pleading, unless the basis is apparent from the pleading.

(b) Sufficiency of Request. The words "Three-Judge District Court Requested" or the equivalent on a pleading constitutes a "request" under 28 U.S.C. § 2284(b)(1).

Committee Comments

1994 Amendment

The rule was suggested as a model rule by the Local Rule Project and greatly expands former L.R. 23 which merely imposed an obligation to provide notice to the clerk of the statutory provision requiring a three-judge court.

2009 Amendment

The Committee recommended striking subsection (b), which concerned the required number of paper copies to be filed, as unnecessary due to the electronic filing requirements. The subparagraph (a) designation was also deleted.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 10-1 Responsive Pleadings

(a) Rule. Responsive pleadings under Fed. R. Civ. P. 7(a) must:

(1) restate verbatim the paragraphs from the pleading they respond to; and

(2) immediately following each restated paragraph, state the response to that paragraph.

(b) Exception. This rule does not apply to pro se cases.

Committee Comments

2003 Amendment

This new rule is modeled after a local rule in the Northern District of Illinois which requires each paragraph of a responsive pleading to recite verbatim the paragraph to which it is directed, followed by the response. The Committee believes that such a practice would enable the court and the parties to better reference the matters that are at issue in a case and focus on these issues. In addition, the Committee does not believe such a practice would unduly burden the bar in that most complaints are computer generated and can be readily furnished by e-mail to opposing counsel for their use in the manner contemplated by this rule.

The Committee further believes that an exception for pro se cases should exist to minimize the burden on opposing counsel since such complaints are not always neatly set forth in paragraph form.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 15-1 Amending Pleadings

(a) Supporting Documents. Motions to amend a pleading must include the original signed proposed amendment as an attachment.

(b) Form of Amended Pleading. Amendments to a pleading:

(1) must reproduce the entire pleading as amended, unless the court allows otherwise; and

(2) must not incorporate another pleading by reference.

(c) Failure to Comply. Failing to comply with this rule is not grounds to deny the motion.

Committee Comments

1994 Amendment

The rule is new and is adopted from the model rule proposed by the Local Rules Project. The Southern District did not, and has not, adopted the rule's last sentence. The Committee deemed the possible striking of any non-conforming complaint under L.R. 1.3 as a "more appropriate sanction."

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 16-1 Pretrial Procedure

(a) Deviation from Rule 16. The court may deviate from the pretrial procedures in Fed. R. Civ. P. 16 if it first notifies the parties.

(b) Notice from Clerk. A clerk-issued notice directing the parties to prepare for and appear at a pretrial conference is a court order for purposes of Fed. R. Civ. P. 16(a).

(c) Exemptions. The following cases are exempt from the requirements of Fed. R. Civ. P. 16(b):

(1) actions to review an administrative record;

(2) petitions for habeas corpus or other proceedings to challenge a criminal conviction or sentence;

(3) civil forfeitures;

(4) actions by the United States to recover benefit payments;

(5) actions by the United States to collect on a student loan it guaranteed;

(6) actions to enforce or quash an administrative summons or subpoena;

(7) mortgage foreclosures if the United States is a party;

(8) proceedings ancillary to proceedings in another court; and

(9) actions to enforce, vacate, or modify an arbitration award.

(d) Planning-Meeting Report. When the court orders an initial pretrial conference, the parties must file a Report of the Parties' Meeting following their Fed. R. Civ. P. 26(f) planning meeting. The report must be consistent with the form on the court's website (www.innd.uscourts.gov). The court may adopt all or some of the report as part of its scheduling order.

(e) Preparation for Pretrial Conferences. Parties must confer before each pretrial conference and must be prepared to address the following matters at the conference:

(1) case-management plan issues;

(2) alternative-dispute-resolution processes, including mediation, early neutral evaluation, and mini-trial;

(3) settlement, including their present positions on settlement;

(4) trial readiness; and

(5) any other matters specifically directed by the court.

(f) Settlement Negotiations.

(1) ***Facilitation at Pretrial Conferences.*** The court may facilitate settlement negotiations at any pretrial conference after an initial conference. Accordingly, attorneys attending a pretrial conference after the initial conference must:

(A) know their settlement authority; and

(B) be prepared to negotiate in good faith at the conference.

(2) ***Attendance by Parties.*** To assist settlement discussions, the court may require a party, a corporate party's agent, or an insurance-company representative to appear at a pretrial conference.

(3) ***Disclosure Prohibited.*** The court may not disclose the details of any negotiations at a pretrial conference in an order or docket entry.

(g) Settlement or Resolution. The parties must immediately notify the court if they reasonably expect to settle the case or resolve a pending motion.

(h) Sanctions. The court may sanction a party that willfully violates this rule.

Committee Comments

1994 Amendment

The rule derives from present L.R. 21[and before 1987, Rules 12 and 13]. The rule made several changes and additions:

1. Interpleader actions are no longer exempt but mortgage foreclosure actions now are exempt. In addition, in accordance with § 5.02(a) of the Court's Civil Justice Expense and Delay Reduction Plan, § 1983 pro se litigation is no longer exempt from

pretrial scheduling requirements.

2. The conference is to be held within 120 days of the complaint's filing.
3. Paragraph (d)(12)[now (d)(11)] was amended to require that counsel be prepared to discuss the possibility of disposition through mediation or other forms of ADR. The addition was consistent with current practice and the goals of the Judicial Improvement Act of 1990.
4. The requirement of an agenda was deleted in favor of a case-by-case requirement.
5. Paragraph (i) was added to make clear that deadlines will not be altered without agreement of the parties and the court, or for good cause shown. Consistent with the goals of the Judicial Improvement Act of 1990, L.R. 16.1(i) is designed to reduce civil case backlog through firm deadlines. The Committee anticipated that non-consensual requests for extension would "be held to a high standard of review."
6. A new requirement that the court be immediately advised of a settlement or resolution of a motion was added in L.R. 16.1(j).
7. Finally, new language was added to L.R. 16.1 (i) and (k) to reflect § 4.03 of the Court's Plan. Both provisions are designed to enhance the court's power to settle cases effectively. Both provisions are designed to enhance the court's power to settle cases effectively. 28 U.S.C. § 1927 and the court's inherent power provide the source of the court's power under L.R. 16.1 (i) and (k). The final sentence of L.R. 16.1 (k) must be read in conjunction with L.R. 47.3, which does not permit the award of juror costs as a sanction except upon the conditions specified in that rule.

1995 Amendment

Subpart (b) was amended to exempt from the meet and confer requirement of Fed. R. Civ. P. 26(f) any case in which all plaintiffs or all defendants were proceeding pro se. Subpart (d) was amended to clarify that pro se parties should appear at the initial pretrial conference prepared to address the issues identified in Fed. R. Civ. P. 16(c)**.**

1996 Amendment

The rule was amended to delete the provisions inserted by the 1995 amendment and by removing subpart (b)(14), a provision that exempted "[a]ny other case [where] the judge finds that justice would not be serviced by using the scheduling order procedures of Fed. R. Civ. P. 16(b)."

2000 Amendment

Due to inadvertence, two different versions of L.R. 16.1 are being published. The Committee prepared this version which it believes reflects current practice and the intent of the court.

The revised rule is similar to S.D. Ind. L.R. 16.1, but not identical. The exemptions in the rule also exempt the parties from the discovery planning conference requirement of Fed. R. Civ. P. 26(f). This provision is not present in the Southern District's rule because, pursuant to S.D. Ind. L.R. 26.3, all cases filed in the Southern District are exempt from the provisions of Fed. R. Civ. P. 26(f). The Southern District rule specifically exempts cases under 42 U.S.C. §1983 brought by pro se prisoners, while the version of this district's rule does not exempt such cases.

After reviewing the Southern District's rule, the Committee modified the Southern District's catch-all exemption from the scheduling order requirement by adding exempted case number 14, which reads: "[a]ny other case where the judge finds that justice would be served by such exemption." [Compiler's Note: Former Rule 21(b) from 1987 also noted that the judge could exempt individual cases.]

2002 Amendment

Revisions to Fed. R. Civ. P. 26(f) eliminated a district court's authority to exempt by local rule certain types of cases from the requirements of a discovery planning conference. Therefore, the Committee deleted the exemption language. Although this revision may result in certain cases undergoing discovery planning conferences even though such cases are exempt from the scheduling order requirements of Rule 16(b) (e.g., mortgage foreclosure cases), the Committee finds the conference requirement beneficial.

The Committee also deleted the language that exempts cases from the discovery planning conferences when "all plaintiffs or all defendants are proceeding pro se . . . ." since it conflicts with Fed. R. Civ. P. 26(f) in non-prisoner pro se cases. The Committee inserted language inviting any party to seek an exemption in such cases, where appropriate, on a case-by-case basis.

2004 Amendment

The Committee removed language in L.R. 16.1(f) that the Committee deemed inconsistent with Fed. R. Civ. P. 26(a)(3)(A). Fed. R. Civ. P. 26(a)(3) requires disclosure of all witnesses and exhibits except those to be used "solely for impeachment," yet L.R. 16.1(f)(5) and (7) go further and allow non-disclosure of witnesses and exhibits used "solely for impeachment or rebuttal." The Committee believes that well-developed case law should govern the non-disclosure of witnesses called for rebuttal. The requirement of L.R. 16.1(f)(7), which provides that parties must still disclose the general subject matter of each witness's testimony, remains. The deletion of L.R. 16.1(f)(5) required the renumbering of the last two subsection of L.R. 16.1(f).

The heading in L.R. 16.1(f) was further revised to read "Pretrial Submissions," since this was a more accurate description of its contents.

Finally, the Committee struck "counsel for" from the introductory paragraph to encompass instances where a litigant is proceeding pro se.

2009 Amendment

Overall, the Committee looked to update and simplify Local Rule 16.1 by eliminating statutory references, deleting material already addressed in Fed R. Civ. P. 16 (and elsewhere), and conforming the rule to existing practice.

The changes begin with paragraph (b). Rule 16(b)(1) provides that the Court must issue a scheduling order in every case except those "exempted by local rule . . . [.]" The subcommittee noted that the present version of Local Rule 16.1 provides 14 exemptions that while adequate, can probably be more effectively described.

Federal Rule 26(a)(1)(B)(i-viii) provides that certain proceedings are exempt from initial disclosures and Rule 26(f) similarly makes those proceedings exempt from the requirements of

any meeting to prepare a discovery plan and the issuance of a report to the court (unless "the court orders otherwise"). The upshot of these exemptions is that because no report is generated under Rule 26(f), no scheduling order is likely to issue. The subcommittee believes that with one exception, this scheme for the management of cases is not only sound, but consistent with current District practice. Accordingly, like the Southern District, the proposed rule incorporates the exemptions listed at Fed. R. Civ. P. 26(a)(1)(B)(i, ii, iv-viii).

The sole exception is the exemption listed at Rule 26(a)(1)(B)(iii), "an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision[.]" At present, the Court always enters scheduling orders involving such pro se prisoners, and sometimes even conducts scheduling conferences, often with a proposed schedule offered by the parties. The subcommittee assumes the Court wishes to continue this practice and the flexibility it affords, and therefore has not exempted those cases from either a scheduling order or a scheduling conference. Notably, the Southern District continues to exempt such cases.

The Committee also recommended deleting the exemption language contained at (b)(14) as it seems to run counter to the mandatory language of Rule 16(b)(1) and also suggests, for a similar reason, removal of the somewhat ambiguous language contained within the last paragraph of current paragraph (b).

Overall, the amendments to Local Rule 16.1(b) gives the practitioner a clear and shorter version to consider and one that is likely consistent with other districts.

Paragraph (c) was amended to delete language concerning when pretrial conferences are to be held. The subcommittee does not believe that the present language adds any substance to the local rule, particularly since such conferences are routinely held in a timely fashion. New paragraph (c) on the other hand, adds important language alerting the practitioner of the procedure in non-exempt cases and the expectations they may have concerning their Rule 16(b)(1) report.

New paragraph (d) concerns additional pretrial conferences and is identical to Local Rule 16.1(c) in the Southern District. The provision is consistent with current practice and more expansive than this Court's current paragraph (e) addressing the same topic.

Both paragraphs (d) and (f) of current Rule 16.1, addressing preparation for the initial pretrial conference and pretrial submissions respectively, are shown deleted. Paragraph (d) adds nothing to what is already specified for consideration under Fed. R. Civ. P. 16(c)(2) and similarly, paragraph (f) is either subsumed by Rule 26(a)(3) or the orders each trial judge routinely enters concerning trial.

Paragraph (g) is shown deleted as it is no longer necessary or routinely utilized.

Former paragraphs (h), (i) and (j) are retained in full, but re-lettered to (e), (f) and (g).

Former paragraph (k) is re-lettered to (h). In addition, the last sentence, concerning sanctions for a last-minute, substantial and vexatious change in a settlement position, is deleted. The provision was first added to Local Rule 16.1 in 1994 as an adjunct to Local Rule 47.3 (concerning the taxation of juror costs) but apparently never (or rarely, if ever) used. The provision has likely been largely forgotten because it can only be used under the narrowest of circumstances. Accordingly, the Committee recommended deletion of this provision. With the deletion of the sanctioning provision, the Court's new (h) will be identical to the Southern District's Local Rule 16.1(f), except that sanctions in the Northern District can only be imposed if a party "willfully" fails to comply with any part of the Rule. The Southern District does not impose that additional term. The Committee believes the term clarifies the basis for sanctions and therefore recommends its retention.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

2012 Amendment

The Committee recommended deletion of Local Rule 16-1(h) dealing with sanctions as arguably contrary to the Federal Rules of Civil Procedure. The Southern District of Indiana took similar action. Additionally, section (a) was amended to conform to the version in the Southern District.

N.D. Ind. L.R. 16-3 Continuances

(a) Court's Discretion. The court may continue proceedings in a civil case on its own or on the motion of one or more parties.

(b) Consultation with Clients. Attorneys must consult with their clients before asking the court to continue a trial.

(c) Unavailable Evidence. A party seeking to continue a trial because evidence is unavailable must include with the motion an affidavit showing:

(1) that the evidence is material;

(2) that the party has acted diligently to obtain it;

(3) where the evidence might be; and

(4) if the evidence is the testimony of an absent witness:

(A) the name and residence of the witness, if known;

(B) the likelihood of procuring the testimony within a reasonable time;

(C) that neither the party nor anyone at the party's request or with the party's knowledge procured the witness's absence;

(D) the facts the party believes the witness will truthfully testify to; and

(E) that the party cannot prove the facts by another witness whose testimony can be readily procured.

(d) Stipulation to Unavailable Evidence. The court may not continue a trial because evidence is unavailable if all parties stipulate to the content of the unavailable evidence. Despite the stipulation, the parties may contest the stipulated evidence as if it had been available at trial.

(e) Award of Costs. The court may order a party seeking a continuance to reimburse other parties for their actual expenses caused by the delay.

Committee Comments

1994 Amendment

The proposed rule is based upon present L.R. 20(a) [also was L.R. 20 prior to 1987], and governs continuances of trial and other pretrial proceedings in civil actions. The final two sentences of the present rule were amended in an attempt to clarify the situation in which the absence of significant evidence would not allow delay of the trial. In essence, if the party or parties against whom evidence will be offered will stipulate to the evidence which an unavailable witness or document will provide the trial will not be continued. In entering such a stipulation, the parties do not stipulate to the relevance, admissibility, or truth of the evidence. Instead, the parties remain free to challenge its relevance or admissibility through proper objection, and to challenge the truth of the evidence through the introduction of impeaching or conflicting evidence. While the intent of present L.R. 20(a) is the same, the Committee believed that its language might lead to unnecessary confusion, and the rule was consequently redrafted.

2000 Amendment

The Committee removed the requirement from the prior version of the local rule that the motion to continue a trial or other proceedings in civil cases must be "verified." The Committee compared the current local rule with the Southern District's recently revised local rule deleting the verification requirement. The Southern District's rule also admonishes that "the court expects counsel to have consulted with their clients prior to requesting continuances of a trial setting." After considering the Southern District rule, the Committee removed the verification requirement, and adopted the client consultation language. The Committee believed the addition of the client consultation language makes it clear to counsel that he or she has an obligation to advise and consult with the client regarding continuances.

2002 Amendment

All amendments were technical.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 16-6 Alternative Dispute Resolution

(a) Report of Agreement. After they confer as required by Fed. R. Civ. P. 26(f), the parties must advise the court which, if any, alternative-dispute-resolution processes they expect to pursue and when they expect to undertake the process.

(b) Authority to Order Mediation or Evaluation. The court may order mediation or early neutral evaluation in any civil case.

(c) Rules. The Indiana Rules for Alternative Dispute Resolution (including the rules regarding privilege, confidentiality of communications, and disqualification of neutrals) apply to all alternative-dispute-resolution processes unless the court orders otherwise.

(d) Judicial Settlement Conference. A settlement conference conducted by a judge is not an alternative-dispute-resolution process.

(e) Immunity of Mediators. Mediators performing their duties under these rules have, to the extent the law allows, the same immunities a judge has.

(f) List of Neutrals. The clerk must maintain a list of neutrals available for mediation or early neutral evaluation. The list may be purchased from the clerk's office or accessed for free on the court's website.

Committee Comments

1994 Amendment

[Compiler's Note: This rule was originally numbered 53.2, but was re-numbered 16.6 in 2000 see L.R. 53.2 for original text.] This revision simplifies and clarifies present L.R. 32. [Compiler's Note: Local Rule 32, adopted in 1988 mirrored a Southern District rule adopted in 1984.] As the Judicial Improvements Act of 1990 recognizes, parties should be encouraged to resolve disputes amicably and efficiently, and the court should have available devices which can assist the parties in the settlement process. The experience of the court with present dispute resolution devices such as summary jury trial, arbitration, mediation, and settlement conferences has proven the value of alternative methods of dispute resolution. The proposed rule is designed to build upon that experience. Like L.R. 32, the proposed rule permits the use of non-binding summary trial and alternative methods of dispute resolution. Unlike L.R. 32, the proposed rule makes clear that the parties are entitled to request non-binding resolution by motion, and also explicitly permits the parties to consent to a binding method of dispute resolution.

The Advisory Committee does not intend to suggest, however, that summary jury trial is a preferred method of dispute resolution. In fact, as the Court's Civil Justice Expense and Relay Reduction Plan makes clear, summary jury trials should be considered the exception rather than

the rule. *See* § 4.02. The Committee mentioned summary jury trial only to make clear that the court retains the power to order a summary jury trial in appropriate cases.

2000 Amendment

This proposed rule would replace existing L.R. 53.2 [which largely followed former L.R. 32] and is in compliance with the ADR Act of 1998, now codified at 28 U.S.C. § 651, *et seq.* In accordance with Fed. R. Civ. P. 83(a) this rule is being numbered L.R. 16.6 to conform to the uniform numbering system proscribed by the Judicial Council of the United States as promulgated in its March 1996 session.

The proposed rule is not particularly detailed, as the Committee sought to draft a rule that would accommodate the evolving ADR processes in all three divisions. While somewhat similar to what was done in the Southern District, that District went on to draft a local rule on arbitration which the Committee did not believe was either required under the ADR Act, or necessary given its rarity of use.

L.R. 16.6(b) also mandates the consideration of "ADR" in most cases, a requirement missing from prior versions. While the Southern District applied an admittedly minimalist approach to ADR, the tenor of this proposed local rule makes the utilization of ADR more likely, and encourages the selection of an ADR process by the time a scheduling conference is held.

To comply with the procedural requirements of the ADR Act of 1998, the Committee has provided that the Indiana Rules for Alternative Dispute Resolution are to govern unless otherwise ordered by the court. However, since settlement conferences expressly fall outside the local rule, federal judicial officers will not be governed by state court rules with which they may have little familiarity. Finally, to assist counsel, the rule provides that the clerk's office will maintain a roster of available neutrals, which will probably be the same roster district-wide.

2009 Amendment

The Committee considered adopting the Southern District's extensive rules of alternate dispute resolution but determined that with the exception of the immunity provision currently shown red-lined in new subsection (d)–the Southern District's 1.3–no changes were necessary. With the addition of a new paragraph (d), the former (d) will be re-lettered (e).

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 23-1 Class Actions

A party seeking to maintain a case as a class action (whether for or against a class) must include in the complaint, crossclaim, or counterclaim

(a) the words "Class Action" in the document's title; and

(b) a reference to each part of Fed. R. Civ. P. 23 that the party relies on in seeking to maintain the case as a class action.

Committee Comments

1994 Amendment

This proposed rule revises present L.R. 8. [Compiler's Note: L.R. 8 was new in 1987 and was in accord with the Southern District's rule.] The most significant change is the elimination of the requirement in L.R. 8 that certain matters such as class size, adequacy of representation and common questions of law and fact be pleaded with specificity. The Committee believed that the specificity required by L.R. 8 either conflicted with the "short and plain" pleading requirement of Fed. R. Civ. P. 8, or were duplicative of requirements in Fed. R. Civ. P. 23.

The words "or the court shall direct" were added to the first sentence of sub-paragraph (b) to reflect more accurately the language of Fed. R. Civ. P. 23(c)(1).

1996 Amendment

Subpart (b) was amended to require the filing of a motion to certify a class action within 90 days unless impracticable under Fed. R. Civ. P. 23(c)(1).

2000 Amendment

For uniformity, the Committee adopted the Southern District's rule which modified the first sentence of subpart (b) and provided clarity as to the procedure for class actions. The changes are more editorial than substantive.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

The Committee also recommended deletion of former paragraph (b) requiring a plaintiff to file a motion to certify a class within ninety days of the filing of the complaint. The Southern District deleted the same language because it was unwieldy and did not work well in application. Deletion of the language will allow uniformity with the Southern District.

L.R. 24.1 PROCEDURE FOR NOTIFICATION OF ANY CLAIM OF UNCONSTITUTIONALITY (deleted 2009)

~~**L.R. 24.1: Procedure for Notification of Any Claim of Unconstitutionality**~~

~~**(a)** Whenever the constitutionality of any act of Congress affecting the public interest is or is intended to be drawn into question in any suit or proceeding to which the United States, or an officer, agency or employee thereof, is not a party, counsel for the party raising or intending to raise such constitutional issue shall immediately file a "Notice of Claim of Unconstitutionality" with the court, specifying the act or the provisions thereof which are attacked, with a proper reference to the title and section of the United States Code if the act is included therein.~~

~~**(b)** In any action, suit, or proceeding in which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the party raising the constitutional issue shall, immediately file a "Notice of Claim of Unconstitutionality" with the court specifying the act or the provisions thereof which are attacked, with a proper reference to the title and section of the Indiana Code if the act is included therein.~~

~~**(c)** The party giving notice of a challenge to the constitutionality of a statute under subsection (a) or (b) shall also move the court to certify the question to the Attorney General of the United States and the United States Attorney in the case of an act of Congress; or to the Attorney General of the state in the case of a state statute, as required by 28 U.S. C. § 2403. In the case of an act of Congress, a copy of the motion and notice shall be served upon the Attorney General of the state. The pertinent attorney general shall not be served with a summons or made a party to the action unless intervention is sought. The moving party shall tender a form of order and include on the distribution list the pertinent attorney general, and in the case of an act of Congress, the United States Attorney, with sufficient copies for service. An order granting certification shall provide a set time within which the attorney general may seek to intervene, and the clerk shall serve a copy of~~

~~the order upon the attorney general, and in the case of an act of Congress, the United States Attorney.~~

~~**(d)** Failure to comply with this rule will not be grounds for waiving the constitutional issue or for waiving any other rights the party may have. Any notice provided under this rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading requirement set forth in statute or the Fed. R. Civ. P.~~

Committee Comments

1994 Amendment

The proposed rule is derived from present L.R. 22[L.R. 16 prior to 1987], which governs only notification to the court when a federal statute is allegedly unconstitutional. The proposed rule makes no changes in the procedure for notification involving federal statutes, but does expand the rule to require notification when a State statute is allegedly unconstitutional. The notification procedures for both federal and state statutes are identical.

2000 Amendment

The Committee considered S.D. Ind. L.R. 24.1 which recently underwent revision. To provide uniformity, the Committee added paragraph (c) to assure that the notice to the clerk required by L.R. 24.1(a) and (b) is followed by court certification, and notice to the pertinent government official under 28 U.S.C. §2403. Under this rule, certification is not automatic; the court may deny certification, for example, because the public interest is not affected or the action will likely be disposed of on another basis.

This amendment, like the Southern District's revision, also clarifies that it is not appropriate to implead an attorney general merely because the constitutionality of a statute is in question. Section 2403 makes it clear that intervention is at the option of the attorney general.

2002 Amendment

Several clarifying amendments were made to conform the rule to the Southern District's version.

2009 Amendment

This rule should be abandoned in favor of new local rule 5.1.1, for the reasons set out in the Committee Comments in connection with that rule.

