

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA**

Robert N. Trgovich, Clerk

www.innd.uscourts.gov

December 10, 2015

N O T I C E

TO: THE PUBLIC AND MEMBERS OF THE PRACTICING BAR FOR THE NORTHERN
DISTRICT OF INDIANA

Pursuant to 28 U.S.C. § 2071 and Rule 83 of the *Federal Rules of Civil Procedure*, the United States District Court for the Northern District of Indiana gives public notice of the following:

The Local Rules Advisory Committee for the Northern District of Indiana has recommended, and the District Court has authorized release for a period of public comment, the revision of certain Local Rules of the United States District Court for the Northern District of Indiana. The proposed Local Rules are as follows:

- Local Rule 7-3
- Local Rule 16-1
- Local Rule 83-6.3 (deleted in it's entirety)
- Local Rule 83-6.4 (deleted in it's entirety)
- Local Rule 83-6.5 (deleted in it's entirety)
- Local Rule 83-6.6 (deleted in it's entirety)
- Local Rule 83-6.7
- Local Rule 83-6.8
- Local Rule 83-6.11
- Appendix C: Notice to *Pro Se* Litigant

Comments must be submitted on or before January 15, 2015, either on the court's website at www.innd.uscourts.gov, or in writing sent to:

Local Rules Comments
Office of the Clerk
204 South Main Street
Room 304
South Bend, Indiana 46601

Amendments are attached to this notice. Unless otherwise indicated, as seen in this Notice **redline** text is added and **struck** text is deleted.

Reply to South Bend Office

1108 E. Ross Adair Federal Bldg. • 1300 S. Harrison Street • Fort Wayne, Indiana 46802 • (260) 423-3000 • Fax (260) 423-3007
5400 Federal Plaza • Suite 2300 • Hammond, Indiana 46320 • (219) 852-6500 • Fax (219) 852-6509
102 Robert A. Grant Federal Bldg. • 204 South Main Street • South Bend, Indiana 46601 • (574) 246-8000 • Fax (574) 246-8002
214 Charles Halleck Federal Bldg. • 230 North Fourth Street • P.O. Box 1498 • Lafayette, Indiana 47902 • (765) 420-6250 • Fax (765) 420-6273

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

- (a) Answer.** The Social Security Administration must respond to a complaint challenging an agency determination about Social Security benefits by filing either a motion to dismiss or the certified administrative record. The certified administrative record serves as the agency's answer to the complaint.
- (b) 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.
- (c) Response Brief.** Any response brief must be filed within 42 days after the opening brief.
- (d) Reply Brief.** Any reply brief must be filed within 14 days after the response brief.
- (e) Page Limitations.** Briefs under this rule are subject to the page limitations in N.D. Ind.L.R. 7-1(e).

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

~~(a) **Initial Pretrial Conference.** In all cases not exempted under subsection (c) of this rule, the court may order the parties to appear for an initial pretrial conference.~~

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

(b) Actions with Unrepresented Parties. In actions where a party is unrepresented, the court may issue a scheduling order after consulting with the parties' attorneys and the unrepresented parties at a scheduling conference or by telephone, mail, or other means.

(c) Exemptions. The following ~~cases~~**categories of actions** are exempted 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.~~

(1) an action for review on an administrative record;

(2) a forfeiture action in rem arising from a federal statute;

(3) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(4) an action to enforce or quash an administrative summons or subpoena;

- (5) an action by the United States to recover benefits payments;
 - (6) an action by the United States to collect on a student loan guaranteed by the United States;
 - (7) a proceeding ancillary to a proceeding in another court;
 - (8) an action to enforce an arbitration award; and
 - (9) an action for mortgage foreclosure if the United States is a party.
- (d) **Planning-Meeting Report.** When the court orders an initial pretrial conference, the parties must file a *Report of the Parties' Planning 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.

~~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.~~

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.~~

~~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.~~

~~(e) **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) **Recommended 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.~~

- ~~(c) **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.~~

N.D. Ind. L.R. 83-6.7 Attorneys Convicted of **Serious** Crimes will be amended as follows:

(a) ~~Serious Crimes.~~

~~(1)~~ **(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)~~ **(b)** *Evidence of Conviction.* A certified copy of a judgment or order reflecting conviction of a serious crime is conclusive evidence that the crime was committed.

~~(3)~~ **(c)** *Suspension Process.* When conclusive evidence 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)~~ **(d)** *Authority to Set Aside Suspension.* The chief judge may lift the suspension for good cause.

~~(5)~~ **(e)** *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) — (f) ***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, which must treat the referral as if it were a grievance.~~

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; **or**
 - (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;~~
 - ~~(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.

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 **petition and the chief judge's recommendation**, 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 **reinstate the attorney unconditionally**;~~

(B) ~~reinstate the attorney unconditionally~~ deny the petition, if they find that the attorney is unfit to resume practicing law; 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.

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~~ **It** 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~~ **It** says that there should not be a full trial because you cannot win ~~on~~ some or all of your claims. ~~The motion~~ **It** asks the court to enter judgment against you. **The party that filed the motion will win if the facts show that party is entitled to judgment. If you do not agree with the facts in the motion, you must submit affidavits or other evidence to dispute those facts.**

Copies of Rule 56 and Local Rule 56-1 are set forth below also attached. You should **carefully** 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]