LOCAL RULES

of the

UNITED STATES DISTRICT COURT

for the

NORTHERN DISTRICT OF INDIANA

Effective Date: August 14, 2015

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N.D. Ind. L.R. 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 August 14, 2015. 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.

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.

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.

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

Papers must be filed, signed, and verified electronically unless excepted by the court's *CM/ECF Civil and Criminal User Manual*.

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.

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;

(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.

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 1-inch margins;

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

(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;

(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.

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.

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.

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.

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.

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.

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.

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).

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.

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.

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 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' 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. 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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

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.

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.

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).

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.

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.

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.

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.

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.

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 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.

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.

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.

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.

(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) ***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.

(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.

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.

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 or order reflecting conviction of a serious crime is conclusive evidence that the crime was committed.

(3) ***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) ***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, 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;

(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.

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.

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.

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; or

(iii) comply with IOLTA program 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) Fee. Any request for reinstatement, whether by affidavit or petition, must be accompanied by a fee in an amount equal to the filing fee for miscellaneous cases.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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);

(vi) 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.

N.D. Ind. L. Cr. R. 58-1 Forfeiture of Collateral in Lieu of Appearance

(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.

(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.

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 completion of the preliminary contentions process outlined in N.D. Ind. L.P.R. 3-1.

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 earliest 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 (or make available for inspection and copying) 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. 3-1(c) and 3-1(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 (terms for construction), 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 (preliminary claim construction[s]). 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 receiving the final invalidity contentions or, in cases in which invalidity is not at issue, within 28 days after receiving the final infringement contentions.

(2) ***Rebuttal Reports.*** Rebuttal expert reports are due 28 days after receiving opening expert reports.

(d) Depositions. Expert depositions must be completed within 35 days after receiving an expert's rebuttal report.

Appendix A: Sample Pre-trial Order

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

CLAUDE JONES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL 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. Willard 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]