N.D. Ind. L.R. 26-1 Form of Certain Discovery Documents

(a) Form of Requests. A party propounding written discovery under Fed. R. Civ. P. 33, 34, or 36 must number each interrogatory or request sequentially.

(b) Form of Responses. A party responding (by answer or objection) to written discovery must:

(1) fully quote each interrogatory or request immediately before the party's response; and

(2) number each response to correspond with the interrogatory or request being responded to.

(c) Limit on Requests for Admission. Ordinarily, a party may not serve more than 30 requests for admission on another party (not counting requests that relate to the authenticity of a document. A party wanting to serve more requests must file a motion setting forth the proposed additional requests and why they are necessary.

Committee Comments

1994 Amendment

The present rule derives from L.R. 14 [Rule 8 prior to 1987]. Present L.R. 14(a) was deleted, and the language suggested by the Local Rules Project was inserted. One formal difference between the rules is that proposed L.R. 26.1(a) requires sequential numbering of discovery requests and that a response for production must set out the request immediately before the response. In a more significant change, sub-paragraph (b) clarifies that sub-paragraphs which relate to the subject matter of an interrogatory do not count as separate interrogatories for purpose of the 30 interrogatory limitation. The Committee believes that the requirements of this rule effectively balance the parties' rights to discovery against the court's inherent power to secure the just, speedy, and inexpensive resolution of suits and its obligation to manage pretrial proceedings to avoid undue burden and expense. *See* Fed. R. Civ. P. 1, 16, 26.

2000 Amendment

The Southern District of Indiana has a similar local rule to this rule. The Committee revised the title of this local rule, i.e. "Form of Certain Discovery Documents," to reflect that requests for admissions are generally not considered to be discovery. This revision was not made to the Southern District rule, but appears proper in light of the cases which exclude requests for admissions as discovery.

Adoption of this rule places the Northern District in conformity with the Southern District's version of L.R. 26.1, except that our rule expands the maximum number of requests for

admission from twenty-five (25) to thirty (30). In addition, the Committee removed the limit on interrogatories, anticipating a change to the Federal Rules which will remove the ability of a court to limit the number of interrogatories by Local Rule. This change to the Federal Rules will, in effect, make the twenty-five (25) written interrogatory limit imposed by Fed. R. Civ. P. 33(a) a national rule.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 26-2 Filing of Discovery and Other Materials

(a) Generally.

(1) ***Discovery Ordinarily Not Filed.*** The party who serves a discovery request or notices a deposition is the custodian of the original discovery response or deposition transcript. Except as required under subdivision (a)(2), parties must not file:

(A) disclosures under Fed. R. Civ. P. 26(a)(1) or (2);

(B) deposition notices;

(C) deposition transcripts;

(D) interrogatories;

(E) requests for documents, to permit entry upon land, or for admission;

(F) answers to interrogatories;

(G) responses to requests for documents, to permit entry upon land, or for admission; or

(H) service-of-discovery notices.

(2) ***Exceptions.***

(A) *Pro Se Litigation.* All discovery material in cases involving a pro se party must be filed.

(B) *Specific Material.* Discovery material must also be filed when:

(i) the court orders; or

(ii) the material is used in a proceeding.

(3) ***Motions to Publish Not Required.*** Motions to publish deposition transcripts are not required.

(b) Filing Materials with Motion for Relief. A party who files a motion for relief under Fed. R. Civ. P. 26(c) or 37 must file with the motion those parts of the discovery requests or responses that the motion pertains to.

(c) Materials Necessary for Motion. A party must file those portions of discovery requests or responses (including deposition transcripts) that the party relies on to support a motion that could result in a final order on an issue.

(d) Materials to be Used at Trial. A party who reasonably anticipates using discovery requests or responses—including deposition transcripts—at trial must file the relevant portions of the requests or responses with the clerk at the start of the trial.

Committee Comments

1994 Amendment

This rule replaces present L.R. 15 [which was new in 1987]. It modifies the present rule in several respects. First, requests for admission and responses, which did not previously need to be filed, must now be filed with the court. Second, present L.R. 15(e), which required that discovery be filed in pro se cases, has now been simplified in its language. Third, notices of depositions no longer need to be filed. Fourth, the parties are relieved from filing a notice of discovery, as required under the present rules. The rule clarifies that notices of deposition need not be filed. Finally, the requirement that papers not in the record but necessary for appeal should be filed with the clerk was deleted, for it erroneously implied that counsel have an opportunity to supplement or correct deficiencies in the record when the case is on appeal.

The concern with L.R. 26.2 is its potential conflict with Fed. R. Civ. P. 5(d), which requires filing of all papers with the court unless the court on motion of a party or its own initiative otherwise orders. On the other hand, the clerk of the court has advised that it simply does not have the filing space available to accommodate all discovery filings. The present rule is an attempt to balance these concerns by requiring the filing of certain documents and the parties' retention of other documents. Moreover, to the extent that the purpose of FRCP 5(d) is to allow public access to court records, the Committee believes that this matter can be taken up case-by-case by individuals seeking access to particular documents retained by the parties under this rule. The Committee anticipates that leave to examine documents in a particular case would be freely granted by the court, subject only to privileges of non-disclosure which the parties might assert in response to such a motion.

1995 Amendment

Subpart (a) was amended to include disclosures under Fed. R. Civ. P. 26(a)(1) as another category of documents that are not to be filed with the court.

2000 Amendment

The S.D. Ind. L.R. 26.2 is similar but not identical to this local rule. For instance, the Southern District of Indiana local rule does not contain the text currently added by the Committee in paragraph (a). This proposal is based upon the proposed amendment to Fed. R. Civ. P. 5(d), which largely excludes the filing of discovery, to which the Committee added customary local discovery filings such as, "notices of deposition" and "notice of service of discovery."

Paragraph (e) of the rule requires all discovery to be filed in cases where there is a pro se litigant. The Committee believes this paragraph serves a useful purpose; however, if proposed Fed. R. Civ. P. 5(d) is adopted, this provision could be in conflict with that Federal Rule.

The Committee, as it did in L.R. 26.1, changed the title from "Filing of Discovery Materials" to "Filing of Discovery and Other Materials." The "Other Materials" portion again reflects that requests for admission are generally not considered discovery.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 30-1 Scheduling Depositions

(a) Avoiding Conflicts. Attorneys must try in good faith to schedule depositions to avoid calendar conflicts.

(b) Notice. Attorneys must schedule depositions with at least 14-days' notice, unless opposing counsel agrees to shorter notice or the court orders otherwise.

Committee Comments

2000 Amendment

The Southern District has an entirely different rule governing the conduct of counsel at depositions. That rule includes a provision that an attorney for a deponent is not to initiate a private conference with a deponent regarding a pending question except for the purpose of determining whether a claim of privilege should be asserted. S.D. Ind. L.R. 30.1(c). Further, under that rule an attorney is not to interpose objections to questions in the presence of a deponent that would suggest an answer to a pending question. *Id.* at ¶(d).

The Committee reviewed the Southern District's version of L.R. 30.1 and found it to be unnecessary in this district. In lieu of the Southern District's Local Rule 30.1, the Committee adopted a new rule which attempts to eliminate the possibility of scheduling conflicts for depositions being brought to the court's attention. The Committee believes that this local rule in combination with L.R. 37.1 and the Seventh Circuit's "Standards for Professional Conduct" which specifically relate to "Lawyers' Duties to Other Counsel" will encourage counsel to confer and hopefully resolve these types of scheduling issues without involving the court.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 37-1 Resolving Discovery Disputes

(a) Certification Required. A party filing any discovery motion must file a separate certification that the party has conferred in good faith or attempted to confer with other affected parties in an effort to resolve the matter raised in the motion without court action. The certification must include:

(1) the date, time, and place of any conference or attempted conference; and

(2) the names of the parties participating in the conference.

(b) Failure to File Certification. The court may deny any motion described in subdivision (a)—except those motions brought by or against a person appearing pro se—if the required certification is not filed.

Committee Comments

1994 Amendment

The rule amends present L.R. 13. [Compiler's Note: L.R. 13 utilized the specific language of L.R. 7(e) that existed prior to 1987.] The first paragraph of the proposed rule is taken from the Model Rule suggested by the Local Rules Project. The Model Rule does not state the precise information to be contained in the statement; the Committee thus adopted a slight revision of the final two sentences of the present L.R. 13 as the second paragraph of this Rule.

The Committee does not intend any change in present practice under L.R. 13. Specifically, the Committee does not intend the proposed rule's substitution of the phrase "reasonable effort to reach agreement" to create a standard different than L.R. 13's present criteria of "sincere attempts to resolve differences." The linguistic changes were motivated by a desire to ensure uniformity of rule with other district courts which might adopt the Local Rules Project's language.

1995 Amendment

As originally adopted, a non-party seeking relief under Fed. R. Civ. P. 26(c) was exempt from the requirements of this local rule. The 1995 Amendment removed the exemption, leaving only pro se litigants exempt from its requirements.

1996 Amendment

The rule was amended to incorporate the certification requirements imposed by Fed. R. Civ. P. 26(c), 37(a)(2)(A), 37(a)(2)(B) and 37(d) and to require a recitation of the date, time, and place of the conference.

2000 Amendment

This amendment seeks to revitalize and expand this Local Rule. The Committee added paragraphs (b) and (c) to the current N.D. Ind. L.R. 37.1 to make clear that motions relating to discovery other than those specifically listed in paragraph (a) must include a certification that the movant in good faith conferred or attempted to confer with counsel prior to bringing the issue to the attention of the court.

2008 Amendment

The changes in this rule remove citations to other local rules that either are no longer in existence or have been amended. No substantive changes to the rule are being proposed.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 37-3 Dealing with Objections During Depositions

(a) Attempt to Resolve Dispute. Before contacting the court for a ruling on an objection during a deposition, all parties must confer in good faith or attempt to confer in an effort to resolve the matter without court action.

(b) Raising Objections with the Court. A party may recess a deposition to submit an objection by phone to a judge if:

(1) a judge is available and willing to address the objection; and

(2) the objection:

(A) could cause the deposition to be adjourned; and

(B) can be resolved without submitting written materials to the court.

Committee Comments

1994 Amendment

This rule is new. Although the court has always been available in appropriate cases to resolve discovery disputes immediately, this rule makes the practice clear.

[Compiler's Note: Prior to adoption, the court added the phrase: "subject to the availability of and within the discretion of the judicial officer," to the first sentence of the rule. The court also added a concluding sentence: "such telephonic submission shall be subject to the requirements of L.R. 37.1."]

2000 Amendment

The prior version of this rule indicated that any telephonic submission of a dispute under this rule would be subject to the requirements of L.R. 37.1. This revision rewrites the last sentence to specifically extend the good faith requirement of L.R. 37.1 to disputes brought to the court's attention under this rule. With the exception of the Committee's revision to the concluding sentence, the rule mirrors S.D. Ind. L.R. 37.3.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 40-1 Case Assignment

(a) Assignment According to Court Order. The clerk's office must assign cases to judges according to the court's general orders.

(b) Assignment Sequence Is Confidential. No one in the clerk's office may reveal to any person, other than a judge, the sequence in which cases are assigned.

(c) Punishment for Tampering with Assignments. The court may punish a person for contempt if the person, directly or indirectly, causes or attempts to cause a court employee to:

(1) reveal the sequence in which cases are assigned; or

(2) assign a case inconsistent with the court's order.

(d) Notice of Related Action. A party must file a notice of related action as soon as it appears that the party's case and another pending case:

(1) arise out of the same transaction or occurrence;

(2) involve the same property; or

(3) involve the validity or infringement of the same patent, trademark, or copyright.

(e) Transfer of Related Cases. When the court determines that two cases are related, the case filed later must be transferred to the judge handling the earlier- filed case. But a magistrate judge handling an earlier-filed case with consent under Fed. R. Civ. P. 73 must transfer the case to a district judge handling a later-filed case if the parties to the later case have not consented to a magistrate judge handling the entire case.

(f) Reassignment of Cases.

(1) ***Workload.*** The court may reassign cases among judges if workload and the speedy administration of justice so require.

(2) ***Disqualification of District Judge.***

(A) *Civil Cases.* A civil case must be randomly reassigned to another district judge in the district if the presiding district judge is disqualified.

(B) *Criminal Cases.* If a district judge presiding over a criminal case is disqualified the case must be randomly assigned to another district judge in the same division if there is one. If there is no other district judge in the division, the case must be reassigned to another district judge by:

(i) the chief judge, if the chief judge is not disqualified; or

(ii) the district judge with the most seniority on the bench who is not disqualified.

(3) ***Disqualification of Magistrate Judge.*** If a magistrate judge handling a case with consent under Fed. R. Civ. P. 73 is disqualified, the district judge most recently assigned to the case will reassign it to another magistrate judge within the district.

(g) Remands for New Trials. Cases remanded for a new trial under Seventh Circuit Rule 36 must be reassigned according to subdivision (f) unless:

(1) the remand order directs otherwise; or

(2) within 14 days after the mandate for a new trial is docketed, all parties in the case file a request that the judge previously assigned to the case retry it.

Committee Comments

1994 Amendment

This proposed rule is based upon present N.D. Ind. L.R. 40 [L.R. 26 prior to 1987], which governs re-assignments only in the Hammond Division. The Committee believed that it would be beneficial to have an equivalent rule operate throughout the district. Thus, the only change is to expand L.R. 40 to cover the problem of re-assignment in all divisions.

2000 Amendment

The current N.D. Ind. L.R. 40.1 is entitled "Reassignment on Recusal." Under the existing rule, a district judge who has recused himself should notify the chief judge so that the case can be reassigned. However, this is contrary to existing practice for normally the case is reassigned to another judge within that division. The Committee essentially incorporated at

paragraphs (g) and (h) existing practice, as set out in a general order from this court dated July 13, 1998. This final version is a combination of the general order and the Southern District's version of L.R. 40.1.

2004 Amendment

Subpart (g) was amended to reflect that in every division of the court there is now more than one district judge, and in one division there are three. The rule was drafted to accommodate future additions or contractions among the court's judiciary.

2007 Amendment

The amendment to paragraph (g), involving the assignment of a case after disqualification, was amended so that it mirrors the present district-wide practice that civil cases are to be randomly assigned to a district judge regardless of the division in which they were filed. In sum, the court saw no reason to have a different practice for cases in which the original district judge disqualified.

Paragraph (h) is new and essentially the criminal case corollary to paragraph (g), but recites current practice. As stated, the rule requires that if a judge disqualifies in a criminal case, that case is to be reassigned within the division on a random basis.

With the addition of an entirely new paragraph (h), former paragraphs (h) and (i) were re-lettered to (i) and (j) respectively.

Paragraph (e) was also amended to correct a small typographical error.

2009 Amendment

The Committee recommended amending the Rule at paragraph (j) to reflect the anticipated time calculation amendments effective December 1, 2009, and for consistency with the Southern District. Accordingly, the time to request the same judge retry a case following a mandate is reduced from fifteen (15) days to fourteen (14) days.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

In addition, section (e) was amended to provide for the circumstances where in one case the parties consent to the Magistrate Judge, but in the other related case, the parties do not consent. The rule change allows the Magistrate Judge in the consented case to transfer the consented case to the District Judge assigned to the related case.

N.D. Ind. L.R. 40-4 Time-Sensitive Matters

If a matter needs to be heard quickly and the judge assigned to the case is unavailable, the clerk must notify the district judge in the same division with the most seniority on the bench. But if no district judge is available in that division, the clerk must notify the chief judge or—if the chief judge is unavailable—the district judge with the most seniority on the bench.

Committee Comments

1994 Amendment

This proposed rule is new, and is derived from a proposal of the Rules Committee for the United States District Court for the Southern District of Indiana. Their draft of L.R. 40.4 combined several internal administrative rules of their court. The Committee believed that a similar rule describing the divisions of the court and the availability of a motion judge would be beneficial.

The significant difference in this rule from the present practice of the court was the creation of a motion judge to whom all emergency matters would be referred in the absence of a judge assigned to the case. The Committee anticipates that this function will be filled by the judges of the court on a rotating basis, and will provide litigants a more definite procedure to follow when emergency matters arise.

2000 Amendment

The Southern District has no comparable rule to this rule. The Committee struck the language in subsection (c) providing for a motions judge because it is not the general practice to have such a judge in this district. To more accurately reflect current practice, the Committee added the language now in L.R. 40.4(c).

2009 Amendment

The Committee recommended deletion of paragraphs (a) (concerning divisions of the court and trial sessions) and (b) (providing for continuous trial sessions) for two reasons: first, the terms "trial sessions" and "continuous session" are archaic; second, paragraph (a) does not reflect the current policy of random assignment of civil cases. The Committee rejected the Southern District's provision for the designation of a "motions judge" as contrary to this Court's procedure.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 41-1 Failure to Prosecute

The court may dismiss a civil case with judgment for costs if:

(a) no activity has occurred in the case for six months;

(b) the court or clerk has notified the parties that the case will be dismissed for failure to prosecute it; and

(c) at least 28 days have passed since the notice was given.

Committee Comments

1994 Amendment

The proposed rule is taken nearly verbatim from present L.R. 36(a) [Rules 27(d) and 10 prior to 1987]. The only amendment was to expand the rule so that it now also applies to the pro se litigants. L.R. 36(b), which had dealt with dismissal for failure to serve process, has subsequently been superseded by Fed. R Civ. P. 4(j) [now, 4(m)], and was therefore deleted. [Compiler's Note: The court added the phrase "of record" after the word "action" prior to adoption.]

2000 Amendment

L.R. 41.1 is virtually identical in both districts. The Northern District rule begins "Civil cases in which no action of record has been taken . . . ." The Southern District version eliminates "of record" from that sentence. In addition to notice from the clerk, the Southern District has added "the assigned judicial officer or the clerk." The Committee, while considering the Southern District's rule, struck the words "of record" and made no other changes. It was the observation of many on the Committee that a civil case can be actually prosecuted, yet that activity would not be revealed "on the record." This may become even more true with the practical elimination of many discovery filings as set out in L.R. 26.2.

2009 Amendment

This change is recommended to comply with the S.D. Ind. L.R. 41.1 and current practice where either the clerk or, as now amended, the judge issues the show cause notice. The 30 days' notice provision was also amended to 28 days for consistency with the Southern District.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 42-2 Consolidation

(a) Required Filings. A party seeking to consolidate two or more cases must file:

(1) a motion in the case with the earliest docket number; and

(2) a notice of the motion in all the other cases.

(b) Ruling. The judge assigned to the case in which the motion is filed will decide the motion.

Committee Comments

The Northern District did not have a Local Rule 42.2 dealing with consolidation of cases. The Committee recommended that the Northern District adopt the Southern District's version.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 47-1 Voir Dire

(a) Voir Dire Conducted by Court. Ordinarily, the court conducts voir dire in jury cases. But consistent with Fed. R. Civ. P. 47, the court may allow attorneys to conduct voir dire.

(b) Requests to Cover Particular Subjects and Questions. At the time set by the court, parties may file with the clerk requests for the court to cover particular subjects or to ask particular questions during voir dire.

(c) Requests for Additional Questions after Initial Voir Dire. After the court completes its initial voir dire, parties may request that the court ask additional questions that are necessary and could not have been reasonably anticipated before trial.

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Committee Comments

1994 Amendment

The proposed rule is identical to present L.R. 41 [Rule 13(b) prior to 1987], which has been re-numbered to conform to the suggestions of the Local Rules Project.

2000 Amendment

L.R. 47.1 is identical in both districts with the exception of the following sentence which has been added in the Southern District: "However, nothing in this Rule is intended to preclude or otherwise limit the court, in any individual case, from allowing attorneys to conduct voir dire examination in any other manner as permitted by Federal Rule of Civil Procedure 47."

The Committee struck from the existing L.R. 47.1 the words "at least 24 hours before commencement of trial, or at other," because the submission of voir dire questions is governed in each instance by court order. In addition, the Committee, for uniformity, added the concluding sentence from the Southern District's rule. Upon consideration, the Committee felt that this language would not be objectionable because it is left to the discretion of each presiding judge.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 47-2 Communication with Jurors

(a) Communication Forbidden. Ordinarily, no party or attorney (or any of their employees or agents) may communicate off the record with:

(1) a member of the jury pool; or

(2) a juror during trial, during deliberations, or after a verdict.

(b) Exceptions. The court may allow a party or attorney to communicate with jurors if all other parties are given notice and if the court sets conditions on allowed communication.

Committee Comments

1994 Amendment

[Compiler's Note: In 1987 the court adopted this rule verbatim from one used by a district in Wisconsin and which the Seventh Circuit upheld in *Delvaux v. Ford Motor Co.*, 764 F.2d 469 (7th Cir. 1985). The rule was assigned the title "Juror Contact" and given the number 44. In 1994 the Local Rules Advisory Committee suggested liberalizing the rule to allow limited attorney contact in civil cases after expiration of the juror's panel service and upon notice to the court and all counsel of record. The court rejected the proposed rule and retained the former language, now re-numbered to 47.2.]

2000 Amendment

Local Rule 47.2 is similar in both the Northern and Southern Districts of Indiana. The Southern District rule extends the prohibition against juror communications to pro se litigants as well as attorneys. The Committee added the language "or party" in the first sentence to insure that pro se parties would also be bound by this rule. The remainder of the rule remains unchanged.

2009 Amendment

In order to grant more discretion to the assigned judge, the committee recommended elimination of the requirement of good cause before communication with a juror is allowed. Leave of Court is still required.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 47-3 Assessment of Jury Costs

(a) Authority of Court. The court may order any party or its counsel to pay juror costs (including marshal's fees, mileage, and per diem) if:

(1) prospective jurors have reported for voir dire;

(2) a trial does not start or resume as scheduled; and

(3) a settlement, change of plea, or other action by the party or its counsel causes the court to incur the costs.

(b) Safe Harbor. The court may not assess juror costs if at least one full business day before the trial is set to begin, the clerk is notified of the circumstances causing delay.

Committee Comments

1994 Amendment

The proposed rule is based upon present L.R. 42 [and formerly, rule 30]. The revision is intended to ensure that juror cost shall be borne by the parties when the tardiness of a settlement forces the court to incur juror costs. In a technical revision, the proposed rule makes it clear that parties who notify the clerk of settlement at least one full business day prior to the start of trial will not be required to bear any juror costs; the present rule was somewhat ambiguous on the latest date at which the parties could advise the court of settlement and avoid assessment of juror costs.

Parties and attorneys who unreasonably and vexatiously delay settlement are still subject to other sanctions. *See* L.R. 16.1(k).

2000 Amendment

Both the Northern District and the Southern District have comparable rules on this issue, although the Southern District's Rule is numbered as L.R. 42.1. For uniformity, the Committee considered changing the numbering of the rule, but opted to retain the current numbering system.

2002 Amendment

This is a substantial revision based on rules from the Northern and Central District of Illinois as well as this district's rule. The goal was to extend the possible assessment of costs to criminal cases.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

L.R. 48.1 SIX-MEMBER JURIES (deleted 2000)

~~**L.R. 48.1: Six-Member Juries**~~

~~In all civil jury cases, the jury shall consist of six (6) members, unless otherwise provided by law.~~

~~Provided however, that the court to whom the case is assigned may impanel a jury of not more than twelve (12) members who shall constitute the jury to hear the particular civil case. Each person so impaneled shall be considered a member, and the verdict shall be unanimous unless the parties otherwise stipulate.~~

~~In the event that it becomes necessary to excuse one (1) or more jurors for reasons the court determines to be valid, the unanimous decision of six (6) or more jurors shall constitute the verdict of the case. If fewer than six jurors remain, the provisions of Fed. R. Civ. P. 48 govern.~~

[Compiler's Note: The original rule adopted in 1994 derived from former L.R. 24 (rule 25 prior to 1987) but as the Advisory Committee noted, "it largely overlaps with proposed Fed. R. Civ. P. 48 . . . [.]" The rule was deleted in 2000 because in the Committee's view, "[it] is redundant of [the] federal rule."]

N.D. Ind. L.R. 51-1 Jury Instructions

In jury cases, parties must use pattern jury instructions when possible.

Committee Comments

1994 Amendment

This new rule derives from present CR-7 (as revised by proposed L.R. 110.1), which concerns criminal cases. The benefits of submitting jury instructions in advance of trial are significant in civil cases. Unlike L.R. 110.1, however, it is contemplated that in accordance with Fed. R. Civ. P. 5 and L.R. 5.1, requests for civil jury instructions will be served on opposing counsel at or before the time of filing the requests.

1996 Amendment

This amendment deleted the requirement that jury instructions be filed in triplicate at least 3 business days before trial.

2000 Amendment

There is no Southern District counterpart to this rule. However, the Committee retained the rule but modified it by striking the last sentence [governing exceptions for unanticipated issues] since these matters are routinely governed by the pretrial order as noted in the first sentence. The Committee also changed the language requiring instructions to be submitted on a disk in a format compatible with WordPerfect in favor of requiring the parties to submit instructions in a format compatible with the court's word processing program. The Committee believes this addition will avoid having to amend the rule in the future if the court's word processing program is changed from WordPerfect.

2009 Amendment

Because of electronic filing, the Committee deleted obsolete language concerning the need to submit additional copies of jury instructions.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

L.R. 53.2 ARBITRATION/ALTERNATIVE DISPUTE RESOLUTION (Renumbered 2000)

~~**L.R. 53.2:Arbitration/Alternative Dispute Resolution**~~

~~A judge may, in his or her discretion, upon the judge's own motion or on the motion of a party, set any appropriate civil case for advisory summary jury trial or other alternative methods of dispute resolution. However, the parties may agree to be bound by the result of the alternative method of dispute resolution.~~

[Compiler's Note: Rule re-numbered and amended as L.R. 16-6 in 2000. See L.R. 16.6 for original Committee comment.]

N.D. Ind. L.R. 54-1 Taxation of Costs

(a) Process. To recover costs, a party must file and serve a completed AO Form 133 (available from the clerk or the court's website) within 14 days after final judgment is entered.

(b) Extensions. The court may extend the 14-day deadline for good cause if, before the original deadline, the party files a motion requesting an extension.

Committee Comments

1994 Amendment

The present rule derives from present L.R. 43 [which was apparently new in 1987]. The only changes were designed to clarify and simplify the language of the rule. No change in substance was intended.

1995 Amendment

The rule was amended to reduce the time for filing a request for costs and attorney fees from 90 days to 14 days, to conform with Fed. R. Civ. P. 54(d)(2)(B). [Compiler's Note: The original 90 day deadline was inserted in 1987 in accordance with a recommendation by the Seventh Circuit Judicial Council in 1983.]

2000 Amendment

L.R. 54.1 deals with the taxation of costs and assessment of attorney fees. The original version of this rule was identical in both districts. However, in their most recent revisions, the Southern District amended its rule to add: "The court prefers that any bill of costs be filed on an AO Form 133, which is available from the clerk." The Committee adopted the premise from the Southern District's rule but revised the language to make mandatory, not just preferential, the requirement that the party requesting taxation of costs submit that request on an AO Form 133.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 56-1 Summary Judgment Procedure

(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 in accordance with L.R. 7-1.

(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.

Committee Comments

1994 Amendment

The proposed rule revises present L.R. 11 [which was basically a new rule in 1987] regarding summary judgment practice. First, the new rule anticipates that the parties' "Statement of Material Facts" and "Statement of Genuine Issues" will be incorporated into the brief in support of the motion for summary judgment, either in the text or as an appendix. Second, both

the "Statement of Material Facts" and the "Statement of Genuine Issues" must contain appropriate citations to the portions of the record which support their factual assertions. Third, the "good faith" requirement presently governing a Statement of Genuine Issues was deleted, since a good faith requirement is already imposed under Fed. R. Civ. P. 11. Finally, and perhaps most significantly, the requirement that finding of fact, conclusions of law, and a proposed order be filed has been deleted. The Advisory Committee received significant input from the Civil Justice Reform Advisory Group, which strongly urged the elimination of these filings due to their cost and limited utility. In its Civil Justice Expense and Delay Reductions Plan, the court indicated its support for elimination of these filings. *See* § 5.06 (b). The Advisory Committee agreed with this suggestion to reduce unnecessary costs.

2000 Amendment

The core provisions of L.R. 56.1 are the same in each district, but the Southern District summary judgment procedures (as recently amended) are much more detailed. Both districts require a statement of material facts from the moving party along with a statement of genuine issues from the party opposing the motion. However, Southern District Rule 56.1(f) requires "a single factual proposition" for each numbered factual assertion. The Southern District also provides an automatic thirty (30) day period for responding to any motions for summary judgment along with a requirement that the motions be filed no later than 120 days prior to trial unless otherwise specified in the case management order. Paragraph (i) of the Southern District rule requires the moving party to provide the *Lewis v Faulkner* [689 F.2d 100(7th Cir. 1982)] notice to pro se litigants.

After reviewing the Southern District's rule, the Committee advises against adopting a comparable version of that rule. Rather, the Committee recommends changing the response time for a summary judgment motion from 15 to 30 days, and addition of language at the end of paragraph (a) referencing a reply brief: "any reply shall be filed within 15 days from the date the response is served." The Committee also opted not to add the provision requiring the movant to issue a *Lewis v. Faulkner* notice to pro se litigants, as a notice is routinely generated by the court.

2003 Amendment

The Committee undertook a substantial review of current N.D. Ind. L.R. 56.1 in light of major revisions made by the Southern District to their summary judgment local rule. The Committee did adopt an addition to the local rule. Paragraph (d) clarifies that motions to strike, *i.e.* motions disputing the admissibility of evidence, should be addressed in a separate motion as required by L.R. 7.1 rather than addressed in the summary judgment briefs. The Committee believes that requiring separate motions for disputes about evidentiary matters aids the clerk by clarifying the docket and provides all parties adequate response/reply opportunities.

Paragraph (e) is a codification in the local rules of the Seventh Circuit's requirement in *Lewis v Faulkner*, 689 F.2d 100 (7th Cir. 1982), and its progeny that opposing counsel must notify an unrepresented party of the nature of a summary judgment motion and the appropriate response to such a motion. The Committee concluded that adding this paragraph to the local rules clarifies that the responsibility of serving such a notice lies first with counsel for the moving party and only secondarily with the court. The Committee also concluded that adding this provision will aid practitioners who may be unfamiliar with the *Lewis* decision. To aid counsel in drafting and serving such a notice, the Committee recommends attaching, as

Appendix C to the local rules, the notice previously approved by the court for use where counsel fails to comply with *Lewis v. Faulkner.* [Compiler's Note: Appendix C was amended in 2008 to conform with the stylistic changes made to Fed. R. Civ. P. 56 in 2007.]

2009 Amendment

The Committee did not recommend any changes to this Local Rule apart from establishing 28 days for a response to any motion for summary judgment and 14 days for a reply. This change responds to the new time calculation in the federal rules effective December 1, 2009. Although amended Rule 56 (effective December 1, 2009) grants a party 21 days to respond to a motion for summary judgment, that deadline can be modified by local rule, and 28 days for a response is not only consistent with the new time computation requirements, but also a near approximation of the current 30 days.

The Committee recommended that the Northern District, unlike the Southern District, retain the requirement of a separate motion to strike as set out in Local Rule 56.1(d).

Paragraph (e) discusses notice to pro se litigants and refers to Appendix C. The Southern District's Local Rule 56.1(h) has the requirements of notice to a pro se litigant within the rule. The Committee recommended that the Northern District retain its reference to Appendix C. However, the Committee recommends some changes to Appendix C, which is noted there. In particular, Appendix C is amended to provide pro se litigants with the same response deadline, 28 days, as any other litigant and was also modified to extensively quote the new language of Rule 56.

2010 Amendment

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. In addition, Appendix C to these Rules, the notice of the filing of a summary judgment motion, to pro se litigant was re-styled to include both the text of Fed. R. Civ. P. 56 and the local rule.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 65-1 Preliminary Injunctions and Temporary Restraining Orders

(a) Preliminary Injunctions. The court will consider requests for preliminary injunctions only if the moving party files a separate motion for relief.

(b) Temporary Restraining Orders. The court will consider requests for temporary restraining orders only if the moving party:

(1) files a separate motion for relief;

(2) files a supporting brief; and

(3) complies with Fed. R. Civ. P. 65(b).

Committee Comments

1994 Amendment

The proposed rule derives from present L.R. 37 [which incorporated the practice of the Fort Wayne Division]. Unlike L.R. 37, the proposed rule specifically requires that a motion for a preliminary injunction or temporary restraining order be verified. The court's power to require the verified pleading is contained in Fed. R. Civ. P. 11. The requirement of verification is designed to deter groundless motions and to provide the court with evidence in an admissible form for purposes of ruling on the motion.

Several formal changes, such as sub-paragraphs, are intended to clarify the operation of the rule.

2000 Amendment

The Southern District has significantly modified and shortened its L.R. 65.1. The Committee followed the Southern District's lead and shortened the local rule since much of the current rule tracks, and is redundant of, Fed. R. Civ. P. 65. The revisions are identical to the Southern District's modified rule.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 66-1 Receiverships

(a) Applicability. This rule applies to the administration of estates (excluding estates in bankruptcy) by court-appointed officers such as receivers.

(b) Officer's Duties.

(1) ***Inventories.*** Within 28 days after taking possession of an estate, the court-appointed officer must file:

(A) an inventory and appraisal of the estate's property and assets held by the officer or the officer's agent; and

(B) on a separate schedule, an inventory of the estate's property and assets held by others.

(2) ***Regular Reports.*** Within 28 days after the inventory is filed and every three months after that, the court-appointed officer must file a report:

(A) describing the acts and transactions the officer undertakes on the estate's behalf; and

(B) accounting for any monies received by or expended for the estate.

(c) Compensation of Receiver, Attorneys, and Other Officers.

(1) ***Amount.*** The court, in its discretion, will determine what to pay court- appointed officers, their attorneys, and others the court appoints to help administer an estate.

(2) ***Procedures for Payment.*** To get paid, persons seeking compensation must petition the court and notify:

(A) the estate's creditors; and

(B) any other interested parties the court requires to receive notice.

(d) Administration Generally. In all other respects the court-appointed officer must—to the extent it is reasonable to do so—administer the estate

in the way that bankruptcy estates are typically administered unless the court authorizes a different practice.

(e) Deadlines. The court may alter any deadline imposed by this rule.

Committee Comments

1994 Amendment

The proposed rule derives from present L.R. 26 [which tracked verbatim old L.R. 14]. The only difference is in sub-paragraph (b), which now requires the receiver or other officer to file an appraisal in addition to the inventory already required under L.R. 26. The filing of an appraisal, which is sometimes done even under the present rule, is a useful aid to the court.

2000 Amendment

The Committee recommends no changes to this rule except for the format change [to "Fed. R. Civ. P. 66"] in paragraph (a). The current rule is identical in both districts.

2009 Amendment

The Committee recommended amending the Rule at paragraphs (b) and (c) to reflect the anticipated time calculation amendments effective December 1, 2009, and for consistency with the Southern District. In each instance, thirty (30) days was changed to twenty-eight (28) days.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

L.R. 67.1 DEPOSITS
(deleted 2009)

~~**L.R. 67.1: Deposits**~~

~~**(a) Deposit into Registry Account and Other Interest-bearing Accounts.** All funds deposited into the court pursuant to Fed. R. Civ. P. 67 and 28 U.S.C. § 2041 shall be deposited into an interest-bearing Registry Account maintained by the clerk. The Order of Deposit should direct the clerk, without further order of the court, to deduct from the income earned on the investment a fee not exceeding the fee authorized from time to time by the Judicial Conference of the United States, as soon as such fee becomes available for deduction from the investment income.~~

~~**(b) Orders Directing Investments of Funds by clerk of court.** A party may petition the court for an Order of Investment which directs the clerk to hold the funds in a form of interest-bearing account other than the Registry Account. Whenever a party seeks a court order for money to be invested by the clerk into an interest-bearing account, the party shall personally deliver a proposed order to the clerk, who will inspect the order for proper form, content, and compliance with this rule. A model proposed order is available from the clerk or on the court's website. The clerk shall immediately forward the proposed order to the judge for whom the order was prepared.~~

~~Any order which, pursuant to 28 U.S.C. § 2041, directs the clerk to invest funds in an interest-bearing account or instrument shall include the following:~~

~~**(1)** The amount to be invested;~~

~~**(2)** The name of the financial institution in which the money will be invested;~~

~~**(3)** The type of instrument or account;~~

~~**(4)** The term of the investment; and~~

~~**(5)** If the deposit and/or interest received during the time of investment will exceed the FDIC Insurance amount, then the petitioning party shall obtain a collateral pledge by the financial institution for the remainder of the investment. The collateral pledge shall be approved by the judge.~~

Committee Comments

1994 Amendment

This rule replaces present L.R. 6 [new in 1987, but patterned after a Southern District rule] and the court's General Order of June 12, 1989. This rule reflects the present statutory and administrative constraints which are placed on deposits, as well as the parties' obligations regarding those deposits. The present rule and order are outdated.

2000 Amendment

Local Rule 67.1 deals with money deposited with the clerk's office. The Southern District has no comparable Local Rule. The Committee added language in paragraph (b) which provides: "A model proposed order is available from the clerk on the court's website." The Committee believes this will be a helpful addition to the rule. The Committee also modified the format in paragraph (a) to be consistent with the format throughout the rules.

2009 Amendment

The Committee recommended that Local Rule 67.1 be deleted for three reasons. First, the procedures outlined in the local rule are covered by statute and Rule 67. Second, the order entered approving the deposit generally instructs the clerk whether the money should be kept in an interest bearing account. Third, there is no comparable rule in the Southern District.

L.R 69.2 DISCOVERY IN AID OF JUDGMENT OR EXECUTION (deleted 2009)

~~**L.R. 69.2: Discovery in Aid of Judgment or Execution**~~

~~An order to answer interrogatories shall accompany each set of interrogatories served on a garnishee defendant and may be part of the same document or pleading. As a minimum, the order to answer interrogatories shall contain the following information:~~

~~**(1)** that the plaintiff has a judgment against the defendant and the amount of the judgment;~~

~~**(2)** that the garnishee defendant may answer the interrogatories in writing on or before the date specified or appear in court and answer the interrogatories in person, at the garnishee's option;~~

~~**(3)** the time, date and place of the hearing; and~~

~~**(4)** that any claim or defense to a proceedings supplemental or garnishment order to a garnishee defendant must be presented at the time and place of the hearing specified in the order to appear.~~

~~A copy of the motion for proceedings supplemental must be served on the garnishee defendant at the time the order to answer interrogatories and the interrogatories are served upon the garnishee defendant.~~

~~Further, if the order to answer interrogatories is to operate as a hold on a judgment defendant's depository account, the order shall comply with the applicable provisions of the Indiana Code.~~

~~To the extent that they are inconsistent with the Federal Debt Collection Act, the foregoing provisions shall not apply in Federal Debt Collection Act cases.~~

Committee Comments

1994 Amendment

This proposed rule descends from present L.R. 29(b) [new in 1987 and similar to Southern District Rule 29]. The final two paragraphs are new.

2000 Amendment

Both districts have L.R. 69.2 which provides for discovery in proceedings supplemental. The rules are identical except for the following sentences contained in the Northern District version: "To the extent that they are inconsistent with the Federal Debt Collection Act, the foregoing provisions shall not apply in Federal Debt Collection Act cases." The Committee recommends no changes to this rule.

The Southern District also has a L.R. 69.1 which this district does not have. This rule provides that collection procedures shall be in accordance with Fed. R. Civ. P. 69 and applicable state law. The Committee considered adding such a local rule for uniformity but recommends against doing so because the rule adds nothing to Fed. R. Civ. P. 69.

2009 Amendment

Rule 69 of the Federal Rules of Civil Procedure provides that state procedures apply. Both Local Rule 69.2 and Rule 69.3, replicate state procedures as found in the Indiana Trial Rules. Because these rules do not add to the existing state rules and merely replicate them, the Committee recommended deletion of both rules.

L.R. 69.3 FINAL ORDERS IN WAGE GARNISHMENT (deleted 2009)

~~L.R. 69.3: Final Orders in Wage Garnishment~~

~~All final orders garnishing wages shall comply with the applicable provisions of the Indiana Code, and shall take effect after all prior orders in garnishment have been satisfied, and only one wage garnishment will be carried out by the garnishee defendant at a time. Garnishment orders obtained under the Federal Debt Collection Act shall comply with the provisions of that Act.~~

Committee Comments

1994 Amendment

The proposed rule replaces present L.R. 29(c) [new in 1987]. The new language simply requires that final orders in garnishment comply with the Indiana statutes, rather than specifying the content of those orders. Likewise, the second phrase of the proposed rule states the effect of the orders directly; present L.R. 29(c) [new in 1987] requires the parties to type into a proposed order standard language which gives this effect of the order by local rule, rather than by requiring parties to type the effect of a garnishment order into every order submitted to the court. The purpose of the final sentence is evident.

2000 Amendment

L.R. 69.3 is substantially similar in both districts. In the Northern District, the rule provides that any garnishment orders "shall comply with the applicable provisions of the Indiana Code . . . ." The Southern District rule requires specific reference to the Indiana Code §24-4.5-5-105 *et seq.* Also, the Northern District rule contains an express reference to the Fair Debt Collection Act while the Southern District does not. This reference is also included in L.R. 69.2 and, for uniformity, should likewise be retained in this local rule. The Committee recommends retaining the current rule without change.

2009 Amendment

Rule 69 of the Federal Rules of Civil Procedure provides that state procedures apply. Both Local Rule 69.2 and Rule 69.3, replicate state procedures as found in the Indiana Trial Rules. Because these rules do not add to the existing state rules and merely replicate them, the Committee recommended deletion of both rules.

N.D. Ind. L.R. 69-4 Body Attachments; Hearings

(a) Requirements for Body Attachments. The court may issue a body-attachment warrant against a judgment debtor only if:

(1) the debtor was served notice of a proceedings-supplemental hearing;

(2) the debtor failed to appear for the hearing;

(3) the judgment creditor filed a petition seeking a hearing for the debtor to show cause for failing to appear;

(4) the debtor was served notice of the show-cause hearing; and

(5) the debtor failed to appear at the show-cause hearing.

(b) Hearing after Arrest. When a judgment debtor is arrested on a body attachment, the court must conduct a hearing at its earliest convenience. The judgment-creditor's attorney will be notified of the hearing by telephone. Attorneys are deemed to have consented to telephonic notice by requesting the body attachment.

(c) Failure to Respond to Telephonic Notice. If the judgment-creditor's attorney fails to respond promptly to the telephonic notice, the court may release the judgment debtor or take other appropriate action.

(d) Appearance at Hearing by Creditor's Attorney. The judgment-creditor's attorney of record must personally appear at the hearing; neither clerical nor secretarial personnel may interrogate an attached judgment debtor.

Committee Comments

2000 Amendment

The Southern District's L.R. 69.4 deals with bench warrants when the judgment debtor fails to appear for a hearing. There is no comparable rule in the Northern District of Indiana. However, the Committee adopted a rule similar to the Southern District rule with some minor modifications.

The Southern District rule requires the magistrate judge to make a report and recommendation to the District Judge before a warrant can be issued. The Committee deleted this provision from the rule because it believed the provision was unnecessary.

Additionally, the practice in the Northern District when a judgment defendant fails to appear for a hearing is to require the judgment plaintiff to serve a show cause notice on the judgment defendant. A warrant is issued only after the judgment defendant fails to appear the second time. The rule incorporates this process.

Finally, the Committee changed the language of "magistrate judge" to "court" to address the concern about whether a magistrate judge has jurisdiction to issue a bench warrant.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 72-1 United States Magistrate Judges

(a) Application. This rule applies to all United States magistrate judges, including full-time magistrate judges, part-time magistrate judges, and magistrate judges recalled under 28 U.S.C. § 636(h).

(b) Authority. Magistrate judges are judges. They are authorized—and specially designated—to perform all duties authorized by the United States Code and any rule governing proceedings in this court. Magistrate judges are authorized to perform the duties enumerated in these rules in cases assigned to the magistrate judge by rule, by court order, or by order or special designation of any of the court's district judges.

Committee Comments

2009 Amendment

This proposed revision marks a significant departure from the Local Rule 72.1 in effect in this District for more than twenty-five years. When magistrates (as they were then called) first came into existence, the extent of their jurisdiction was somewhat in question. Accordingly, this District, along with others (e.g., Southern District of Indiana; Eastern District of Wisconsin) drafted Local Rules that were a comprehensive recitation of nearly all possible proceedings that could involve magistrates. The result, at least in this District, was a lengthy rule spanning more than nine pages.

The intervening years, however, have witnessed an evolutionary and expansive approach to magistrate judge duties, as well as additional statutory and procedural clarity. Indeed, the involvement of magistrate judges has become so common and accepted that it is exceedingly rare to have the scope of their authority challenged. Accordingly, many districts have jettisoned a "laundry list" approach to Magistrate Judge duties in favor of a simple local rule granting them authority co-extensive with the reach of the United States Code. The subcommittee reviewed a number of such local rules and settled on the rule currently in effect in the Eastern District of Virginia as the most suitable.

New paragraph (a) is drawn from the Eastern District of Virginia, but also largely tracks (except for the deletion of the needless phrase: "[u]nless otherwise provided in these Rules,") this District's Local Rule 72.1(a).

New paragraph (b) is lifted wholesale from the Eastern District of Virginia's Local Rule 72.1 and because of its comprehensive wording, essentially supplants nearly all of this District's existing Local Rule 72.1. The subcommittee, the District's Magistrate Judges, believe that the proposed change is consistent with current District practice.

New paragraph (c) not only follows the language from the Eastern District of Virginia, but also is word-for-word recitation of this District's Local Rule 72.1(j). The two versions of Local Rule 72.1 are otherwise too difficult to reconcile and accordingly the current version of Local Rule 72.1 should be stricken.

The Committee believes these changes will ultimately assist the practicing bar and the public in understanding the modern role of the magistrate judge in federal litigation.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

L.R. 72.1 AUTHORITY OF U.S. MAGISTRATE JUDGES (deleted 2009)

~~**L.R. 72.1 Authority Of United States Magistrate Judges**~~

~~Unless otherwise provided in these Rules, the term "United States Magistrate Judge" shall include full-time magistrate judges, part-time magistrate judges and magistrate judges recalled pursuant to 28 U.S.C. § 636(h).~~

~~**(a) Duties under 28 U.S.C. §§ 636(a)(1) and (2).** Each United States magistrate judge of this court is authorized to perform the duties prescribed by 28 U.S.C. §§ 636(a)(1) and (2), and may exercise all the powers and duties conferred upon United States magistrate judges by statutes of the United States and the Federal Rules of Criminal Procedure which include, but are not limited to, the following:~~

~~**(1)** Acceptance of criminal complaints and issuance of arrest warrants or summonses. (Fed. R. Crim. P. 4)~~

~~**(2)** Issuance of search warrants, including warrants based upon oral or telephonic testimony. (Fed. R. Crim. P. 41)~~

~~**(3)** Conduct of initial appearance proceedings for defendants, informing them of the charges against them and of their rights, and imposing conditions of release. (Fed. R. Crim. P. 5)~~

~~**(4)** Conduct of initial proceedings upon the appearance of an individual accused of an act of juvenile delinquency. (18 U.S.C. § 5034)~~

~~**(5)** Appointment of attorneys for defendants who are unable to afford or obtain counsel and approval of attorneys' expense vouchers in appropriate cases. (18 U.S.C. § 3006A)~~

~~**(6)** Appointment of counsel for persons subject to revocation of probation, parole or supervised release (in which case preference shall be given to previously appointed counsel if such attorney is still available and willing to serve); persons in custody as a material witness; persons seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 or 18 U.S.C. § 4245; or for any person for whom the Sixth~~

~~Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which the person faces loss of liberty, any federal law requires the appointment of counsel.~~

~~**(7)** Appointment of interpreters in cases initiated by the United States. (28 U.S.C. §§ 1827 and 1828)~~

~~**(8)** Direction of the payment of basic transportation and subsistence expenses for defendants financially unable to bear the costs of travel to required court appearances. (18 U.S.C. § 4285)~~

~~**(9)** Setting of bail for material witnesses. (18 U.S.C. § 3149)~~

~~**(10)** Conduct of preliminary examinations. (Fed. R. Crim. P. 5.1 and 18 U.S.C. § 3060)~~

~~**(11)** Conduct of initial proceedings for defendants charged with criminal offenses in other districts. (Fed. R. Crim. P. 40)~~

~~**(12)** Conduct of detention hearings. (18 U.S.C. § 3142(f))~~

~~**(13)** Conduct of preliminary hearings for the purpose of determining whether there is probable cause to hold a probationer for a revocation hearing. (Fed. R. Crim .P. 32.1(a)(1))~~

~~**(14)** Administration of oaths and taking of bail, acknowledgements, affidavits and depositions. (28 U.S.C. § 636(a)(2))~~

~~**(15)** Conduct of extradition proceedings. (18 U.S.C. § 3184)~~

~~**(16)** Holding of individuals for security of the peace and for good behavior. (50 U.S.C. § 23)~~

~~**(17)** Discharge of indigent prisoners or persons imprisoned for debt under process of execution issued by a federal court. (28 U.S.C. § 2007)~~

~~**(18)** Issuance of attachments or orders to enforce obedience of Internal Revenue Service summonses to produce records or give testimony. (26 U.S.C. § 7604(b))~~

(19) Issuance of administrative inspection warrants. (*In the Matter of Establishment Inspection of Gilbert and Bennett Manufacturing Co.*, 589 F.2d 1335, 1340-41 [7th Cir. 1979])

(20) Institution of proceedings against persons violating certain civil rights statutes. (42 U.S.C. § 1987)

(21) Settling or certification of the non-payment of seamen's wages.

(22) Enforcement of awards of foreign consuls in differences between captains and crews of vessels of the consul's nation. (22 U.S.C. § 258)

(23) Conduct of proceedings under the Federal Debt Collection Act to the extent not inconsistent with the Constitution and laws of the United States. (28 U.S.C. § 3008)

(b) Disposition of Misdemeanor Cases -- 18 U.S.C. § 3401. A magistrate judge may:

(1) Conduct the trial of persons accused of, and sentence persons convicted of, misdemeanors, including petty offenses committed within this district. Pursuant to 18 U.S.C. § 3401(a), each magistrate judge is hereby specially designated to exercise the jurisdiction conferred by such section with the written consent of the defendant as provided in 18 U.S.C. § 3401(b); such trial shall be by jury in the case of all Class A misdemeanors unless waived in writing by the defendant;

(2) Direct the probation service of the court to conduct a pre-sentence investigation in any misdemeanor case. Any appeal from the judgment of the magistrate judge shall be as provided in 18 U.S.C. § 3402.

(c) Determination of Non-Dispositive Pre-trial Matters -- 28 U.S.C. § 636(b)(1)(A). A magistrate judge may hear and determine any procedural or discovery motion or other motion or pre-trial matter in a civil or criminal

~~case, other than the motions which are specified in Local Rule 72.1(d) of these rules, in accordance with Fed. R. Civ. P. 72(a).~~

~~(d) Recommendation Regarding Case-Dispositive Motions -- 28 U.S.C. § 636(b)(1)(B).~~

~~(1)~~ ~~A magistrate judge may submit to a district judge of the court a report containing proposed findings of fact and recommendations for disposition by the judge of the following pre-trial motions in civil and criminal cases in accordance with Fed. R. Civ. P. 72(b):~~

~~(A)~~ ~~Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;~~

~~(B)~~ ~~Motions for judgment on the pleadings;~~

~~(C)~~ ~~Motions for summary judgment;~~

~~(D)~~ ~~Motions to dismiss or permit the maintenance of a class action;~~

~~(E)~~ ~~Motions under Fed. R. Civ. P. 72(a);~~

~~(F)~~ ~~Motions to involuntarily dismiss an action;~~

~~(G)~~ ~~Motions for review of default judgments;~~

~~(H)~~ ~~Motions to dismiss or quash an indictment or information made by a defendant;~~

~~(I)~~ ~~Motions to suppress evidence in a criminal case;~~

~~(J)~~ ~~Applications for post-trial relief made by individuals convicted of criminal offenses;~~

~~(K)~~ ~~Petitions for judicial review of administrative decisions regarding the granting of benefits to claimants under the Social Security Act, and related statutes;~~

(L) Petitions for judicial review of an administrative award or denial of licenses or similar privileges.

(M) Any matter that may dispose of a charge or defense in a criminal case.

(2) A magistrate judge may determine any preliminary matter and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

(e) Prisoner Cases under 28 U.S.C. § 2254 and 2255. A magistrate judge may perform any or all the duties imposed upon a judge by the rules governing proceedings in the United States District Court under §§ 2254 and 2255 of Title 28, United States Code. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a district judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition may only be made by a judge. In the event no hearing is held by the magistrate judge, the magistrate judge may, pursuant to 28 U.S.C. § 636(b)(3) acting as legal advisor to the district judge, submit to the judge a proposed entry ruling on the motion. If the district judge so directs, copies of such proposed ruling need not be served on the parties of counsel.

(f) Prisoner Cases under 42 U.S.C. § 1983. A magistrate judge may:

(1) Review prisoner suits for deprivation of civil rights arising out of conditions of confinement under § 1983 of Title 42, United States Code and issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for the disposition of the suits by the district judge. Any order disposing of prisoner suits challenging the conditions of their confinement may only be made by a district judge.

(2) Take on-site depositions, gather evidence, conduct pretrial conferences, or serve as a mediator at a holding facility in connection with civil rights suits filed by prisoners contesting conditions of confinement under § 1983 of Title 42, United States Code.

(3) Conduct periodic reviews of proceedings to ensure compliance with previous orders of the court regarding conditions of confinement.

(4) Review prisoner correspondence.

(g) Special Master References -- 28 U.S.C. § 636(b)(2). A magistrate judge may be designated by a district judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. Upon the consent of the parties, a magistrate judge may be designated by a judge to serve as a special master in any civil case, notwithstanding the limitations of Fed. R. Civ. P. 53(b).

(h) Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties -- 28 U.S.C. § 636(c). Upon the consent of the parties, a full-time magistrate judge is hereby authorized and specially designated to conduct any or all proceedings in any civil case which is filed in this court, including the conduct of a jury or nonjury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. Pursuant to 28 U.S.C. § 636(c)(1), upon the consent of the parties, pursuant to their specific written request, and upon certification by the chief judge of this court that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit, any part-time magistrate judge who does not serve as a full-time judicial officer but who meets the bar requirements set forth in 28 U.S.C. § 631(b)(1), is hereby authorized and specifically designated by this court to conduct any or all proceedings in a civil case, whether jury or non-jury. In the course of conducting such proceedings, upon consent of the parties, a magistrate judge may hear and determine any and all pre-trial and post-trial motions which are filed by the parties, including case-dispositive motions.

(i) Additional Duties -- 28 U.S.C. § 636(b)(3). A magistrate judge of this court is also authorized to:

(1) Exercise general supervision of civil and criminal calendars, including the handling of calendar and status calls, and motions to expedite or postpone the trial of cases for the district judges;

~~**(2)** Conduct preliminary and final pre-trial conferences, status calls, settlement conferences, and related pre-trial proceedings in civil cases, and prepare a pre-trial order following the conclusion of the final pre-trial conference;~~

~~**(3)** Conduct pre-trial conferences, omnibus hearings, and related pretrial proceedings in criminal cases;~~

~~**(4)** Conduct arraignments, accept not guilty pleas, and order presentence reports on defendants who signify the desire to plead guilty. (A magistrate judge, however, may not accept pleas of guilty or *nolo contendere* in cases outside the jurisdiction specified in 18 U.S.C. § 3401);~~

~~**(5)** Receive grand jury returns in accordance with Fed. R. Crim. P. 6(f);~~

~~**(6)** Accept waivers of indictment, pursuant to Fed. R. Crim. P. 7(b);~~

~~**(7)** Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;~~

~~**(8)** Hear and determine motions by the government to dismiss an indictment, information, or complaint without prejudice to further proceedings;~~

~~**(9)** Conduct voir dire and select petit juries in civil cases for the court;~~

~~**(10)** Accept petit jury verdicts in civil cases in the absence or unavailability of a judge;~~

~~**(11)** Order the exoneration or forfeiture of bonds;~~

~~**(12)** Conduct proceedings for the collection of civil penalties of not more than $200.00 assessed under the Federal Boat Safety Act of 1971 in accordance with 46 U.S.C. §§ 4311(d), 12309;~~

(13) Conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;

(14) Serve as eminent domain commissioner as provided in Fed. R. Civ. P. 71.1;

(15) Perform the functions specified in 18 U.S.C. §§ 4107, 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;

(16) Serve as a member of this District's Speedy Trial Act Planning Group, including service as the reporter (18 U.S.C. § 3168);

(17) Supervise proceedings on requests for letters rogatory in civil and criminal cases upon special designation by the district court as required under 28 U.S.C. § 1782(a);

(18) Hear and determine applications for admission to practice before this District Court;

(19) Preside over naturalization ceremonies and administer the oath of renunciation and allegiance required by 8 U.S.C § 1448(a);

(20) Conduct proceedings supplemental; and

(21) Perform any additional duty as is not contrary to the law of this District and Circuit nor inconsistent with the Constitution and laws of the United States.

(j) Assignment of Matters to Magistrate Judge. The cases in which each magistrate judge is authorized to perform the duties enumerated in these rules are those cases assigned to the magistrate judge by rule or order of this court, or by order or special designation of any district judge of this court.

Committee Comments

1994 Amendment

This proposed rule is derived from present L.R. M-1 [which antedated the 1987 amendments]. The rule states the authority of the magistrate judge in various proceedings and the duties which the court might otherwise assign to the magistrate judge.

2000 Amendment

The Committee made no substantial changes to this rule but modified the citations to the Fed. R. Civ. P. to make them uniform throughout the Local Rules.

2002 Amendment

The Committee deleted paragraph (j) due to statutory changes that authorized contempt power for magistrate judges. All other amendments were technical. Former paragraph (k) was relettered as (j).

2004 Amendment

The Committee added section (c)(2) to this rule to establish a procedure and time limit for objecting to any non-dispositive rulings by a magistrate judge. The purpose of the amendment is to provide a criminal rule analog to the ten-day rule set out in Fed. R. Civ. P. 72(a). The sections have been renumbered to reflect the change.

2006 Amendment

The revisions to this local rule were inspired by newly adopted Fed. R. Crim. P.59 relating to appeals from dispositive and non-dispositive rulings by magistrate judges in criminal cases. The former version of L.R. 72.1 which referenced such appeals, see former 72.1(c)(2), added in 2004, and 72.1(d)(2), is now no longer necessary given Fed. R. Civ. P. 59 and thus, the Committee deleted these provisions. In addition, the Committee added 72.1(d)(1)(M) to clarify that magistrate judges may issue proposed findings of fact and a recommendation disposing of a charge or defense in a criminal case.

2007 Amendment

The provision in subsection (i)(19) requiring a report from a magistrate judge following a naturalization ceremony was deleted because it is not required by law and is not uniformly applied.

2008 Amendment

The changes in this rule remove citations to [statutes or] other local rules that either are no longer in existence or have been amended. No substantive changes to the rule are being proposed.

N.D. Ind. L.R. 79-1 Custody of Files and Exhibits

(a) Evidence Placed in Clerk's Custody. Items offered into evidence during a case are placed in the clerk's custody.

(b) Claiming Items.

(1) ***Procedure.*** To claim items from the clerk, a party must give the clerk a detailed receipt. The clerk must file the receipt in the case.

(2) ***Timing.*** A party may claim an item from the clerk only after the case concludes unless the court orders otherwise.

(3) ***Unclaimable Items.***

(A) *Contraband Exhibits.* Contraband exhibits (such as controlled substances, money, and weapons) must be released to the investigative agency responsible for them when the case concludes. The investigative agency must give the clerk a detailed receipt when the contraband exhibits are released.

(B) *Original Papers.* No one may claim an original paper filed in a case except as ordered by the court.

(c) When a Case Concludes. A case concludes when:

(1) the parties notify the court that they have settled the case; or

(2) the court has resolved all issues before it and:

(A) the deadline for appeal expires without an appeal being filed; or

(B) if an appeal is filed, the appellate court's final mandate is filed in the clerk's office.

(d) Unclaimed Items.

(1) ***Authority.*** The United States Marshal may dispose of any item that remains unclaimed for 28 days after the clerk notifies the party offering the item into evidence that it will be disposed of if it is not claimed.

(2) ***Issuing Notice.*** The clerk may issue the notice:

(A) 28 days after a case concludes, if the case was appealed; or

(B) 90 days after a case concludes otherwise.

(3) ***Methods of Disposal.*** Unclaimed items may be sold in a public or private sale or disposed of in any other manner the court directs. The net proceeds of a sale will be paid into the court's registry.

Committee Comments

1994 Amendment

The proposed rule is nearly identical to present L.R. 18 [Rules 18 and 21 prior to 1987]. The only change was to eliminate the requirement that a person taking custody of trial exhibits give a receipt to the clerk. The reason for the change was consistency with the rule proposed by the Southern District's Rules Committee; that rule did not have a receipt requirement. The Committee anticipates that the clerk can still require the execution of a receipt in all appropriate circumstances

2000 Amendment

The Committee entertained a proposal to have attorneys, rather than the clerk, retain custody of exhibits at the conclusion of a hearing or trial. The practice in other districts is to require the party tendering an exhibit to maintain custody of that exhibit until the final disposition of the case. Although requiring the clerk to maintain custody of exhibits creates storage problems, it eliminates any disputes over the authenticity of the record. For this reason, the Committee opted to keep the current rule without revision. The Northern and Southern District versions of these rules are identical.

2002 Amendment

The Committee only made a technical change.

2009 Amendment

The Committee recommended amending the Rule at paragraphs (b) and (c) to reflect the anticipated time calculation amendments effective December 1, 2009, and for consistency with the Southern District. In each instances, thirty (30) days was changed to twenty-eight (28) days.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory

Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-3 Courtroom and Courthouse Decorum

(a) Prohibited Activities. The following activities are prohibited anywhere on a floor where a courtroom, jury assembly room, grand-jury room, or clerk's office is located when they are done in connection with a judicial proceeding:

(1) taking photographs;

(2) making sound recordings (except by court reporters in the performance of their duties); and

(3) broadcasting by radio, television, or any other means.

(b) Exceptions:

(1) ***Ceremonial Proceedings.*** The court may permit these activities in connection with investiture, ceremonial, or naturalization proceedings.

(2) ***U.S. Attorney's Office Space.*** The U.S. Attorney may conduct press conferences and depositions within its office space.

(3) ***Other Depositions.*** If the court or clerk approves, a deposition may be taken and recorded by any means in another space in the courthouse.

(c) Cell Phones and PDAs.

(1) ***Generally Prohibited.*** Ordinarily, no one may have a cell phone or personal digital assistant ("PDA") in the courthouse.

(2) ***Exceptions*:**

(A) *Attorneys.* Members of the court's bar may have cell phones and PDAs.

(B) *U.S. Marshals.* The U.S. Marshal and all deputy marshals may have cell phones. But they may not have a cell phone in a courtroom unless it is set so that it cannot ring audibly.

(C) *Building Personnel.* Courthouse personnel may have cell phones, but not in a courtroom.

(D) *Visiting Federal Law Enforcement Personnel.* Visiting federal law-enforcement personnel may have cell phones if:

(i) the U.S. Marshal's Service approves them to carry cell phones;

(ii) they only carry the cell phones directly to and from the agency office they are visiting; and

(iii) they leave the cell phones in the office during their visit.

(3) ***Restrictions on Use.*** No one may use a cell phone or PDA in the courthouse for an improper purpose, including without limitation taking pictures or videos not permitted under subdivision (a). A judge may confiscate a cell phone or PDA or fine its user up to $1,500 (or both) if the cell phone or PDA makes an audible noise in the judge's courtroom while court is in session.

Committee Comments

2009 Amendment

This rule, new Local Rule 83.3, best combines Local Rule 83.3, 83.4, and the General Order 2008-7, without changing their content. In the interest of clarity, the present version of Local Rules 83.3 and 83.4 are shown deleted.

In addition, the Committee amended the rule further to clarify that the U.S. Attorney can conduct depositions in its office (even if technically within the environs of the Court) and that any deposition can be taken within the environs of the Court if approved by a judicial officer or the Clerk.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

L.R. 83.3 COURTROOM AND COURTHOUSE DECORUM (deleted 2009)

~~**L.R. 83.3 Courtroom and Courthouse Decorum**~~

~~At its March 1979 meeting the Judicial Conference of the United States amended its March 1962 resolution pertaining to courtroom photographs to read as follows:~~

~~"RESOLVED, That the Judicial Conference of the United States condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not be permitted in any federal court. A judge may, however, permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings."~~

~~In the Northern District of Indiana the term "environs" means all areas upon the same floor of the building on which a courtroom, jury assembly room, grand jury room or clerk's office is located.~~

~~Consistent with the Resolution of the Judicial Conference of the United States, and this court's interpretation of the term "environs," the taking of photographs, sound recording (except by the official court reporters in the performance of their duties), broadcasting by radio, television, telephone, or other means, in connection with any judicial proceeding on or from the same floor of the building on which a courtroom is located are prohibited. Provided, however, that incidental to investiture, ceremonial or naturalization proceedings, a judge of this court may, in his or her discretion, permit the taking of photographs, broadcasting, televising, or recording. *And provided further*, that video depositions may be taken in the environs of the court upon written approval by a judge of this court.~~

~~Cellular telephones, any device containing a cellular telephone, including Personal Digital Assistants (PDAs), and pagers are permitted in the federal courthouses in the Northern District of Indiana, but must be deposited, and only used at, the Court Security station at the front entrance of each building. Building personnel and federal law enforcement officers may have cellular telephones in the district courthouses subject to the following:~~

~~**(a)** Building personnel shall not be allowed to bring cellular telephones into any courtroom in this district.~~

~~**(b)** The United States Marshal and all Deputy Marshals shall be allowed to bring cellular telephones into the courtrooms, provided the cellular telephones are switched to a vibrate (rather than an audible) mode prior to entry.~~

~~**(c)** Visiting federal law enforcement personnel who have been approved by the United States Marshal's Service to carry cellular telephones are authorized to carry them directly to and from the agency office they are visiting, but must deposit them there for the duration of their visit.~~

Committee Comments

1994 Amendment

The proposed rule is based upon present L.R. 31 [before 1987, it was Local Criminal Rule 6]. The final sentence of present L.R. 31, which gave judges the discretion to permit electronic recording of proceedings by counsel or a party, was deleted. The reasons were that the court's power to make particular exceptions to L.R. 83.3 is already provided through proposed L.R. 1.1(e) and that the rule should be uniform with the rule in the Southern District of Indiana. The Southern District's rules did not include the final sentence of L.R. 31.

2003 Amendment

This rule was substantially amended to more accurately define "environs" since the opening of the new courthouse in Hammond. See 2003 Committee Comments to L.R. 83.4. This rule was also amended to clarify the court's position concerning cellular telephones in the district's federal courthouses.

2006 Amendment

The Committee amended the rule to permit cameras and ancillary equipment within the "environs" of the court for video depositions. The term "environs" has not been altered; rather, the amendment seeks to clarify that video equipment for the taking of video depositions is not prohibited under this rule so long as its use has been authorized in writing.

2009 Amendment

This rule is shown as deleted in favor of a new combined Local Rule 83.3.

L.R 83.4 BROADCASTING AND PUBLICITY (deleted 2009)

~~**L.R. 83.4: Broadcasting and Publicity**~~

~~At its March 1979 meeting the Judicial Conference of the United States amended its March 1962 resolution pertaining to courtroom photographs to read as follows:~~

~~"RESOLVED, That the Judicial Conference of the United States condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not be permitted in any federal court. A judge may, however, permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings."~~

~~In the Northern District of Indiana the term "environs" means a courtroom, jury assembly room, grand jury room or clerk's office and all common areas on the same floor. The taking of photographs, sound recording (except by the official court reporters in the performance of their duties), and broadcasting by radio, television, or other means within these areas, are prohibited. *Provided*, however, that incidental to investitive, ceremonial or naturalization proceedings, a judge of this court may permit the taking of photographs, broadcasting, televising, or recording.~~

Committee Comments

2003 Amendment

This rule has a new number and title. The rule broadly defines the term "environs" to include common areas on the same floor as a grand jury room, jury assembly room and clerk's office. The revision was necessary to encompass the first floor of the Hammond building where no courtroom is located. The rule largely duplicates L.R. 83.3, but, unlike that rule, extends the prohibition against photographs and sound recording to beyond those "in connection with any judicial proceeding."

2009 Amendment

This rule is shown as deleted in favor of a new combined Local Rule 83.3.

N.D. Ind. L.R. 83-5 Bar Admission

(a) Authority to Practice Before the Court.

(1) ***Rule.*** Only members of the court's bar may represent parties before the court.

(2) ***Exceptions.***

(A) *Pro Se.* A nonmember may represent him or herself in a case.

(B) *U.S. Government Attorneys.* A nonmember who is an attorney may represent the United States, or an officer or agency of the United States.

(C) *Pro Hac Vice.* A nonmember who is an attorney may represent parties in a case if the nonmember:

(i) is admitted to practice as an attorney in another United States court or the highest court of any state;

(ii) is a member in good standing of the bar in every jurisdiction where the attorney is admitted to practice;

(iii) is not currently suspended from practice;

(iv) has certified that he or she will abide by the Seventh Circuit Standards of Professional Conduct and these rules;

(v) has paid the required filing fee; and

(vi) has applied for, and been granted by the court, leave to appear in the case.

(3) ***Foreign Legal Consultants.*** A person admitted as a foreign legal consultant is not "admitted to practice as an attorney" under this rule.

(b) Bar Membership.

The bar consists of those persons who:

(1) are admitted by the court to practice; and

(2) have not resigned or been disbarred or suspended from the bar.

(c) Admission.

(1) ***Who May Be Admitted***. An attorney admitted to practice by the United States Supreme Court or the highest court in any state may become a member of the court's bar on a member's motion.

(2) ***Character.*** An applicant will be admitted to the bar if the court—after being assured by a member or by the report of a committee appointed by the court—is satisfied that the applicant:

(A) has good private and professional character; and

(B) is a member in good standing of the bar in every jurisdiction where the applicant is admitted to practice.

(3) ***Entry on Court's Records.*** The attorney's admission will be entered on the court's records and the court will issue a certificate to that effect only after the applicant:

(A) takes a prescribed oath or affirmation;

(B) certifies that he or she has read and will abide by:

(i) the Seventh Circuit Standards of Professional Conduct; and

(ii) the court's local rules;

(C) pays the required fees (law clerks to the court's judges are exempt from these fees);

(D) registers for electronic case filing;

(E) gives a current address; and

(F) agrees to notify the clerk promptly of any change in address.

(d) Local Counsel. The court may require an attorney residing outside the district to retain, as local counsel, a member of the court's bar who resides in the district.

(e) Standards. Indiana's Rules of Professional Conduct and the Seventh Circuit Standards of Professional Conduct (an appendix to these rules) govern the conduct of those practicing in the court.

Committee Comments

1994 Amendment

The proposed rule is based upon present L.R. 31 [before 1987, it was Local Criminal Rule 6]. The final sentence of present L.R. 31, which gave judges the discretion to permit electronic recording of proceedings by counsel or a party, was deleted. The reasons were that the court's power to make particular exceptions to L.R. 83.3 is already provided through proposed L.R. 1.1(e) and that the rule should be uniform with the rule in the Southern District of Indiana. The Southern District's rules did not include the final sentence of L.R. 31.

2003 Amendment

This rule was substantially amended to more accurately define "environs" since the opening of the new courthouse in Hammond. *See* 2003 Committee Comments to L.R. 83.4. This rule was also amended to clarify the court's position concerning cellular telephones in the district's federal courthouses.

2006 Amendment

The Committee amended the rule to permit cameras and ancillary equipment within the "environs" of the court for video depositions. The term "environs" has not been altered; rather, the amendment seeks to clarify that video equipment for the taking of video depositions is not prohibited under this rule so long as its use has been authorized in writing.

2009 Amendment

This rule is shown as deleted in favor of a new combined Local Rule 83.3.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

2013 Amendment

The Committee suggested deleting former section (c)(3)(D) referring to the signing of the roll of attorneys as anachronistic. Subsections (e), (f), and (g) were adjusted accordingly.

N.D. Ind. L.R. 83-6.1 Attorney Discipline

(a) Who Is Subject to Discipline. Any attorney authorized to represent a party before the court may be disciplined under N.D. Ind. L.R. 83-6.1 through 83-6.13.

(b) Scope of Discipline Rules. These discipline rules (N.D. Ind. L.R. 83-6.1 through 83-6.13) do not apply to or limit:

(1) sanctions or other disciplinary or remedial actions authorized by the Federal Rules of Civil or Criminal Procedure; or

(2) the court's inherent or statutory power to maintain control over the proceedings conducted before it, such as contempt proceedings under Title 18 United States Code or under Fed. R. Crim. P. 42.

Committee Comments

[Compiler's Note: Beginning in 1978 the Court adopted the Model Rules of Disciplinary Enforcement as formulated by the Judicial Conference. In 1987 the rules were largely re-adopted and styled DE-I to DE-XIV. From 1994 to 2000 the court's disciplinary rules were numbered 83.6.1 to 83.6.14, as part of the civil section. Starting in 2000 the rules were segregated and styled as "Local Rules of Disciplinary Enforcement," recast as Rules I through XIII. In 2006, the entire body of the Rules of Disciplinary Enforcement was recast again into a new and much longer, Local Rule 83.6. The following are the Advisory Committee Comments from 1994 for all the disciplinary rules, that is, for rules 83.6.1 to 83.3.14 as they were then styled].

1994 Amendment

This rule [former 83.6] is new, and is designed to act as a bridge which brings the existing Rules of Disciplinary Enforcement [that is, Rules DE-I through DE-XIV, which apparently had been in force since 1978] into the main body of the Local Rules themselves. The rule is designed simply to state the obvious: that attorneys admitted to practice before the court (whether generally admitted or admitted *pro hac vice*) can be subject to discipline for their misconduct, and that the court also retains the power to sanction attorneys for specific misconduct occurring in the context of specific litigation.

L.R. 83.6.1(g) [now 83.6(d)(7)] is new. It corresponds to reporting requirements imposed under L.R. 83.6.2(a) [now 83.6(e)(1)] and L.R. 83.6.3(b) [now 83.6(f)(1)]. In all other respects, the rule [formerly 83.6.1 and now 83.6(d)] is identical to present DE-1.

The proposed rule [formerly 83.6.3 and now 83.6(e)] is nearly identical to present DE-II. The revision changes the language in subsection (e) [now 83.6(e)(5)] from "been guilty of misconduct" to "engaged in an act or pattern of misconduct" in order to avoid any implication that only criminal misconduct is conclusively established in the court's disciplinary proceeding. For instance, the court might wish to impose disciplinary sanctions as a result of another court's

imposition of disciplinary sanctions against an attorney. Under the present rule, it could be argued that, because a disciplinary sanction does not involve a finding of "guilt," the court would need to conduct de novo proceedings to determine whether a violation existed. The amendment is designed to avoid this unnecessary use of resources.

The rule [formerly 83.6.3 and now 83.6(f)] is identical to present DE-III.

L.R. 83.6.4 [now 83.6(b)] derives from present DE-IV. The text is considerably shortened because present DE-IV specifies the standards of conduct to which it applies. Since those standards have already been adopted in proposed L.R. 83.5(f), it was believed unnecessary to repeat the language here. Practitioners should be aware that the proposed rule is broader than DE-IV in one significant way: misconduct can occur as the result of a violation of either the Indiana Supreme Court's Rules of Professional Responsibility *or* the Seventh Circuit's Standards for Professional Conduct. Under present DE-IV, misconduct occurs only upon violation of the Indiana Supreme Court's Rules of Professional Responsibility.

Furthermore, the final clause of present DE-IV(b), which permitted the court to make exceptions by rule only "after consideration of comments by representatives of bar associations within the state," was deleted. Since L.R. 1.2 now provides a notice-and-comment period for all local rules the specific provision here seemed superfluous and was therefore deleted.

This rule [formerly 83.6.5] derives from present DE-V, with one insignificant change at the end of subsection (c). No substantive changes are intended. [Compiler's Note: The rule was effectively abandoned in 2006 when the court went to a Grievance Committee model. *See* now L.R. 83.6(c).]

This rule [formerly 83.6.6 and now 83.6(g)] is identical to present DE-VI.

This rule [formerly 83.6.7, now 83.6(h)] is nearly identical to present DE-VII. In order to avoid confusion in terminology, the term "respondent-attorney" in subsection (d) [a section since deleted] was changed to "petitioner." No substantive change was intended.

This rule [formerly 83.6.8, later subsumed by 83.6(a)] is identical to present DE-VIII.

This rule [formerly 83.6.9, now 83.6(i)] is identical to present DE-IX.

This rule [formerly 83.6.10] is identical to present DE-X. [Compiler's Note: This rule which provided or the appointment of counsel "to investigate allegations of misconduct or [to] prosecute disciplinary proceedings" or to serve during the reinstatement process was deleted when to court adopted the "board of inquiry" model of a Grievance Committee.]

This rule [formerly 83.6.11] is identical to present DE-XI. [Compiler's Note: This rule which provided for the reimbursement of fees and costs incurred by counsel appointed under old rule 83.6.10 was abandoned when the court went to the Grievance Committee process and deleted both rules.]

This rule [formerly 83.6.12, now 83.6(i)] is identical to present DE-XII.

This rule [formerly 83.6.13, now 83.6(k)] is identical to present DE-XIII.

This rule [83.6.14] is derived from present DE-XIV. Because the effective date of all Local Rules is set out in L.R. 1.1(b), the specific reference to an effective date for the Disciplinary Rules was deemed unnecessary. Some changes in syntax were made in the remaining portion of DE-XIV, but no substantive changes were intended. [Compiler's Note: The rule, which declared that any disciplinary proceedings pending before the effective date of the disciplinary rules would be conducted under the pre-existing procedure was deleted in 2006.]

2000 Amendment

Northern District Rule 83.6 deals with attorney discipline. This rule is further sub-divided into 14 sub-sections. The Southern District has removed the disciplinary rules from the civil section and has established a separate section for attorney discipline. The Committee adopted a separate section, like the Southern District, in which Local Rules 83.6 through 83.6.14 would be segregated. [The rules were thereafter styled as "Local Rules of Disciplinary Enforcement" and as Rule I to XIII, inclusive.]

2006 Amendment

In 1978, this court, along with the Southern District of Indiana, adopted a proposed set of uniform rules that eventually became this Court's Rules of Disciplinary Enforcement. Thereafter, the rules remained generally unchanged, but recently it was observed by members of this court and the bankruptcy judges that in some instances they proved difficult to apply. Given these practical concerns, the Committee was asked to review the rules for possible modification. The task of initial review was assigned to a subcommittee, and after canvassing all the local rules governing attorney discipline in the nation, the subcommittee recommended jettisoning the current rules in favor of what appears to be a favored disciplinary regime centered on a Grievance Committee model. The Advisory Committee adopted the Grievance Committee concept and drafted this rule, generally modeling it on those rules in other districts that employ the Grievance Committee as a "board of inquiry" to investigate claims of attorney misconduct and present findings and recommendations to the court. The Committee made substantial revisions in the drafting process, however, to meet due process concerns and to ensure the proper level of court oversight and review. As to the latter point, the Committee was sensitive to the administrative burden that these proceedings may place upon the Chief Judge, and accordingly, put most of those responsibilities upon the Grievance Committee and the clerk. The Rule also guarantees that the final decision concerning attorney discipline remains at all times with the judges of the court or, if the matter involves conduct before the United States Bankruptcy Court, upon a majority vote of the district court and bankruptcy judges.

The rule [now 83.6 with lettered sub-sections] should be viewed as an entirely new disciplinary process that replaces the former Rules of Disciplinary Enforcement. A section by section commentary, incorporating various clarifying amendments made in 2007 are recited in the 2007 comments as if fully set out here.

2007 Amendment

The Committee made clarifying amendments in 2007 as reflected in the section by section commentary that follows:

Section (a) is intended to clarify that the filing of an appearance on behalf of a client in this court subjects an attorney to discipline in this court. The section simplifies language in the first paragraph of the former rule 83.6.

Section (b) is a simplified version of former Disciplinary Rule of Enforcement IV and has been moved to the beginning of the disciplinary rule to place attorneys admitted to practice in this court on notice that there is potential for discipline in this court regardless of whether misconduct occurs during the course of an attorney-client relationship.

Section (c) sets out the general procedure for the grievance process.

(1) Subsection (1) establishes the Grievance Committee as the disciplinary body of the court and provides general guidelines for the initial members' selection, term of office, member replacement upon resignation or expiration of term, and voting. This section also provides immunity to Grievance Committee members for their official duties under the rules and requires the Grievance Committee to provide an annual written report of its activities.

(2) Subsection (2) sets out the procedure for the filing of a grievance against an attorney and provides that grievances shall remain under seal until the Grievance Committee determines to investigate further.

(3) Subsection (3) provides the protocol upon the Grievance Committee's receipt of a complaint. Part (A) permits the Grievance Committee to undertake an initial screening of the grievance to determine whether, on its face, the complaint presents a question that merits either further investigation, referral to another disciplinary body, or dismissal. In formulating this provision, the Advisory Committee intended for the Grievance Committee to have flexibility in utilizing its discretion once a complaint is filed. Although referral to a state disciplinary agency may often be preferable, the rule leaves this determination to the discretion of the Grievance Committee members for resolution on a case by case basis. The remainder of this section details the investigative and hearing powers of the Grievance Committee. Generally, if after an investigation there is no substantial question of misconduct, the Grievance Committee is to notify the clerk, the complainant, and the attorney. If, however, there is a substantial question of misconduct, the attorney will be directed to file with the clerk a written response after which the Grievance Committee may either dismiss the complaint or hold a formal hearing. If following the hearing, the Grievance Committee believes that the conduct merits discipline they shall send their findings and recommendation to the Chief Judge.

(4) Subsection (4) sets out the procedure of the court once the Grievance Committee has delivered its findings and recommendation to the Chief Judge, principally, a show cause order to the attorney. If, following the attorney's response, a hearing is required, the court shall designate a judge to conduct a hearing and submit findings and recommendation to the court. The findings and recommendations are then voted upon by the district judges and, in the case of conduct before the Bankruptcy Court, both the district and bankruptcy judges.

Section (d) sets out the procedure for attorneys convicted of crimes. The procedure remains unchanged from the prior Rule I of the Disciplinary Rules of Enforcement except that the matter is referred to the Grievance Committee for hearing.

Section (e) discusses the procedure for dealing with discipline imposed by other courts. The procedure remains unchanged from the prior Rule II of the Disciplinary Rules of Enforcement except that the matter can be referred to the Grievance Committee rather than having the court appoint a prosecutor.

Sections (f) and (g) retain the language of prior Rules III and VI of the Disciplinary Rules of Enforcement with only minor editorial changes.

Section (h) provides for reinstatement of an attorney and requires the attorney to submit a petition to the Chief Judge who then reviews it and recommends a disposition to the other district judges. If it is deemed that a hearing must be held, the matter is referred to the Grievance

Committee and they are to make a full report to the court. Upon consideration of the report, and after such further hearing as the court may require, reinstatement may or may not be ordered.

Sections (i) and (j) are miscellaneous provisions clarifying the manner of service to be utilized in attorney disciplinary proceedings and the obligations of the clerk. Section (k) makes clear that attorneys may also be subject to discipline under the Federal Rules, various statutory provisions, or through the court's own inherent powers.

2009 Amendment

Upon the recommendation of the Grievance Committee, the Local Rules Advisory Committee recommended that the rule be amended to allow an attorney to "unseal" his or her response to the complaint given that the complaint itself is to be unsealed if it moves forward in the process. The proposed change appears at paragraph (c)(3)(B).

The Grievance Committee also suggested a "clear and convincing" standard of proof be imposed as the current rule is silent on the point. The Grievance Committee has been requested to offer a specific set of amendments as it would appear that the burden will likely shift; for example, an attorney would not have the burden during an initial grievance, but would probably be required to bear it while pursuing a petition for reinstatement. Accordingly, since it may take some fairly careful drafting to achieve the Grievance Committee's desired intent, they have been invited to offer an initial draft for the Advisory Committee's consideration.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

In addition, the Committee adopted proposed changes suggested by Chief Judge Simon to provide for a more fluid application of the rules of discipline. Subsection (a) was clarified to better describe when an attorney may be subject to discipline. Major substantive changes are proposed in subsection (h)(1)(A) and (B) which attempt to carve out minor cases on noncompliance with CLE requirements or payment of bar fees and permitting automatic reinstatement without vote of the entire court. Under these proposed changes, vote of the entire court would only be required in cases where an attorney has been convicted of a crime or some other offense falling outside of the minor cases of noncompliance listed above. In addition, various changes to the structure of the rule were adopted.

N.D. Ind. L.R. 83-6.2 Grounds for Discipline

(a) Court's Authority. The court may discipline an attorney who:

(1) engages in misconduct, even if the misconduct occurs outside an attorney- client relationship;

(2) is convicted of a serious crime; or

(3) is disciplined by any other court in the United States or its territories, commonwealths, or possessions.

(b) "Misconduct" Defined. "Misconduct" means a violation of the standards of professional conduct identified in N.D. Ind. L.R. 83-5(e).

(c) "Serious Crime" Defined. "Serious crime" includes

(1) any felony; and

(2) any lesser crime that under the law of the jurisdiction that entered the conviction has a necessary element involving:

- false swearing;
- misrepresentation;
- fraud;
- willful failure to file income-tax returns;
- deceit;
- bribery;
- extortion;
- misappropriation;
- theft;
- attempting to commit a serious crime; or
- conspiring with another or soliciting another to commit a serious crime

(d) Discipline. Discipline may include:

(1) a public or private reprimand;

(2) suspension from the court's bar;

(3) disbarment from the court; or

(4) other disciplinary action taken under the grievance process established in these rules.

Committee Comments

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-6.3 Grievance Committee

(a) Members. The court will maintain a five-member grievance committee, which must include at least one attorney from each of the court's four divisions. The fifth member must also be an attorney.

(b) Appointment and Terms. The court's district judges will appoint committee members to five-year terms. Committee members will serve staggered terms so that the court replaces or reappoints one member each year.

(c) Replacement of Members. The court's district judges will promptly replace a committee member who is unable or unwilling to complete the member's term.

(d) Chairperson. The chief judge will designate one committee member as the chairperson to convene the committee.

(e) Secretary. The clerk must either serve, or designate a deputy clerk to serve, as the committee's secretary. The secretary may not vote, but must maintain the committee's records.

(f) Annual Report. By January 31, the committee must give the court a written report of its actions during the previous calendar year, including:

(1) the number of grievances filed;

(2) the number of pending investigations; and

(3) the disposition of grievances.

(g) Special Counsel. The court may appoint special counsel to:

(1) help the committee investigate a grievance; or

(2) prosecute a grievance at a hearing.

(h) Compensation and Expenses.

(1) ***Committee Members.*** Committee members serve without compensation. But when possible, the clerk must pay the committee members' necessary expenses from the library fund.

(2) ***Special Counsel.*** Special counsel is entitled to reasonable fees and expenses as the court determines. The clerk must pay approved fees and expenses from the library fund.

(i) **Powers and Immunities.** Members acting for the committee and any special counsel appointed by the court represent the court and act under its powers and immunities so long as they act in good faith in their official capacity.

(j) **Quorum.** Three or more members constitute a quorum. A quorum may act on the committee's behalf.

Committee Comments

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

In addition, at the suggestion of Chief Judge Simon, the Committee included a provision providing for the appointment of special counsel to prosecute claims under the grievance procedure and providing such counsel with immunities as long as they act in good faith in their official capacity.

N.D. Ind. L.R. 83-6.4 Initiating Grievance Proceedings

(a) When the Proceeding Begins. A grievance proceeding begins when:

(1) the court, by order in a pending case, refers an instance of possible attorney misconduct to the grievance committee; or

(2) someone files a written allegation of attorney misconduct with the clerk that:

(A) identifies the attorney;

(B) briefly and plainly describes the alleged misconduct at issue; and

(C) is verified.

(b) Clerk's Duties. The clerk must:

(1) maintain a grievance form for making grievances; and

(2) promptly give each committee member a copy of any grievance.

(c) "Grievance" Defined. "Grievance" means:

(1) a written allegation of attorney misconduct filed with the clerk; or

(2) an order referring an instance of possible attorney misconduct to the grievance committee.

(d) Allegation to Remain Sealed. A written allegation of attorney misconduct must be filed under seal and remain sealed until the committee determines that there is a substantial question of misconduct.

Committee Comments

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory

Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-6.5 Conduct of Grievance Proceedings—Grievance Committee

(a) Initial Determination.

(1) ***Generally.*** Upon receiving a grievance, the committee must determine whether it raises a substantial question of misconduct.

(2) ***If Substantial Question of Misconduct Does Not Exist.*** If the committee determines that no substantial question of misconduct exists, the committee must:

(A) take no further action against the attorney;

(B) advise the clerk and the person or judge who filed the grievance that no further action or investigation is warranted;

(C) notify the attorney that a grievance was filed and that the committee decided to take no further action; and

(D) supply the attorney with a copy of the grievance.

(3) ***If Substantial Question of Misconduct Exists.*** If the committee determines that a substantial question of misconduct exists, the committee must either:

(A) investigate the misconduct alleged in the grievance; or

(B) refer the matters raised in the grievance to another disciplinary agency with jurisdiction over the attorney.

(b) Investigation.

(1) ***Requirements of Investigation.*** If the committee investigates, it must:

(A) notify the attorney of its investigation;

(B) give the attorney a copy of the grievance;

(C) direct the attorney to file a written response:

(i) with the clerk;

(ii) under seal (unless the attorney files a written request with the committee to have it unsealed); and

(iii) within 30 days; and

(D) otherwise decide how, and to what extent, it will investigate.

(2) ***Investigative Powers.*** During its investigation, the committee may:

(A) interview witnesses;

(B) subpoena witnesses or documents;

(C) depose witnesses;

(D) administer oaths; and

(E) otherwise exercise the powers necessary to properly and expeditiously investigate the grievance.

(c) Determinations After Investigation.

(1) ***Generally.*** After completing an investigation, the committee must determine whether a substantial question of misconduct exists.

(2) ***If Substantial Question of Misconduct Does Not Exist.*** If the committee determines that no substantial question of misconduct exists, the committee must:

(A) take no further action against the attorney; and

(B) advise the clerk, the attorney, and the person or judge who filed the grievance that no further action is warranted.

(3) ***If Substantial Question of Misconduct Exists.*** If the committee determines that a substantial question of misconduct exists, the committee must promptly schedule a formal hearing.

(d) Hearing.

(1) ***Conduct of Hearing.***

(A) *Attorney's Rights.* The attorney may:

(i) attend the hearing;

(ii) be represented by counsel;

(iii) present evidence; and

(iv) confront and cross-examine witnesses.

(B) *Evidentiary Rules.* The Federal Rules of Evidence will guide the committee on evidentiary issues.

(C) *Record.* The committee must make a record of the hearing.

(D) *Delays*. Delays in the hearing do not affect the committee's jurisdiction.

(2) ***Determinations.*** After the hearing, the committee must determine:

(A) whether the attorney committed misconduct; and

(B) if so, whether the misconduct merits discipline.

(3) ***When No Misconduct Is Found.*** If the committee determines that the attorney did not commit misconduct or that the attorney's misconduct does not merit disciplinary action, the committee must:

(A) take no further action against the attorney; and

(B) advise the clerk, the attorney, and the person or judge who filed the grievance that no further action is warranted.

(4) ***When Misconduct Is Found.*** If the committee determines that the attorney's misconduct merits discipline, it must:

(A) prepare a written report setting forth:

(i) the committee's findings and conclusions, including a finding that the attorney committed misconduct;

(ii) the facts that support the findings and conclusions;

(iii) recommended discipline; and

(iv) the reasons for the recommended discipline.

(B) forward the report to:

(i) the chief judge;

(ii) if the matter involved conduct before the bankruptcy court, the bankruptcy court's chief judge;

(iii) the attorney; and

(iv) the person or judge who filed the grievance.

(5) ***Recommend Discipline.*** The following are among the discipline the committee may recommend:

(A) private reprimand;

(B) public reprimand;

(C) suspension from the court's bar;

(D) disbarment from the court; and

(E) referral to another appropriate disciplinary agency for disciplinary action.

(e) Attorney's Proposed Discipline. The attorney may propose discipline any time before the committee gives the chief judge its report. If the proposed discipline is appropriate, the committee may cease further proceedings and recommend the proposed discipline to the chief judge.

(f) Confidentiality.

(1) ***Generally.*** The committee's investigations, deliberations, hearings, determinations, and other proceedings—including all materials presented to the committee—are confidential.

(2) ***Exceptions.*** The committee may disclose some or all aspects of its proceedings to:

(A) the court's judges;

(B) the person who filed the grievance; and

(C) other disciplinary committees.

(3) ***Written Report.*** The committee's written report to the chief judge must be filed as a miscellaneous case. Ordinarily, the report is a public record. But it must be – and remain – sealed if the committee recommends a private reprimand.

Committee Comments

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-6.6 Conduct of Grievance Proceedings—District Court

(a) Initial Proceedings.

(1) ***Show-Cause Order.*** Upon receiving the committee's written report recommending discipline, the chief judge must issue an order requiring the attorney to show cause, in writing, why the court should not adopt the committee's findings and recommendations.

(2) ***Response.*** Any response by the attorney must be filed with the clerk within 30 days after the show-cause order is served.

(3) ***Vote of Judges.*** The court's district judges—and the bankruptcy court's judges if the matter involves conduct before the bankruptcy court—must:

(A) consider the committee's report and any response from the attorney; and

(B) vote on:

(i) whether to adopt, modify, or reject the committee's findings and recommendations; or

(ii) set the matter for a hearing before a judge.

(4) ***Decision of Chief Judge.*** The chief judge must enter an order consistent with the judges' majority vote.

(b) Hearing.

(1) ***Conduct of Hearing.*** Any hearing the chief judge sets must be conducted promptly and use the Federal Rules of Evidence as a guide on evidentiary issues.

(2) ***Report.*** The judge who conducts the hearing must give the chief judge a report on the hearing that includes proposed findings of fact and a recommendation for disposition.

(3) ***Vote of Judges.*** The court's district judges—and the bankruptcy court's judges if the matter involves conduct before the bankruptcy court—must vote on whether to:

(A) adopt, modify, or reject the judge's findings and recommendations; or

(B) take other appropriate action.

(4) ***Decision of Chief Judge.*** The chief judge must enter an order consistent with the judges' majority vote.

(c) **Final Disposition.** The chief judge must notify the following people of the court's resolution:

(1) the person or judge who filed the grievance;

(2) the attorney; and

(3) the grievance-committee chairperson.

Committee Comments

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-6.7 Attorneys Convicted of Crimes

(a) Serious Crimes.

(1) ***Immediate Suspension.*** An attorney may be suspended immediately if a court in the United States or its territories, possessions, or commonwealths convicts the attorney of a serious crime.

(2) ***Evidence of Conviction.*** A certified copy of a judgment of conviction of a serious crime is conclusive evidence that the crime was committed.

(3) ***Suspension Process.*** When a certified copy of a judgment of conviction of a serious crime is filed with the court:

(A) the court must immediately:

(i) suspend the attorney; and

(ii) serve the attorney with the suspension order; and

(B) the chief judge may refer the matter to the grievance committee.

(4) ***Authority to Set Aside Suspension.*** The chief judge may lift the suspension for good cause.

(5) ***Effect of Reversal.*** If a certificate demonstrating that the conviction has been reversed is filed with the court, the court must immediately reinstate the attorney. But:

(A) any pending disciplinary proceedings against the attorney will continue; and

(B) the court may resolve the pending disciplinary proceedings based on all available evidence pertaining to the attorney's guilt.

(6) ***Grievance Committee Proceedings.*** If the chief judge refers the matter to the grievance committee, the committee must generally treat the matter as a grievance. But:

(A) the committee may not conduct a hearing until all appeals from the conviction are concluded; and

(B) if the conviction is not reversed, the only issue before the committee will be what discipline to recommend.

(7) ***Effect of Appeals and Manner of Conviction.*** The court and chief judge's obligations under this rule do not change:

(A) because there are pending appeals or other actions attacking the conviction; or

(B) due to the manner of conviction (for example, from a guilty plea, *nolo contendere,* or a verdict after trial).

(b) Other Convictions. The chief judge may refer a conviction for a non-serious crime to the grievance committee when a certified copy of the judgment of conviction is filed with the court. The committee must treat the referral as if it were a grievance.

Committee Comments

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-6.8 Identical Discipline

(a) Discipline by Another Court. The court may discipline an attorney if another court in the United States or its territories, possessions, or commonwealths disciplines the attorney.

(b) Discipline Process. When a certified or exemplified copy of the judgment or order imposing the discipline is filed with this court, the chief judge must promptly order the disciplined attorney to show cause within 30 days after the order is served why the court should not impose identical discipline (other than a fine).

(c) Identical Discipline. The court must impose identical discipline (other than a fine) as the other court unless:

(1) the other court stays its order, in which case this court must defer any identical discipline until the stay expires;

(2) the chief judge refers the matter to the grievance committee:

(A) for disciplinary proceedings, in which case the committee must treat the referral as a grievance; or

(B) to recommend appropriate action in light of the other court's discipline; or

(3) the attorney demonstrates, or the court finds from the record's face, that:

(A) the other court's procedure lacked sufficient notice or opportunity to be heard to provide the attorney with due process;

(B) the proof supporting the misconduct is so lacking that this court cannot, consistent with its duty, accept the other court's order as final;

(C) imposing identical discipline would result in a grave injustice; or

(D) the misconduct warrants substantially different discipline.

Committee Comments

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-6.9 Disbarment on Consent or Resignation in Other Courts

Attorneys may no longer practice in this court if, while being investigated for misconduct, they consent to disbarment or resign from the bar of any other court in the United States or its territories, commonwealths, or possessions.

Committee Comments

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-6.10 Disbarment on Consent in this Court

(a) How to Consent to Disbarment. An attorney who is the subject of pending disciplinary proceedings in this court may consent to disbarment from the court's bar by delivering to the clerk an affidavit stating that the attorney:

(1) freely and voluntarily consents to disbarment;

(2) is not subject to coercion or duress;

(3) fully understands the implications of consenting to disbarment;

(4) knows that he or she is the subject of pending disciplinary proceedings;

(5) knows the alleged material facts—which must be set forth in the affidavit—that provide the grounds for discipline;

(6) acknowledges that the material facts are true; and

(7) consents to disbarment because if required to mount a defense in the disciplinary proceedings, the attorney could not do so successfully.

(b) Clerk's Duties. The clerk must submit the affidavit to the chief judge to enter an order disbarring the attorney.

(c) Access to Order and Affidavit. The order disbarring the attorney is a public record. But the affidavit may only be publicly disclosed or made available for use in another proceeding by court order.

Committee Comments

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-6.11 Reinstatement

(a) Court Order Required. A suspended or disbarred attorney must not resume practice until reinstated by court order.

(b) Reinstatement by Affidavit.

(1) ***When Permitted.*** The chief judge may—without a vote of the court's judges—reinstate a suspended attorney after receiving an affidavit of compliance if the suspension was:

(A) for three months or less; or

(B) because the attorney had been suspended from a state bar for failing to:

(i) pay bar dues on time; or

(ii) comply with continuing-legal-education requirements.

(2) ***How Raised.*** To be reinstated without a vote of the court, an attorney must file:

(A) an affidavit of compliance; and

(B) a certified copy of the judgment or order reinstating the attorney to the state bar, if applicable.

(c) Reinstatement by Petition and Court Vote.

(1) ***Initiating the Process.*** An attorney seeking reinstatement from disbarment or any suspension not described in subdivision (b)(1) must file:

(A) a petition with the court; and

(B) if the attorney was suspended or disbarred because another court disciplined the attorney, a certified copy of the other court's reinstatement order.

(2) ***Chief Judge's Duties.*** The chief judge must promptly:

(A) consider whether the petition and any supporting materials—including any findings and conclusions from another court's reinstatement order—establish the attorney's fitness to practice law; and

(B) based on the review of the petition and supporting materials, recommend a course of action to the other judges.

(3) ***Action by Judges.*** After the chief judge's review, the court's district judges—and bankruptcy judges, if the matter involved an attorney's conduct before the bankruptcy court—may by a majority vote:

(A) reinstate the attorney, if they find that the petition and supporting materials establish the attorney's fitness to practice law; or

(B) request additional evidence or a hearing before voting on the petition.

(4) ***Hearing.***

(A) *Referral to Grievance Committee.* If the judges request a hearing, the chief judge must promptly refer the petition to the grievance committee and the chairperson must promptly set a hearing.

(B) *Attorney's Burden of Proof.* At the hearing, the attorney must establish:

(i) by clear and convincing evidence, that he or she has the moral qualifications, competency, and learning in the law required for admission to the court's bar; and

(ii) that the attorney's reinstatement will not harm the bar's integrity and standing, the administration of justice, or the public interest.

(C) *Post-Hearing Report.* After the hearing, the committee must give the court a written report including its:

(i) findings of fact about the petitioner's fitness to resume practicing law; and

(ii) recommendations about whether to reinstate the attorney.

(5) ***Court's Decision.*** After considering the committee's report, the court's district judges—and bankruptcy judges, if the matter involved an attorney's conduct before the bankruptcy court—may by majority vote:

(A) deny the petition, if they find that the attorney is unfit to resume practicing law;

(B) reinstate the attorney unconditionally; or

(C) reinstate the attorney conditioned on the attorney:

(i) paying for all or part of the proceeding's cost;

(ii) making restitution to parties harmed by the conduct that led to the discipline;

(iii) providing certification from any jurisdiction's bar examiners that the attorney has successfully completed an admission examination after the suspension or disbarment took effect;

(iv) otherwise proving competency and learning in the law (if the suspension or disbarment was for five or more years); or

(v) meeting any other terms the judges deem appropriate.

(d) Timing of Petition.

(1) ***After Disbarment.*** A disbarred attorney may not file a reinstatement petition until five years after disbarment.

(2) ***After Previous Unsuccessful Petition.*** An attorney who has previously filed a reinstatement petition that was denied may not file another reinstatement petition on the same matter until one year after the denial.

(e) Depositing Costs of Proceeding. Reinstatement petitions must be accompanied by a deposit in an amount equal to the filing fee for miscellaneous cases.

Committee Comments

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-6.12 Service of Show-Cause Order

A show-cause order related to formal disciplinary proceedings may be served by:

(a) CM/ECF if the attorney subject to the order is a registered electronic filer; or

(b) by regular mail addressed to the attorney at the attorney's last-known address.

Committee Comments

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-6.13 Other Disciplinary Duties

(a) Attorneys' Duties. Attorneys must promptly notify the clerk when they:

(1) are convicted of a serious crime;

(2) have been publicly disciplined by any court in the United States or its territories, commonwealths, or possessions; or

(3) consent to disbarment or resign from the bar of any court in the United States or its territories, commonwealths, or possessions while being investigated for misconduct.

(b) Clerk's Duties.

(1) ***Conviction or Discipline in Another Court.*** When the clerk learns that an attorney has been convicted of a crime or disciplined in another court, the clerk must promptly obtain the certificate of the conviction or a certified copy of the disciplinary order and file it with the court.

(2) ***Conviction or Discipline in This Court.*** When this court disciplines an attorney, the clerk must promptly notify:

(A) each appropriate disciplinary agency with jurisdiction over the attorney; and

(B) the American Bar Association's National Discipline Data Bank if the discipline was public.

Committee Comments

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-7 Duty of Attorneys to Accept Appointments in Certain Civil Actions

(a) Duty. Every bar member should be available to represent, or assist in representing, indigent parties whenever reasonably possible.

(b) Procedure. If the judge assigned to a case involving a party proceeding *in forma pauperis* determines that representation of the party by an attorney is warranted under 28 U.S.C. § 1915 (e)(1) or 42 U.S.C. § 2000e-5(f), the judge may direct the clerk to request that a bar member represent the indigent party.

(c) Entry of Appearance. An attorney who accepts a request to represent an indigent party must enter an appearance for the party within 14 days after accepting the request.

(d) Representation, Relief, and Discharge. The following are subject to the judge's discretion:

(1) whether the attorney should continue representing the party;

(2) whether to relieve the attorney from the appointment; and

(3) whether to discharge the attorney.

(e) Expense Reimbursement.

(1) ***Petition.*** Attorneys may seek reimbursement of reasonable expenses incurred representing an indigent party by filing a petition with the court either before the expenses are incurred, or within 90 days after they were incurred. The petition:

(A) may be made ex parte; and

(B) must be accompanied by documentation sufficient to permit the court to determine the request's appropriateness and reasonableness.

(2) ***Type of Expenses.*** The court may approve reimbursement of expenses necessary to prepare and present a civil action in this district. The court will not approve payment for appeal-related

expenses or for costs or fees taxed as part of a judgment against the indigent party.

(3) ***Source.*** Approved reimbursements are paid from the Library and Court Administration Fund.

(4) ***Repayment Upon Recovering Attorney's Fees.*** An attorney who receives a fee award must promptly repay all reimbursements.

Committee Comments

1994 Amendment

This rule replaces present L.R. 1(h) and (i)[also Rule 1 before 1987]. The proposed rule makes several changes to the present rule. First, the rule clarifies the procedure by which the court requests appointments, and also makes clear that the court cannot require an attorney to serve as appointed counsel in a given case as a condition of bar membership. *See Mallard v U.S. District Court,* 490 U.S. 296 (1989), and *DiAngelo v. Illinois Dept. of Public Aid,* 891 F.2d 1260 (7th Cir. 1989). Second, the rule specifies the time within which an appointed attorney must enter an appearance, and specifically provides for relief from appointment and discharge in the court's discretion. Finally, the rule eliminates specific reference to the lack of reimbursement for general office expenses (such as rent and telephone service) found in the present rule. The Committee does not intend any change in the present rule that such general office expenses are not reimbursable, but believes that the proposed rule's limitation of reimbursable expenses only to those "incurred in the preparation and presentation of the proceeding" already precludes recovery of such expenses.

2000 Amendment

Northern District Rule 83.7 deals with the appointment of counsel in civil actions. Southern District Rule 83.7 deals with the appearances and withdrawals of attorneys. Southern District Rule 83.7 is identical to N.D. Ind. L.R. 83.8. The Southern District has renumbered its rule on the appointment of counsel as L.R. 4.6. The issue is not an exact match with either Fed. R. Civ. P. 4 or Fed. R. Civ. P. 83 and thus, the Committee opted to retain the current numbering system.

There are extensive differences between N.D. Ind. L.R. 83.7 and Southern District Rule 4.6. The primary difference deals with the referral of cases to legal clinics. The Committee made no changes to the current rule, believing the rule in its present form to be more consistent with the prevailing practice.

2002 Amendment

Amendments to paragraph (a) and (c) were made to clearly distinguish between district and magistrate judges.

2004 Amendment

The rule was amended to emphasize that members of the Bar have a duty to accept court appointments to represent indigent civil litigants. However, the Committee is cognizant that attorneys, for reasons of lack of expertise or conflicts of interest, may not always be available to accept appointment. The language "whenever reasonably possible" in the first paragraph clarifies this issue. A grammatical change in (a) was also made.

2008 Amendment

The change corrects an erroneous statutory reference. No substantive changes are proposed.

2009 Amendment

The proposed changes to subsection (d) and (d) (1) are intended by the Committee to permit attorneys appointed to represent indigent clients to request reimbursement of appropriate and reasonable expenses incurred in the course of their representation. The proposed amendments enable attorneys to petition the Court for pre-approval of expenses as well as reimbursement for expenses incurred without preapproval provided that the expenses are "appropriate and reasonable." The Committee has also suggested amendments to the District Court Library Fund to eliminate the thresholds that are currently in place for the reimbursement of expenses.

At paragraph (b) "(15) days" has been amended to "(14) days" to comply with the time amendments coming effective on December 1, 2009.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-8 Appearance and Withdrawal of Appearance

(a) Appearances Required. Attorneys not representing the United States or its agencies must file an appearance when they represent (either in person or by filing a paper) a party.

(b) Removed and Transferred Cases. Attorneys whose names are not on the court's docket after a case is removed or transferred must file either an appearance or a copy of the appearance they filed in the original court. Attorneys who are not bar members must comply with the court's admission policy (as described in N.D. Ind. L.R. 83-5) within 21 days of removal or transfer.

(c) Withdrawal of Appearance. To withdraw an appearance, attorneys must file a motion requesting leave to do so. Unless another attorney has appeared for the party, the motion must include:

(1) satisfactory evidence that the attorney gave the party written notice of the attorney's intent to withdraw at least seven days before filing the motion; and

(2) in civil cases, the party's last known contact information, including an address and telephone number.

Committee Comments

1994 Amendment

This proposed rule derives from L.R. 2 [and the previous Rule 2 prior to 1987]. The first sentence of present L.R. 2, requiring the name, address, and telephone number of attorneys on all pleadings, has been moved to proposed L.R. 5.1(b), and expanded to require the information of all filings with the court. The final sentence of (a), which required the clerk to advise non-resident counsel of requirements of present L.R. 1(c) and (d), was deleted because of the changes to those provisions effected by proposed L.R. 83.5. Otherwise, the proposed rule is identical to present L.R. 2.

2007 Amendments

These amendments were endorsed by the clerk's office to facilitate CM/ECF appearances and withdrawals and are consistent with recent changes made by the Southern District of Indiana

2009 Amendment

With respect to paragraph (a), the Committee intends to except attorneys representing the United States from filing a notice of appearance so that those attorneys have greater flexibility in appearing for the government.

In addition, paragraph (b) is amended from 20 days to 21 days, and paragraph (c) is amended from 5 days to 7 days. Identical changes are contemplated in the Southern District.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 83-9 Student Practice

(a) Generally. A law student or law-school graduate may represent parties (including by appearing for, negotiating on behalf of, and advising parties) in civil and criminal matters pending in this district if the student or graduate:

(1) is supervised by a bar member;

(2) is either:

(A) a staff member of a clinic:

(i) organized by a city or county bar association or an accredited law school; or

(ii) funded under the Legal Services Corporation Act; or

(B) participating in a legal-training program organized by:

(i) the United States Attorney's office; or

(ii) the Federal Community Defender's office; and

(3) in the case of a law student:

(A) is in good standing at an accredited law school;

(B) has completed the first year;

(C) meets the academic and moral standards established by the school's dean; and

(D) has been certified by the school as having met these requirements.

(b) Supervision. The supervising bar member must examine and sign all pleadings filed on a client's behalf. But the student or graduate may, without the supervisor present, negotiate on behalf of or advise a client.

(c) Appearance in Court. A student or graduate may appear in court under this rule subject to the following:

(1) the presiding judge must approve the appearance;

(2) if the case is a criminal or juvenile case carrying a penalty exceeding six months, the supervisor must be in the courtroom; and

(3) the judge may suspend a trial at any stage if the judge determines that:

(A) the representation is professionally inadequate; and

(B) substantial justice requires the suspension.

Committee Comments

1994 Amendment

The proposed rule derives from present L.R. 39 [Rule 29 before 1987]. There is only one change: a requirement that the dean of a student's law school actually certify that the student meets the eligibility requirements of sub-paragraph (c).

2003 Amendment

The Committee amended this rule to add the Federal Community Defender's office to the student practice rule. The Committee is advised that the practice is recognized by the Judicial Conference and will provide the Federal Community Defenders resources as well as provide law students with practical experience.

2009 Amendment

No substantive changes have been made. However, the Committee recommended that paragraph (c) be amended to clarify that any student who wishes to participate must have at least completed the first year of law school and be in good standing.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L.R. 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.

(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 Comments

1994 Amendment

The proposed rule derives from present L.R. 45 [Rule 31 prior to 1987]. The text of sections (a), (d), (e), and (f) are identical to the text of present L.R. 45. Section (b) is modified to account for amendments to 28 U.S.C. §§ 1334 (c) and 1452(b), which now permit appeal of abstention and remand decisions by bankruptcy judges to the district court. The proposed rule reflects that only withdrawals of reference, transfer of venue in personal injury cases, and trials of personal injury cases are now heard by the district court in the first instance, and it further provides the procedures by which these motions and trials are to be raised and determined. In addition, a new section (g), which gives the bankruptcy judges the power to make and amend rules, is added. This authorization is permitted by Bankruptcy Rule 9029.

There was also a significant change to section (c). The Seventh Circuit's decision in *Matter of Grabill Corp.*, 967 F.2d. 1152 (7th Cir. 1992) has had a significant impact on the proper interpretation of subsection (c)(1). According to *Grabill Corp.*, bankruptcy judges may no longer preside over jury trials. Because section (c)(1) permits bankruptcy judges to conduct jury trials only when "permitted by law," the Committee chose to retain the present language because of the possibility that the Seventh Circuit, the Supreme Court, or the Congress might ultimately overturn the import of *Grabill Corp.* and authorize bankruptcy judges to conduct jury trials. Nonetheless, the Committee recognizes that, until *Grabill Corp.* is overturned, jury trials before bankruptcy judges are not "permitted by law," and (c)(1) should not be understood as an attempt to "overrule" *Grabill Corp.*

The decision in *Grabill Corp.* also requires the establishment of a procedural device by which jury-triable matters in a bankruptcy case are transferred to the district judge. Consequently, new subsection (c)(2)(A) requires that a motion to withdraw the reference to the bankruptcy judge be filed at the same time as the demand for a jury trial. The Committee intends that only the jury-triable matters would be automatically removed from the reference once the motion is granted, but the Committee also recognizes that the district judge should retain the flexibility to revoke other aspects of the reference in appropriate cases.

2002 Amendment

This proposed addition to L.R. 200.1 comes from the bankruptcy judges following unanimous approval by that court's local practice and procedures Committee. The purpose of the rule is to standardize and clarify the operative effect of a district court mandate following a decision on appeal. The proposal was circulated among the members of the Committee and no suggestions or objections were proffered. It is suggested that the proposal become subparagraph (e) with all subsequent paragraphs re-lettered accordingly.

2008 Amendment

The sole substantive proposed change to this rule is set out in subsection (e) and relates to issuance of expedited mandates. The purpose of this change, proposed by the Bankruptcy Local Rules Committee, is to provide a vehicle by which the mandate could be issued sooner than the time otherwise stated in the rule. This may be appropriate in situations where there would be no possibility of a further appeal–such as when the parties agree that a remand is required–and would help to expedite further proceedings in the court below. Several options were considered by the Bankruptcy Local Rules Committee and the proposal in (e) is the prevailing view of that Committee.

In addition to the substantive change noted above, the rule has been amended to remove references to "mailing" of documents to the parties. With the advent of electronic filing, the bankruptcy clerk no longer mails documents except in the rare instance where counsel is not an electronic filer or where one of the parties is pro se. The Committee amended the references to "mailing" and substituted the word "service" or "serve" so as to accommodate both the electronic filings and the occasional situation where the clerk would be required to mail a document.

2009 Amendment

In those rare instances where the bankruptcy court makes proposed findings of fact and conclusions of law and submits a proposed judgment, the current rule at paragraph (a)(3)(B) requires any objection be filed within 10 days of service. The Committee recommended that this deadline be changed to 14 days to make it consistent with the upcoming change to rule 8002 and the deadline for filing a notice of appeal from bankruptcy court final orders and judgments.

Paragraph (c)(1) addresses jury trials in the bankruptcy court. The first sentence suggests jury trials might be a possibility, and they were when the rule was originally written. Since that time, however, things have become more restrictive. Although the opportunity for a jury trial in a bankruptcy proceeding is limited, even if it is a possibility, it can only take place before a bankruptcy judge if it is specifically authorized and directed to do so by the district court and all

parties consent. The consent of all parties is the complicating factor. No one, at least no one in the collective experience of the Districts' Bankruptcy Judges, demands a jury trial in bankruptcy court and consents. To the contrary, they make the demand, refuse to consent, and use those circumstances as the basis to seek withdrawal of the reference so that the matter can go to the district judge. Indeed, the right to a jury trial is the most common basis for seeking and granting withdrawal of the reference. As a result, even if the Bankruptcy Judges had the ability to preside over jury trials, the parties do not want that to occur and so nothing would be gained by formally giving bankruptcy judges the authority. Furthermore, the Bankruptcy Judges have expressed that they do not want or need such authority. As a result, the Committee recommended that the first sentence of the rule be revised to clarify that jury trials are not permitted before bankruptcy judges. The second sentence of (c)(1) concerning involuntary petitions remained unchanged.

2010 Amendment

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.

N.D. Ind. L. Cr. R. 6-1 Grand Juries

(a) Restricted Areas. While a grand jury is in session, no one may be in the hall leading to the rooms or areas used by the grand jury or anyplace where witnesses before the grand jury can be seen or heard. This subdivision does not apply to:

(1) grand jurors;

(2) witnesses;

(3) government attorneys, agents, and employees;

(4) court personnel involved with grand-jury proceedings;

(5) private attorneys whose clients have been called to appear before the grand jury; and

(6) others specifically authorized to be present.

(b) Numbering. The clerk must open a sealed miscellaneous case for each newly- impaneled grand jury. Motions, orders, and other filings pertaining to the grand jury must bear the case number.

(c) Motions to Seal Unnecessary. Motions and orders to seal are unnecessary.

(d) Challenges to Subpoenas.

(1) ***Content of Challenges.*** Pre-indictment challenges to grand-jury subpoenas or grand-jury proceedings must:

(A) be in writing;

(B) be filed with the clerk; and

(C) contain legal arguments and all pertinent facts, including:

(i) the grand-jury number;

(ii) the date the subpoena was served; and

(iii) the subpoena's appearance or production date.

(2) ***Timing of Filing and Service.*** Absent good cause, motions to quash or to limit a grand-jury subpoena must be filed and served on the United States at least seven days before the appearance or production date.

(3) ***Timing of Ruling.*** Except in unusual circumstances, the court will rule on motions to quash or to limit a grand-jury subpoena before the appearance or production date.

(4) ***Magistrate Judges' Authority.*** Magistrate judges may hear and determine motions to quash or to limit grand-jury subpoenas.

Committee Comments

1994 Amendment

The proposed rule [originally assigned L.R. 108.1 in 1994] is derived from present CR-5(d) [a rule that was new in 1987, but largely drawn from a recommendation of the Judicial Conference of the United States Courts.] Due to the location of the grand jury room in the Hammond courthouse, persons not associated with the grand jury are able to sit or stand in the hallway immediately adjacent to the grand jury room. Their presence poses a potential threat to grand jury secrecy and might intimidate witnesses before the grand jury. While the Southern District of Indiana deleted its version of CR-5(d) because of changes in the security of the grand jury area, the reason for the rule continues to exist in this district. Thus, the Committee recommends retention of this rule.

The rule has been slightly amended for clarity. In addition, the rule was expanded to preclude persons from remaining in the areas from which witnesses could be observed.

2000 Amendment

The Committee proposes renumbering all of the Criminal Local Rules to comply with the uniform numbering system recommended by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States in its April 17, 1996 memorandum. The intent of the uniform system is to aid attorneys in multi-district practice in finding applicable local rules. This new numbering system corresponds to the numbering system utilized in the Criminal Rules of Procedure. [Accordingly, L.R. 108.1 became L. Cr. R. 6.1.]

With respect to this particular rule, the Southern District of Indiana has a completely different rule. The Committee recommends retaining current L.R. 108.1 and making it paragraph (a). For uniformity, the Committee proposes adopting paragraphs (c) through (f) of the Southern District of Indiana's rule with some minor changes to the text. These paragraphs appear as paragraphs (b), (c), (e), and (f) in the proposed rule. The Committee removed the Southern District of Indiana's reference to a motions judge and did not specify which judge was entitled to rule on pre-indictment motions.

The Committee also proposes adding paragraph (d) which expressly authorizes magistrate judges to rule on motions to quash a subpoena. The Committee reviewed the Inventory of United States Magistrate Judge Duties (3rd ed. 1999) which indicates that at least one court has recognized that magistrate judges may rule on a motion to quash subject to *de novo*

review. Accordingly, the Committee opted to include a new provision (d) authorizing magistrate judges to hear and determine motions to quash grand jury subpoenas in the event that the impaneling judge is unavailable.

Finally, the Committee recommends changing the Southern District's provision that motions to quash must be filed and served upon the Government no later than 48 hours prior to the appearance or production date [to no later than seven (7) days]. The Committee retains the portion of the Southern District of Indiana rule that permits filing if good cause is shown.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L. Cr. R. 12-1 Pretrial Authentication and Foundation for Exhibits

(a) Procedure. Parties are strongly encouraged to authenticate exhibits under Fed. R. Evid. 901 or establish the foundation for admitting the records of a regularly conducted activity under Fed. R. Evid. 803(6) by serving the following on opposing parties at least 30 days before trial:

(1) a copy of each exhibit; and

(2) a statement of intent to proceed under this local rule.

(b) Objections. If the procedure in subdivision (a) is used, objections to an exhibit's authenticity or the foundation for admitting it will be waived, unless an opposing party files an objection at least 14 days before trial.

Committee Comments

2000 Amendment

This is a new rule proposed by the Committee and is not intended in any way to waive objections as to relevancy, prejudice or any other valid objection except for the specific objections stated within the rule. This rule is intended to cover the typical custodian of records or other similar witness who testify briefly as to authentication requirements or business records foundation. The testimony of these witnesses is rarely in issue. It is hoped that use of this rule will expedite court proceedings and reduce costs to all parties.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L. Cr. R. 13-1 Assignment of Related Cases

Any subsequent case or superseding indictment or information against a defendant must be assigned to the same judge presiding over a pending criminal case against that defendant.

Committee Comments

1994 Amendment

This proposed rule is new in the Northern District of Indiana. The Southern District of Indiana had previously adopted this rule as an administrative rule, and voted to place the rule in the local rules during its revision. Since the requirement of assigning related criminal cases to a single judge is sensible and efficient, the Committee recommends the adoption of this rule.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L. Cr. R. 16-1 Standard Orders

The court may issue a standard order at the arraignment that contains provisions for:

(a) a trial date;

(b) pretrial discovery;

(c) deadlines for filing, and responding to, pretrial motions; and

(d) other matters.

Committee Comments

2009 Amendment

The Southern District has a Local Rule 2.1 which provides for the issuance of a standard order in criminal cases containing provisions for pleas, trial dates, attorney appearances, pretrial discovery, and other matters. The Committee recommended modifying our rule to make it as close as possible to the Southern District's rule but still allowing for the differences between divisions. Since the current arraignment procedure encompasses the specifics of the existing rule (concerning discovery at (a) and motion filing at (b)) the Committee recommended deletion of both paragraphs in favor of this provision.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

L. Cr. R. 16.1 REQUESTS FOR DISCOVERY; OTHER MOTIONS (deleted 2009)

~~**L. Cr. R. 16.1: Requests for Discovery; Other Motions**~~

~~**(a)** A request for discovery or inspection pursuant to Fed. R. Crim. P. 16 shall be made at the arraignment or within ten (10) days thereafter.~~

~~**(b)** At the arraignment or as soon thereafter as practicable, the court shall enter an appropriate order fixing the dates for the filing of and responses to, any other pretrial motions.~~

Committee Comments

1994 Amendment

This rule [originally assigned L.R. 109.1 in 1994] is new. The Committee believed that a time limit on requests for discovery or inspection would clarify the appropriate timing of these requests. Subsection (b) covers cases where the court does not issue the standard order provided for by L.R. 101.1 [a rule subsequently deleted in 2000].

2000 Amendment

The Southern District of Indiana does not have a comparable rule. The Committee observed that this rule was added in 1994 by the prior local rules committee. Subparagraph (a) was intended to prevent a situation where a defendant fails to request discovery on the eve of trial. The Committee believes that this remains a valid concern, and thus proposes retaining the present rule with only a minor typographical change in paragraph (a) for uniformity with the other rules. [The rule was re-styled and re-numbered from L.R. 109.1 to L. Cr. R. 16.1.]

N.D. Ind. L. Cr. R. 30-1 Jury Instructions

A party requesting that the court instruct the jury under Fed. R. Crim. P. 30(a):

(a) must file the request;

(b) must use the Seventh Circuit Pattern Jury Instructions whenever possible;

(c) must request the Seventh Circuit Pattern Jury Instructions by number only; and

(d) is encouraged, when requesting non-pattern instructions, to submit them to chambers in an electronic format compatible with the court's word-processing program.

Committee Comments

1994 Amendment

The proposed rule [originally assigned L.R. 110.1 in 1994] revises present CR-7 [and styled as Criminal Rule 11 before 1987]. A new introductory clause is added to clarify that the rule applies only to criminal cases–a change necessitated by the merger of the civil and criminal rules into a single set of local rules. In addition, the rule expressly allows and requires parties to submit Seventh Circuit Pattern Jury Instructions by number only, and encourages submission of other pattern jury instructions in a WordPerfect format. Finally, instructions must now be submitted three business days prior to trial, rather than on the first day of trial.

2000 Amendment

There is no comparable Southern District of Indiana rule. The Committee proposes a change in the opening sentence to make clear that although parties are required to file requests for instructions three business days before trial, the parties may in accordance with Fed. R. Crim. P. 30 supplement their requests during the trial.

In addition, the Committee proposes changing the format of jury instruction filings, now requiring them to be "on a disk compatible with the word processing program of the court." This is consistent with the requirement in L.R. 51.1 relating to the format for civil jury instructions. [The rule was re-styled and re-numbered from L.R. 110.1 to L.Cr.R. 30.1.]

2009 Amendment

The Southern District has no comparable rule. Magistrate Judges Rodovich, Cherry, and Cosbey all require the filing of a set of proposed final jury instructions agreed upon by the parties prior to the pretrial conference. All three also require the parties to file separate instructions for those that the parties cannot agree. Magistrate Judge Nuechterlein only requires the filing of instructions at least three days prior to trial and makes no reference to a joint filing.

The Committee also recommended deleting the triplicate filing requirement since it is neither needed nor currently observed. Similarly, the submission of a disk by the parties is somewhat antiquated with the increased usage of e-mail. Judges Springmann, Van Bokkelen, and Lozano all direct that the parties submit via email courtesy copies in WordPerfect or Word format to their chambers.

Finally, the Committee recommended deletion of the last sentence so as to avoid instances where there would be protracted argument over whether an instruction could have been reasonably anticipated, opting instead for the simple application of judicial discretion.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L. Cr. R. 46-1 Sureties

(a) Requirements on Sureties. A surety securing a person's appearance must:

(1) be a corporate surety that:

(A) holds a certificate of authority from the Secretary of the Treasury; and

(B) acts through a bondsman registered with the clerk; or

(2) own fee-simple title to real estate:

(A) in which the surety's equity has a fair-market value at least double that of the bond's penalty;

(B) that is unencumbered except for current taxes and a first-mortgage lien; and

(C) that is not subject to an existing appearance bond in any court in this district—whether federal, state, county, or municipal.

(b) Sureties on Appearance Bonds. Only a corporate surety may charge a fee for an appearance bond.

Committee Comments

1994 Amendment

This proposed rule [originally assigned L.R. 100.1 in 1994] replaces present CR-1[which was new in 1987]. The rule eliminates the present distinction between sureties offering personal property and those offering real property. A single rule is now adopted. In effect, the rule no longer allows a surety other than a corporate surety to post personal property as security. The rules for posting real estate as security are also changed by eliminating the need to file a Title Search Report letter, an appraisal, and a deed of trust, and by now requiring that the property be owned in fee simple and that it have a fair market value of double the bond penalty. In establishing fair market value and lack of encumbrance, the surety may need to provide some of the same information presently required under CR-1, but the rule leaves to the clerk's discretion the exact information sought.

2000 Amendment

This rule is identical to the Southern District of Indiana rule. The sole change proposed to this rule is in the abbreviation of the Criminal Rules of Procedure which was changed to be

consistent throughout the local rules. [The rule was re-styled and re-numbered from L.R. 100.1 to L. Cr. R. 46.1.]

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L. Cr. R. 47-1 Continuances

(a) Grounds. A motion to continue will be granted only if the moving party demonstrates that:

(1) the ends of justice served by a continuance outweigh the defendant's and the public's interests to a speedy trial as provided by the Speedy Trial Act; or

(2) the continuance will not violate the Speedy Trial Act's deadlines for some other reason.

(b) Proposed Entry Required. The moving party must submit with the motion a proposed entry with findings about the applicable ends of justice or any other reason the continuance will not violate the Speedy Trial Act.

Committee Comments

1994 Amendment

The proposed rule [originally assigned L.R. 105.1 in 1994] is identical to present L.R. 20(b) [which was essentially new in 1987]. Because of the different standards for continuances in civil and criminal cases, the Committee decided to place the rule for criminal continuances with the criminal rules. The rule for continuances in civil cases is now located in L.R. 16.3. No substantive change is effected in L.R. 20(b).

2000 Amendment

[The Committee re-styled and re-numbered the rule from L.R. 105.1 to L. Cr. R. 45.1 but otherwise made no other changes.]

2009 Amendment

The proposed amendment to this rule reflects the statutory recodification of the Speedy Trial Act, 18 U.S.C. § 3161. Subsection (h)(8) was recodified to (h)(7). Southern District Rule 7.1 is identical to our rule before the most recent amendment identifying subsection (h)(8) as (h)(7).

The Committee recommended relating this rule to Federal Rule of Criminal Procedure 47 rather than 45. This Local Rule was formerly 45.1, but has now been re-numbered to 47.1.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory

Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L. Cr. R. 47-2 Briefing Deadlines

A party who files a petition under 28 U.S.C. § 2254 or a motion under 28 U.S.C. § 2255 must file any reply brief within 28 days after the answer brief is served.

Committee Comments

2012 Amendment

The proposed rule eliminates the former rule because it merely duplicated much of Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts and Rule 2 of the Rules Governing Section 2255 Proceedings for the United States District Courts. In its place, the proposed rule establishes a deadline for filing the reply brief in those cases where the respondent is ordered to file an answer. The deadline for filing an answer brief cannot be established by local rule in these cases because the respondent is not obligated to answer unless ordered to do so in accordance with the Section 2254 of Rule 4.

PETITIONS FOR HABEAS CORPUS AND MOTIONS PURSUANT TO 28 U.S.C. §§ 2254 AND 2255 BY PERSONS IN CUSTODY (deleted 2012)

~~**L. Cr. R. 47-2 Petitions for Habeas Corpus and Motions Pursuant to 28 U.S.C. §§ 2254 and 2255 by Persons in Custody**~~

~~Petitions for writs of habeas corpus and motions filed pursuant to 28 U.S.C. §§ 2254 and 2255 by persons in custody shall be in writing and signed under penalty of perjury. Such petitions and motions shall be on the form contained in the Rules following 28 U.S.C. § 2254, in the case of a person in state custody, or 28 U.S.C. § 2255, in the case of a person in federal custody, or on forms adopted by general order of this court, copies of which may be obtained from the clerk of the court.~~

Committee Comments

1994 Amendment

The proposed rule [assigned L.R. 104.1 in 1994], based upon present L.R. 35(a), was technically amended to clarify that petitions for habeas corpus are filed under 28 U.S.C. § 2254, not under 28 U.S.C. § 2255. No substantive change was intended. The remainder of L.R. 35 was deleted.

2000 Amendment

[The Committee re-styled and re-numbered the rule from L.R. 104.1 to L. Cr. R. 47.1 but otherwise made no other changes.]

2009 Amendment

The Committee recommends renumbering this rule in light of its other recommendation to renumber L.Cr.R.45 to L. Cr. R. 47.1. This Local Rule was formerly 47.1, but has now been re-numbered to 47.2.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L. Cr. R 47-3 Special Notice Requirements in 28 U.S.C. § 2254 Death Penalty Habeas Corpus Cases

(a) Applicability. This rule applies to 28 U.S.C. § 2254 death-penalty habeas corpus cases.

(b) Required Notices. The clerk must notify those entitled to notice when:

(1) the case is opened;

(2) a stay of execution is granted or denied;

(3) a final order is issued; or

(4) a notice of appeal is filed.

(c) Entitlement to Notice. The following are entitled to notice:

(1) the respondent;

(2) the Indiana Attorney General;

(3) the Indiana Supreme Court; and

(4) the Seventh Circuit.

(d) How to Give Notice. The Clerk will coordinate how to notify those entitled to notice.

Committee Comments

1994 Amendment

This rule is derived from the Circuit Rule governing the disposition of death penalty cases. The rule, which is inserted into the local rules for ease of reference, is expanded to include federal prisoners due to the recent passage of federal death penalty legislation. Some renumbering of the Circuit Rule's paragraphs and some changes in language were adopted in order to conform the rule to the format of the other local rules. One sentence, dealing with the obligations of the Circuit's Chief Judge, was deleted because it was beyond the scope or power of these local rules.

2000 Amendment

[The rule was re-styled and re-numbered to L. Cr. R. 47.2 from L.R. 104.2 but no other changes were made.]

2003 Amendment

The Committee made a minor change in the wording of subsection (a)(3) and (e)(5) so that it reads "Certificate of Appealability" rather than "Certificate of Probable Cause." The change was made at the request of the pro se law clerks so that the rule conforms with the current terminology. In addition, two statutory references were modified and minor typographical changes were made as suggested by the pro se law clerks.

2009 Amendment

Southern District Local Rule 6.1 addresses this process. Our rule and the Southern District's rule are substantially different. The rules between the districts are too difficult to reconcile. However, the Committee recommended extending the deadline in (b)(2) from 10 to 14 days, so as to be consistent with the time amendments becoming effective December 1, 2009. In addition, this Local Rule was formerly 47.2, but has now been renumbered to 47.3.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

2012 Amendment

The proposed rule eliminates most of the lengthy former rule which duplicated portions of several federal rules, local rules, and statutes. It maintains the unique, special notice provisions that are applicable to a Section 2254 death penalty habeas corpus cases.

N.D. Ind. L. Cr. R. 53-1 Special Orders

(a) Orders to Preserve Decorum and Maintain Integrity. The court may, on its own motion or a party's motion, issue special orders to preserve decorum and maintain the integrity of trials. These special orders may regulate such matters as the court deems appropriate, including:

(1) extrajudicial statements by trial participants (including lawyers and their staff, parties, witnesses, and jurors) that are likely to interfere with a party's right to a fair trial;

(2) clearing the courthouse's entrances and hallways so that witnesses and jurors cannot mingle with or be in close proximity to reporters, photographers, parties, lawyers, and others during recesses in the trial or as the jurors enter and exit the courtroom and courthouse;

(3) the seating and courtroom conduct of parties, attorneys (including their staff), spectators, and news-media representatives;

(4) maintaining the confidentiality of the jurors' names and addresses (unless a statute requires disclosure);

(5) forbidding anyone from photographing or sketching jurors within the courthouse;

(6) jury sequestration (but the identity of any party requesting sequestration must not be disclosed);

(7) forbidding jurors from reading, listening to, or watching news reports about the case;

(8) forbidding jurors from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations; and

(9) insulating witnesses from news interviews during trial.

(b) Preliminary Criminal Proceedings. Ordinarily, preliminary proceedings (including preliminary examinations and hearings on pretrial motions) must be held in open court, with the public permitted to attend and observe. But the court may close preliminary proceedings if:

(1) the law allows it; and

(2) the court cites for the record the specific findings that make doing so necessary.

Committee Comments

1994 Amendment

The proposed rule amends present CR-2 [essentially a verbatim version of pre-1987 Criminal Rule 5] in several ways. First, it eliminates the application of the rule only to "a widely publicized or sensational case," and makes it exceptional terms effective in any appropriate case. Second, it extends the rule's protection to ensure that all parties' rights to a fair trial will be considered, rather than only the rights of the accused. Third, the provision of the rule concerning extrajudicial statements is extended to the staff of attorneys, and orders regarding seating may now include parties, attorneys and their staffs.

Fourth, sub-paragraph (b), which governs closure orders, is amended. At present, the only ground for closure of trial is the least restrictive means of protecting an accused's right to a fair and impartial trial. The amended language would permit the court to order closure when other compelling interests (such as the protection of victim or witness identity) are at stake. At present, the power of a court to order closure for these purposes is open to debate. Thus, the introductory clause to the sub-paragraph is amended to ensure that closure would be allowed only when permitted by law. This draft provides flexibility to the court to address particular circumstances in which interests other than fair trial might be implicated by an open proceeding without specifically requiring closure when certain circumstances present themselves.

2000 Amendment

[The rule was re-styled and re-numbered to L. Cr. R. 53.1 from L.R. 102.1 but otherwise no other changes were made.]

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L. Cr. R. 53-2 Release of Information

(a) Applicability. The following are subject to this rule when they are associated with a pending or imminent criminal case:

(1) government attorneys and their staffs;

(2) defense attorneys and their law firms; and

(3) law-enforcement agencies or investigators associated with either the prosecution or defense.

(b) General Prohibition on Release of Facts and Opinions. A person subject to this rule must not release, or authorize the release of, facts or opinions about the criminal case if:

(1) a reasonable person would expect them to be disseminated by any means of public communication; and

(2) the dissemination would pose a serious and imminent threat of interference with the fair administration of justice.

(c) Presumptions of Imminent Threat or Interference. Unless allowed under subdivision (d), the following are presumed to pose a serious and imminent threat of interference with the fair administration of justice:

(1) during an investigation, statements by a government lawyer or law-enforcement agent that go beyond the public record;

(2) during preliminary criminal proceedings, out-of-court statements about:

(A) the accused's character, reputation, or prior criminal record (including arrests, indictments, or other criminal charges);

(B) the existence or contents of a confession, admission, or statement given by the accused;

(C) the fact that the accused has refused or failed to make a statement;

(D) the accused's performance on any examinations or tests;

(E) the fact that the accused has refused or failed to submit to an examination or test;

(F) the identity, testimony, or credibility of prospective witnesses (but identifying the victim is permissible if it is not otherwise legally prohibited);

(G) the possibility of a guilty plea to either the charged offense or a lesser one; or

(H) any opinion concerning either the accused's guilt or innocence or the evidence in the case; or

(3) during trial, out-of-court statements or interviews about the trial or the parties or issues in the trial.

(d) Permitted Statements.

(1) ***During Investigation.*** During an investigation, government lawyers or law-enforcement agents may make statements that go beyond the public record if they are necessary to:

(A) inform the public:

(i) that an investigation is under way; or

(ii) about the investigation's general scope;

(B) ask for public help apprehending the suspect;

(C) warn the public of any dangers involved in the investigation; or

(D) otherwise aid the investigation.

(2) ***During Preliminary Criminal Proceedings.*** During preliminary criminal proceedings and while discharging their official or professional obligations, a person subject to this rule may:

(A) announce:

(i) accused's name, age, address, occupation, and family status;

(ii) that the accused has been arrested;

(iii) the circumstances of the arrest (including time and place of arrest, resistance, pursuit, and use of weapons);

(iv) the identity of the investigating and arresting officer or agency and the length of the investigation;

(v) that physical evidence (other than a confession, admission, or statement) has been seized (so long as the announcement is made when the seizure occurs and is limited to a description of the seized evidence);

(v) nature, substance, or text of the charge, including a brief description of the offense charged;

(vii) the scheduling or result of any stage in the judicial process; or

(viii) without further comment or elaboration, that the accused denies the charges and the general nature of the defense;

(B) request assistance in obtaining evidence; or

(C) if the accused has not been apprehended, release information that is necessary to:

(i) help apprehend the accused; or

(ii) warn the public of any dangers the accused may present.

(3) ***During Trial.*** Persons subject to this rule may quote or refer without comment to the court's public records in the case during trial.

(e) Definitions.

(1) ***Preliminary Criminal Proceedings.*** For purposes of this rule, preliminary criminal proceedings:

(A) start when:

(i) the accused is arrested;

(ii) an arrest warrant is issued; or

(iii) a complaint, information, or indictment is filed; and

(B) end when:

(i) the accused's trial starts; or

(ii) the proceedings are resolved without a trial.

(2) ***Trial Defined.*** For purposes of this rule, a trial includes:

(A) jury selection;

(B) a criminal trial; and

(C) any other proceeding that could result in incarceration.

(f) Limits on the Rule's Scope. This rule does not preclude:

(1) lawyers or law enforcement agents from replying to public charges of misconduct;

(2) legislative, administrative, or investigative bodies from holding hearings and issuing reports; or

(3) the court from promulgating more restrictive rules on the release of information about juveniles or other offenders.

Committee Comments

1994 Amendment

This proposed rule amends present CR-4 [which followed a pre-1987 version of Criminal Rule 4 nearly verbatim]. The changes are based upon Rule 3.6 (Trial Publicity) of the Rules of Professional Conduct, and are intended to harmonize the local rules with profession obligations. The first change is a technical one which clarifies the application of the rule to both government and private attorneys. The second change, in paragraph (1) [now, (a)], limits the non-disclosure of information obtained during investigation to government attorneys. *See Chicago Council of Lawyers v. Bauer*, 522 F.2d 242, 253 (7th Cir. 1978). Third, the rule authorizes defense counsel to state the general nature of the defense; at present, counsel can only state that the accused denies the charges. Next, the restriction of paragraph (3)[now, (c)], which prevents public communications during a trial, are extended to non-jury criminal trials and to non-criminal proceedings which could result in incarceration. *See Bauer*, 522 F.2d at 257. Finally, the rule is expanded to encompass law enforcement agents.

2000 Amendment

The Southern District of Indiana has a similar rule with the exception of the internal numbering system used in their rule. After discussion, the Committee recommends changing the internal numbering system to match the Southern District of Indiana and to conform with the civil local rule changes which the Southern District of Indiana has adopted. [The rule was also re-styled and re-numbered from L.R. 103.1 to L. Cr. R. 53.2.]

A key difference between the Southern District of Indiana rule and our current local rule is the inclusion of "law enforcement agent" and "law enforcement agency" in the opening paragraph. The Committee reviewed minutes from the prior criminal local rules Committee and noted that the intent of that Committee was to specifically encompass "law enforcement agents" and "law enforcement agencies" in the rule. This rule, as written, encompasses all law enforcement agencies and agents whether they be local, state, or federal agencies/agents. The Southern District of Indiana does not include law enforcement agencies or agents in their comparable local rule.

The Committee proposes retaining the above language in the opening paragraph and recommends adding the same phrase in paragraph (a). In addition, the Committee proposes adding investigators to the opening paragraph, paragraph (b), and in paragraph (c) so that any law enforcement agency, agent or any investigator for either the prosecution or defense would be included in the rule. Because of this addition, the Committee recommends changing the title of the rule to reflect that the rule encompasses the release of information by those who are not attorneys (*i.e.*, law enforcement agents and investigators).

Although there is some question over whether the court may regulate the conduct of non-lawyers, the Committee concluded that this rule is intended to prohibit the dissemination of information which poses a serious and imminent threat of interference with the fair administration of justice and, to the extent a law enforcement agent or investigator associated with either side violates this rule, any sanctions would be imposed against the party with whom that individual is associated. The Committee believes the rule is prophylactic in that it

encourages attorneys to counsel their agents/investigators or other associates against disseminating improper information which may jeopardize a case.

The Committee also recommends several grammatical changes to paragraphs (b) and paragraphs (c) for clarity.

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

N.D. Ind. L. Cr. R. 58-1 Forfeiture of Collateral in Lieu of Appearance[4]

(a) When Permitted. A person charged with a criminal offense under 18 U.S.C. § 13, may, in lieu of an appearance, post collateral with a magistrate judge and consent to forfeit that collateral. But the offense must be one for which:

(1) the penalty under state law is equal to, or less than, that of a misdemeanor; and

(2) an appearance is not mandatory.

(b) Schedule of Offenses. These offenses, and the collateral amounts to be posted (if applicable), must appear on a schedule available for public inspection in each of the clerk's divisional offices. The schedule will be effective until rescinded or superseded by court order. The clerk must furnish copies of the schedule to the legal publishing houses that publish and distribute, for commercial purposes, the court's rules. The schedule should be included in any subsequent publication containing these rules.

(c) Failure to Appear. The collateral will be forfeited if the person charged with an offense covered by this rule fails to appear before the magistrate judge. The forfeiture:

(1) signifies that the offender neither:

(A) contests the charge; nor

(B) requests a hearing before the magistrate judge; and

(2) constitutes a finding of guilt.

(d) When Forfeitures Are Not Permitted. Forfeitures are not permitted for violations involving an accident that results in personal injury. Arresting officers must treat multiple and aggravated offenses as mandatory-appearance offenses, and must direct the accused to appear for a hearing.

[4] Local Criminal Rule 58-1 is a renumbering of L.R. 72-2, not a new rule. The rule deals with criminal matters and is better aligned with Fed. R. Cr. P. 58, which addresses at subdivision (d) "Paying a Fixed Sum in Lieu of Appearance" and expressly refers to the possibility of "a local rule governing forfeiture of collateral."

(e) Discretion of Officers to Arrest. Nothing in this rule prohibits a law-enforcement officer from:

(1) arresting a person for committing an offense (including those for which collateral may be posted and forfeited); and

(2) either:

(A) requiring the accused to appear before a magistrate judge, or

(B) taking that person before a magistrate judge immediately after arrest.

Committee Comments

2011 Amendment

This local rule was restyled as part of an overall project to make the Court's Local Rules shorter and more understandable to practitioners, litigants and the public. The style guidelines and principles utilized by the Local Rules Advisory Committee are recited under "Explanatory Statement Concerning the Restyling Project." Unless otherwise noted, no substantive changes were intended.

L.R. 101.1 STANDARD ORDERS IN CRIMINAL CASES (deleted 2000)

~~L.R. 101.1: Standard Orders in Criminal Cases~~

~~The court may issue a standard order in a criminal case which contains provisions for a plea of not guilty, a change of plea, trial date, attorney appearances, pretrial discovery, pretrial motions, plea agreement, and other matters. When such a standards order is issued, it shall be served on the defendant with the indictment or information. Copies of the form standard order are available from the clerk of the court.~~

Committee Comments

1994 Amendment

This proposed rule is new. The Southern District of Indiana has used standard orders with some apparent success. The Committee believed that the issuance of standard orders in criminal cases would facilitate their resolution.

2000 Amendment

The Southern District of Indiana has a similar version of this rule. However, in this district the Committee observed that while all judges enter an order in criminal cases, not all of the judges utilize the same standard order for criminal cases. The Committee reviewed minutes from the last rules revision which indicated that the intent of the Committee in adding this rule was to standardize the orders given in criminal cases. However, to date this has not been done, and as a result, there is no standard order that is available from the clerk. Because there is no standard order, the Committee believes the rule is superfluous and proposes that it be stricken.

L.R. 107.1 PROCESSING OF CASES IN DIVISION WITHOUT A RESIDENT JUDGE (deleted 2000)

~~**L.R. 107.1: Processing of Cases in Division Without a Resident Judge**~~

~~**(a)** In any criminal case presided over by a judge to whom such case was not regularly assigned upon its filing, in which there is more than one defendant and in which one or more but not all of the defendants enter a plea of guilty, the judge taking such plea shall retain control over the defendant or defendants making such plea and proceed toward final disposition of the case in so far as it concerns such defendants. The judge may then elect to retain the case in his or her control for purposes of trial and final disposition as to the remaining defendants, or may refer the case back to the judge to whom such case was originally assigned.~~

~~**(b)** In any criminal case in which a defendant enters a plea of guilty or is found guilty upon trial, the judge taking such plea or presiding at trial, as the case may be, shall retain control of such case for disposition and sentencing.~~

Committee Comments

1994 Amendment

This proposed rule is new in the Northern District of Indiana. The Southern District of Indiana has previously adopted a somewhat different version of this rule as an administrative rule. During the rules revision process, their Committee modified the rule slightly, and voted to place the rule in the local rules. While the Northern District of Indiana does not presently face a situation of having any division without a resident judge, the rule appeared to the Committee to be a sensible and efficient resolution of the problem should the matter arise in the future.

2000 Amendment

In proposing that this rule be stricken, the Committee reviewed the minutes of the prior criminal local rules Committee and noted that this rule was added in 1994. At that time there was no district without a resident judge; however, the prior Committee adopted the rule in the event that the issue arose in the future. Upon review of the rule, the Committee does not believe that the rule is necessary and concludes that the better course is to leave the assignment of cases to the discretion of the Chief Judge.

N.D. Ind. L.P.R. 1–1 Scope

(a) Applicability. These rules govern cases in which jurisdiction is based, in whole or in part, on 28 U.S.C. § 1338. The court may depart from these rules in exceptional circumstances.

(b) Citation. The patent rules may be cited as "N.D. Ind. L.P.R.__."

(c) Compliance. Litigants are expected to comply with these rules. They may not circumvent them by, for example, pursuing discovery into infringement and invalidity contentions by seeking discovery responses before the contentions process outlined below.

N.D. Ind. L.P.R. 2-1 Scheduling, Discovery, and Orders

(a) Scheduling Conference. The court will hold a scheduling conference within 30 days after the last answer is filed.

(b) Discovery Plan. The parties must comply with Fed. R. Civ. P. 26(f) before the conference. Their discovery plan must address these topics:

- Date/place of conference;
- Counsel present/parties represented;
- Case summary;
- Jurisdictional questions;
- Type of trial;
- Discovery needed;
- Electronic-information disclosures;
- Stipulation regarding privilege claims/protecting trial-preparation materials;
- Interrogatories;
- Requests for admission;
- Depositions;
- Joinder of additional parties;
- Amending pleadings; and
- Settlement possibilities/mediation.

(c) Protective Orders. The court strongly prefers jointly proposed protective orders. They should be filed with the discovery plan. If the parties are unable to agree on a protective order, they may submit competing proposed

protective orders accompanied by memoranda explaining the differences between the proposed orders and the party's justification for its proposal. These memoranda may not exceed five pages.

(d) Discovery Order. The court will issue a discovery order promptly after the 16(b) conference and rule on any protective-order requests.

(e) Confidential Disclosures. Before a protective order is entered the parties may not delay making the disclosures these rules require—or responding to discovery—on confidentiality grounds. The producing party may designate confidential disclosures and discovery responses as "outside attorneys' eyes only" until a protective order is entered. Once entered, all information must be treated according to the order's terms.

N.D. Ind. L.P.R. 3-1 Preliminary Disclosures

(a) Preliminary Infringement Contentions. Within 28 days after the last answer is filed, a party claiming patent infringement must serve on all parties its preliminary infringement contentions.

(b) Content. The preliminary infringement contentions must include an infringement-claim chart for each accused product or process (the accused instrumentality). If two or more accused instrumentalities have the same relevant characteristics, they may be grouped together in the same chart. Each claim chart must contain the following contentions:

(1) Each claim of each patent in suit that is allegedly infringed by the accused instrumentality;

(2) A specific identification of where each limitation of the claim is found within each accused instrumentality, including for each limitation that the party contends is governed by 35 U.S.C. § 112(f), the identity of the structures, acts, or materials in the accused instrumentality that performs the claimed function; and

(3) Whether each limitation of each asserted claim is literally present in the accused instrumentality or present under the doctrine of equivalents.

(c) Document Production. The party asserting patent infringement must produce to each party (or make available for inspection and copying) the following documents with its preliminary infringement contentions and identify—by production number—which documents correspond to each category:

(1) Documents demonstrating each disclosure, sale (or offer to sell), or any public use, of the claimed invention before the application date for each patent in suit or the priority date (whichever is earlier);

(2) All documents that were created on or before the application date for each patent in suit or the priority date (whichever is earlier) that demonstrate each claimed invention's conception and reduction to practice;

(3) A copy of the certified Patent Office-file history for each patent in suit; and

(4) All documents demonstrating ownership of the patent rights by the party asserting infringement.

(d) **Safe Harbor.** Producing documents under this rule is not an admission that the document is–or constitutes–prior art under 35 U.S.C. § 102.

(e) **Preliminary Invalidity Contentions.** Within 28 days after receiving the preliminary infringement contentions, each party opposing the patent-infringement claim must serve on all parties its preliminary invalidity contentions. These contentions must include a chart (or charts) identifying each allegedly invalid claim, and each item of prior art that anticipates or renders each claim obvious. Claim charts must contain the following contentions:

(1) How and under what statutory section the item qualifies as prior art,

(2) Whether the prior-art item anticipates or renders each allegedly invalid claim obvious,

(3) A specific identification of where in the prior-art item each limitation of each allegedly invalid claim is found, including for each limitation alleged to be governed by 35 U.S.C. § 112(f), where the corresponding structures, acts, or materials are found in the prior-art item that performs the claimed function, and

(4) Why, if obviousness is alleged, the prior art renders the allegedly invalid claims obvious, including why combining the identified items of prior art demonstrate obviousness, and explain why a person of skill in the art would find the allegedly invalid claims obvious in light of such combinations (e.g., reasons for combining references).

(5) A statement identifying with specificity any other asserted grounds of invalidity of any allegedly invalid claims, including contentions based on 35 U.S.C. §§ 101, 112, or 251.

(f) Document Production. The party opposing a patent-infringement claim must produce to all parties the following documents with its preliminary invalidity contentions. The producing party must separately identify by production number which documents correspond to which category.

(1) Documents sufficient to show the operation of any aspects or elements of an accused instrumentality identified by the patent claimant in its preliminary infringement contentions charts; and

(2) A copy or sample of the prior art identified under N.D. Ind. L.P.R. 3(e). If these items are not in English, an English translation of the portions relied upon must be produced.

(g) Declaratory-judgment Actions. The same disclosure process including the same disclosure sequence) applies in declaratory-judgment actions in which the plaintiff is asserting non-infringement, invalidity, or unenforceability of the patent(s) in suit. For example, in such actions the defendant-patentee will assert preliminary infringement contentions under the schedule set out above. If infringement is not contested, the parties seeking a declaratory judgment must comply with N.D. Ind. L.P.R. 3(c) and 3(f) within 28 days after the last answer is filed.

N.D. Ind. L.P.R. 4-1 Claim-Construction Proceedings

(a) Exchanging Terms. Within 14 days after receiving the preliminary invalidity contentions (or within 42 days after receiving the preliminary infringement contentions in those actions in which validity is not at issue), each party must serve on all other parties a list of claim terms that the party contends should be construed by the court, and identify any claim term that the party contends should be governed by 35 U.S.C. § 112(f).

(b) Exchanging Preliminary Claim Constructions and Extrinsic Evidence; Parties' Conference.

(1) Within 14 days after the proposed terms for construction are exchanged, the parties must exchange proposed constructions of each term. Each preliminary claim construction must also, for each term which any party contends is governed by 35 U.S.C. § 112(f), identify the function of that term and the structures, acts, or materials corresponding to that term's function.

(2) When the parties exchange their preliminary claim constructions, they must also identify all references from the specification or prosecution history that support its construction and designate any supporting extrinsic evidence including:

(A) dictionary definitions;

(B) citations to learned treatises and prior art, and

(C) testimony of percipient and expert witnesses.

(3) Within 14 days after the preliminary claim constructions are exchanged, the parties must meet and confer to limit the terms in dispute by narrowing or resolving differences and plan to prepare a joint claim-construction and prehearing statement. The parties must also jointly identify no more than ten disputed terms per patent in suit, unless the court grants more for inclusion in the joint claim-construction and prehearing statement. If a dispute arises as to which terms to include in the joint claim-construction and prehearing statement, each side must be presumptively limited to five disputed

terms per patent in suit. This limit may only be altered by leave of court.

(c) Joint Claim-construction and Prehearing Statement. Within 14 days after they meet and confer, the parties must complete and file a joint claim-construction and prehearing statement. This statement must address the disputed terms and contain the following information:

(1) The construction of those terms on which the parties agree;

(2) Each party's construction of each disputed term (with the identity of all references from the specification or prosecution history that support its construction) and the identity of any extrinsic evidence known to the party on which it intends to rely either to support its construction or to oppose another party's construction, including dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses;

(3) The anticipated length of time necessary for the claim-construction hearing; and

(4) If witnesses are to be called at the claim-construction hearing, the identity of each such witness, and for each witness, a summary of his or her testimony including, for any expert witness, a report containing the expert's claim-construction opinions and the reasons for them.

(d) Completing Claim-construction Discovery. Within 21 days after the joint claim-construction and prehearing statement is filed, the parties must complete all discovery relating to claim construction, including witness depositions.

(e) Claim-construction Briefs.

(1) ***Opening Briefs.*** Within 14 days after completing claim-construction discovery, the parties must file their respective opening briefs and any evidence supporting their claim constructions.

(2) ***Length.*** Opening briefs may not exceed 30 pages without leave of court.

(3) ***Response Briefs.*** Within 21 days after receiving an opening brief, each opposing party must file any response briefs and supporting evidence.

(4) ***Length.*** Response briefs may not exceed 20 pages without leave of court.

(5) ***Additional Briefs.*** Reply and surreply briefs are not permitted without leave of court.

(f) **Claim-construction Hearing.** When necessary to construe the claims, the court will endeavor to conduct a claim-construction hearing within 63 days after briefing is complete.

(g) **Tutorial Hearings.** The court may order a tutorial hearing to occur before, or during, the claim-construction hearing.

(h) **Orders.** The court will work expeditiously to issue a prompt claim-construction order after the hearing.

N.D. Ind. L.P.R. 5-1 Final Patent Disclosures

(a) Final Infringement Contentions.

(1) ***Due Date.*** Within 28 days after the court's claim-construction order is entered, any party asserting infringement must serve on all parties its final infringement contentions.

(2) ***Contents.*** Parties may not assert at trial any infringement contentions not set out in its final infringement contentions.

(3) ***Amendments.*** Final infringement contentions may not identify additional accused products or processes not contained in the preliminary infringement contentions without good cause (e.g., discovery of previously undiscovered information or an unanticipated claim-construction ruling). The party asserting infringement must include a separate statement outlining the specific grounds that it claims constitute good cause for the amendment.

(4) ***Exclusion.*** Accused infringers may seek to exclude amendments on grounds that good cause does not exist.

(5) ***Due Date.*** Motions to exclude must be filed within 14 days after receiving the final infringement contentions.

(6) ***Failure to Object.*** Unopposed amendments are deemed effective.

(b) Final Invalidity Contentions.

(1) ***Due Date.*** Within 21 days after receiving the final infringement contentions, each accused infringer must serve on all parties its final invalidity contentions.

(2) ***Contents.*** Final invalidity contentions must include that party's final statement of all contentions. The party may not assert at trial any invalidity contentions not contained in its final invalidity contentions.

(3) ***Amendments.*** If the final invalidity contentions identify additional prior art, the amendment must be supported by good cause (e.g.,

discovery of previously undiscovered information or an unanticipated claim-construction ruling) and the accused infringer must include a separate statement providing the specific grounds establishing good cause for the amendment.

(4) ***Exclusion.*** The party asserting infringement may seek to exclude the amendment on grounds that good cause does not exist.

(5) ***Due Date.*** Motions to exclude must be filed within 14 days after receiving the final invalidity contentions.

(6) ***Failure to Object.*** Unopposed amendments are deemed effective.

N.D. Ind. L.P.R. 6-1 Expert Discovery

(a) Applicability. This rule governs expert discovery in patent cases.

(b) Exception. This rule does not apply to claim construction.

(c) Reports.

(1) ***Opening Reports.*** Opening expert reports on issues the proponent will bear the burden of proof at trial are due within 28 days after the final invalidity contentions or, in cases in which invalidity is not at issue, within 28 days after the final infringement contentions.

(2) ***Rebuttal Reports.*** Rebuttal expert reports are due 28 days after opening expert reports.

(d) Depositions. Expert depositions must be completed within 35 days after receiving an expert's rebuttal report.

[Compiler's Note: APPENDIX A was re-drafted in 2000 to update a much earlier version (*circa* 1974) that had been incorporated into the 1994 Amendments. The new sample Pre-Trial Order added references to comparative fault, updated citations to the Indiana Code, and recognized the advent of computer technology.]

Appendix A: Sample Pre-trial Order

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

CLAUDE JONES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Cause No. 2:99-CV-798-RL**
	)	
WILBUR SMITH,	)	
	)	
Defendant.	)	

PRE-TRIAL ORDER

Pursuant to the order of the Court, the attorneys for the parties to this action appeared before the United States District Judge at Hammond, Indiana, at 2:00 p.m. on September 30, 2000, for a conference under Rule 16 of the Federal Rules of Civil Procedure.

Plaintiff was represented by Richard Roe of the firm of Roe and Roe. Defendant was represented by John Doe of the firm of Diamond & Doe.

Thereupon, the following proceedings were had and the following engagements and undertakings arrived at:

A. Jurisdiction was conceded by counsel and found by the Court to be present. (If otherwise, so state).

B. The case is at issue on plaintiff's complaint and the defendant's answer. The First Defense denies defendant's negligence. The Second Defense alleges comparative fault on the part of the driver of plaintiff's car. The plaintiff and driver were engaged in a joint enterprise, and the driver's negligence is imputed to the plaintiff.

C. There are no pending motions.

D. The plaintiff contends that on June 1, 1998, he was riding in the front seat of a 1997 Ford automobile which was being driven in a northerly direction on U.S. Highway No. 31 approaching the intersection of Pierce Road, a county road in St. Joseph County, Indiana. The defendant was driving a Chevrolet convertible west on Pierce Road. The defendant negligently operated his automobile in the following manner: (1) He failed to stop for a stop sign before entering the intersection, (2) he failed to keep a proper lookout for vehicles traveling on U.S. Highway No. 31, and (3) he failed to yield the right-of-way to the vehicle in which plaintiff was riding. The plaintiff further contends that as a result of defendant's negligence, his car collided with the car in which plaintiff was riding, causing plaintiff to be injured permanently. Plaintiff lost wages and income as a result of his injuries in the amount of $32,000 and will suffer loss of income in the

future. He was required to expend $39,455 for medical and hospital care and will be required to expend further sums in the future. Plaintiff sustained property damage of $8,500 to his automobile.

E. The defendant contends that he was not negligent in the operation of his automobile as contended by the plaintiff and further contends that the driver of the car in which the plaintiff was riding was negligent in that (1) he drove at a fast and unreasonable rate of speed, to-wit: 80 miles per hour, and (2) he failed to yield the right- of-way to the defendant, who was in the intersection and almost clear of the northbound lanes when struck in the left rear by the plaintiff's driver. Defendant also contends that the plaintiff and the driver of the car in which he was riding were engaged in a joint enterprise in that they had jointly rented the car in which plaintiff was riding to go on a business trip for the mutual benefit of both and had shared the driving and expense incident to the trip.

F. The following facts are established by admissions in the pleadings or by stipulation of counsel:

1. A collision occurred between the car of the defendant and the car driven by William Jones, with whom plaintiff was riding, at the intersection of U.S. 31 and Pierce Road in St. Joseph County, Indiana, on June 1, 1998, at approximately 4:00 P.M.

2. U.S. 31 is a paved, four-lane, north-to-south highway divided by a median curb approximately four inches high and three feet wide. Pierce Road is a two-land, paved, east-and-west highway, paved with black top. A stop sign, legally erected, was located at the northwest corner of the intersection facing westbound traffic on Pierce Road. Both roads are level for at least 500 feet in both directions, and there are no obstructions to view within 500 feet of the intersection.

3. The pavement was dry and the weather was clear and warm.

4. Plaintiff was traveling north in the northbound lanes of U.S. 31. Defendant was traveling west in the westbound lane of Pierce Road.

5. The defendant was alone in his Chevrolet automobile. The plaintiff was riding in a rented car being driven by his brother, William Jones, who died as a result of injuries received in the collision. The plaintiff and his brother William had gone from South Bend to Plymouth to negotiate for the joint purchase of a grocery store. The plaintiff had driven from South Bend to Plymouth, and William was driving on the return trip. They were sharing the cost of renting the car and any other expenses of the trip.

G. The contested issues of fact are:

1. The negligence of the defendant which was a proximate cause of the collision.

2. The negligence of William Jones which was a proximate cause of the collision.

3. Whether plaintiff and his brother were engaged in a joint enterprise, and, if so, is the negligence, if any, of the driver William imputed to the plaintiff.

4. Extent of plaintiff's damages.

H. A contested issues of law not implicit in the foregoing issue of fact will be:

1. Whether the common-law doctrine of imputed negligence between members of a joint enterprise survived the adoption of Indiana's Comparative Fault Act, I.C. §§ 34-51-2-1 *et seq*.

2. The admissibility of expert testimony attempting to reconstruct the manner in which the accident occurred. In that regard, it is represented that the plaintiff has a complete loss of memory concerning the manner in which the accident occurred and the only living eyewitness is the defendant.

I. There were received in evidence:

1. Plaintiff's exhibits 1, 2, 3, 4, and 5, the same being pictures of the scene taken by State Policeman John Williams; 7 and 8, being pictures of the intersection taken by Commercial Photographer Sam Bigley; 9, Memorial Hospital bill; 10, Dr. Willard Raymond's bill; 11, bill from Medical Appliance Company for back brace; 12, plaintiff's hospital record compiled by Memorial Hospital; 13, Dr. Max Small's bill.

2. Defendant's exhibits A, an engineer's drawing of the intersection; and B, photograph of defendant's car.

3. Except as otherwise indicated, the authenticity of received exhibits has been stipulated, but they have been received subject to objections, if any, by the opposing part at the trial as to their relevance and materiality. If other exhibits are to be offered, they may be done so only with leave of court.

Exhibits which can be obtained only by a subpoena duces tecum shall not be covered by this requirement, but counsel for party offering such exhibits shall advise opposing counsel of the nature of such exhibits at the pretrial conference or at least ten (10) days prior to trial.

J. Witnesses:

1. Plaintiff's witnesses may include any or all of the following:

a. The plaintiff.

b. Dr. Willard Raymond, Room 304 Medical Arts Building, South Bend, Indiana, attending physician.

c. Dr. Max Small, 923 Sherland Building, South Bend, Indiana, consultant.

d. John Williams, state policeman who investigated the accident.

e. Dr. George Bundage, 1069 High Street, Evanston, Illinois, expert who will reconstruct the accident.

f. Mrs. Claude Jones, wife of plaintiff, who will testify as to plaintiff's condition before and following the accident.

2. Defendant's witnesses may include any or all of the following persons:

a. The defendant.

b. John Williams, state policeman.

c. Alex Nagy, 124 West Indiana Avenue, South Bend, Indiana, deputy sheriff, St. Joseph County, who investigated the accident.

d. Bill Hill, 29694 U.S. 31 South, South Bend, Indiana, a neighbor who came to the scene of the accident.

e. Bert McClellan, engineer who made the drawing of the intersection.

f. Dr. James Hyde, examining physician.

3. In the event there are other witnesses to be called at the trial, their names and addresses and the general subject matter of their testimony will be reported to opposing counsel, with copy to the Court, at least ten (10) days prior to trial. Such witnesses may be called at trial only upon leave of Court. This restriction shall not apply to rebuttal or impeachment witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial.

K. It is directed that requests for special instructions must be submitted to the Court, in writing and on a computer disk (or in another electronic format), with supporting authorities, at or prior to the commencement of the trial, subject to the right of counsel to supplement such requests during the course of the trial on matters that cannot reasonably be anticipated.

L. No amendments to the pleadings are anticipated.

M. Trial briefs shall be filed with the Court and exchanged among counsel at least seven (7) days before trial, covering specifically:

1. Questions raised under Section H of this order.

2. Whether under the facts the negligence, if any, of William Jones should be imputed to the plaintiff.

N. The following additional matters pertinent to the trial will be considered.

1. Plaintiff will request the Court to instruct the jury that a violation of I.C. § 9-21-8-32 constitutes negligence per se.

2. Defendant will request the Court to instruct the jury that a violation of I.C. § 9-21-8-31 constitutes negligence per se.

3. Plaintiff contends that as a result of the accident, he suffered a skull fracture and concussion resulting in partial loss of memory, headaches, and occasional blackouts; that he suffered a broken left leg about the knee resulting in a shortening of the leg, causing plaintiff to limp; injury to the lumbar spine, with a probable ruptured intervertebral disc which will require an operation; permanent pain in the spine radiating down the right leg; that he has suffered permanent impairment of 15% of the whole man; that he is 36 years of age and has a life expectancy of 34.76 years.

4. Plaintiff claims the following special damages:

a.	Dr. William Raymond	$ 7,500
b.	Dr. Max Small	$ 1,500

c.	Memorial Hospital	$ 17, 680
d.	Medical Appliance Co. (back brace)	$ 275
e.	Cost of future back operation:	
	Surgeon's	$ 5,000
	Hospital Bill	$ 7,500

5. Plaintiff claims he lost income as follows:

Fifteen months as manager of the A.B.C. Supermarket located at 1764 Portage Street, South Bend, at $2,000 per month. Time lost began June 1, 1998, with the plaintiff returning for light work August 1, 1999. Plaintiff has lost four weeks since returning to work on August 1, 1999 (one week in September 1999 and three weeks in November 1999) due to his back condition. It is expected that he will lose three or four more weeks due to his future operation to repair back injury. Plaintiff's supervisor is Paul Dill, District Manager, A.B.C. Grocery Co., 1764 Portage Street, South Bend, Indiana.

O. This pre-trial order has been formulated after conference at which counsel for the respective parties have appeared. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing by the Court. Hereafter, this order will control the course of the trial and may not be amended except by consent of the parties and the Court or by order of the Court to prevent manifest injustice. The pleadings will be deemed merged herein.

P. The parties have discussed settlement, but have been unable to reach agreement. They will continue to negotiate and will advise the Court immediately if settlement is reached.

Q. The probable length of trial is two days. The case is set down for trial before a jury on November 5, 2000 at 9:30 A.M.

Entered this 15th day of October, 2000.

Judge, United States District Court

APPROVED:

Richard Roe,
Attorney for Plaintiff

APPROVED:

John Doe,
Attorney for Defendant

Appendix B: Standards for Professional Conduct Within The Seventh Federal Judicial Circuit

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality, and protection against unjust and improper criticism or attack.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

The following standards are designed to encourage us, judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

We expect judges and lawyers will make a mutual and firm commitment to these standards. Voluntary adherence is expected as part of a commitment by all participants to improve the administration of justice throughout this Circuit.

These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards supersedes or detracts from exiting disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined.

These standards should be reviewed and followed by all judges and lawyers participating in any proceeding in this Circuit. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards.

Lawyers' Duties to Other Counsel

1. We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.

2. We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties, or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.

3. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

4. We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.

5. We will not seek court sanctions without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.

6. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

7. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the opportunity for review of the writing to other counsel. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

8. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

9. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

10. We will not use any form of discovery or discovery scheduling as a means of harassment.

11. We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings and discovery requests and objections.

12. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

13. We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.

14. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

15. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.

16. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.

17. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.

18. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity.

19. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.

20. We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

21. We will not obstruct questioning during a deposition or object to deposition questions unless necessary under the applicable rules to preserve an objection or privilege for resolution by the court.

22. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.

23. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of any action. We will not design production requests to place an undue burden or expense on a party.

24. We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non- privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

25. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party.

26. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non- privileged information.

27. We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information.

28. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

29. We will not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

30. Unless specifically permitted or invited by the court, we will not send copies of correspondence between counsel to the court.

Lawyers' Duties to the Court

1. We will speak and write civilly and respectfully in all communications with the court.

2. We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.

3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication to the court.

6. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.

7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

8. We will act and speak civilly to court marshals, clerks, court reporters, secretaries, and law clerks with an awareness that they, too, are in integral part of the judicial system.

Courts' Duties to Lawyers

1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.

2. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

3. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will notify counsel, if possible.

4. In scheduling all hearings, meetings and conferences we will be considerate of time schedules of lawyers, parties, and witnesses.

5. We will make all reasonable efforts to decide promptly all matters presented to us for decision.

6. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.

7. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

8. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

9. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

10. We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

11. We will not adopt procedures that needlessly increase litigation expense.

12. We will bring to lawyers' attention uncivil conduct which we observe.

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. **Case No.**

_____, Defendant

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]