

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA

Gary T. Bell, Clerk

www.innd.uscourts.gov

October 29, 2021

NOTICE

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

Pursuant to 28 U.S.C. § 2071, Rule 83 of the *Federal Rules of Civil Procedure*, and Rule 57 of the *Federal Rules of Criminal Procedure* the United States District Court for the Northern District of Indiana gives public notice of the following:

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

Local Rule 5-3
Local Rule 6-1
Local Rule 7-1
Local Rule 7-6 (replaces Local Rule 8-1)
Local Rule 56-1

Comments must be submitted on or before December 13, 2021, either on the court's website at www.innd.uscourts.gov, or in writing sent to:

Local Rules Comments
Office of the Clerk
5400 Federal Plaza
Suite 2300
Hammond, IN 46320

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

Reply to South Bend Office

1108 E. Ross Adair Federal Bldg. • 1300 S. Harrison Street • Fort Wayne, Indiana 46802 • (260) 423-3000 • Fax (260) 423-3007
5400 Federal Plaza • Suite 2300 • Hammond, Indiana 46320 • (219) 852-6500 • Fax (219) 852-6509
102 Robert A. Grant Federal Bldg. • 204 South Main Street • South Bend, Indiana 46601 • (574) 246-8000 • Fax (574) 246-8002
214 Charles Halleck Federal Bldg. • 230 North Fourth Street • P.O. Box 1498 • Lafayette, Indiana 47902 • (765) 420-6250 • Fax (765) 420-6314

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; ~~and~~
- (ix) Motions for fees and expenses pursuant to 18 U.S.C. § 3006A.

(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)~~ To file a sealed document, other than those specified in N.D. Ind. L.R. 5-3(c)(2)(A), a party must file it electronically as required by the *CM/ECF User Manual*. ~~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.~~

Local Rules Advisory Committee Comments
Re: 2022 Amendment

The text of Rule 5-3(c)(2)(C) was amended to remove text indicating that sealed criminal filings should be made on paper. The revisions clarify that sealed criminal filings must now be made electronically, consistent with the Court's General Order No. 2013-8 and the CM/ECF User Manual. Rule 5-3(c)(2)(A) was revised to reflect that motions for fees and expenses under 18 U.S.C. § 3006A can appropriately be filed under seal without motion.

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 **by any other attorney**; or
 - (B) describe the requesting ~~party's~~ **attorney's** efforts to ~~get~~ **obtain an agreement from** opposing attorneys **who objected** ~~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~~ **attorney** could not reach any other opposing attorneys despite due diligence.

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

- (1) **Neither attorneys nor pro se parties are required to consult with each other before filing a motion to extend time.**
- (2) **The automatic initial extension is not available in cases with a pro se party.**

Local Rules Advisory Committee Comments
Re: 2022 Amendment

Civil Rule

The text of Rule 6-1 created some confusion as to what was required to obtain an extension of time in cases with a pro se party. Edits were made to 6-1(a)(3), 6-1(b)(3)(C), and 6-1(c) to clarify.

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) Fed. R. Civ. P. 12(b), (c), or (f) Motions. A party must file any response brief to a motion under Fed. R. Civ. P. 12(b), (c), or (f) within 21 days after the motion is served unless that party is entitled to and first files an amended pleading as a matter of course under Fed. R. Civ. P. 15(a)(1).~~
 - (2) **Fed. R. Civ. P. 12 Motions.**
 - (A) **Responses.** A party must file any response brief to a motion under Fed. R. Civ. P. 12 within 21 days after the motion is served unless that party is entitled to and first files an amended pleading as a matter of course under Fed. R. Civ. P. 15(a)(1).
 - (B) **Replies.** The moving party must file any reply brief within 7 days after the response brief is served.
 - (3) **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~~ **7** days after the response brief is served.

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

(5) *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.

Local Rules Advisory Committee Comments
Re: 2019 Amendment

A 2009 change to Fed. R. Civ. P. 15(a) permits 21 days to amend a pleading in response to 12(b), (e), and (f) motions in cases where a required responsive pleading has not yet been served. The change to Rule 15(a) encourages parties to amend the initial pleading in light of the motion, thereby mooted the Rule 12 motion. The amendment to Local

Rule 7-1(d) (2) provides consistency with Fed. R. Civ. P. 15(a) by allowing 21 days to respond to Rule 12(b), (e), and (f) motions.

Re: 2022 Amendment

The text of Rule 7-1 created some confusion as to whether reply briefs were permitted, without leave of court, for motions made pursuant to Fed. R. Civ. P. 12. Language was added in Rule 7-1(d)(2) to clarify that reply briefs are permitted for such motions, which reflects existing practice.

~~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. 7-6 Pro Se Filings

The court may require parties representing themselves to use clerk-supplied forms.

Local Rules Advisory Committee Comments
Re: 2022 Amendment

Local Rule 8-1 is abrogated by new Local Rule 7-6 to include any pleading, motion, or other paper. Local Rule 7-6 encompasses locally adopted complaints as well as any other form the court may choose to supply. It also permits the use of non-clerk-supplied forms when appropriate.

~~(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.~~

(a) **Moving Party’s Obligations.** A party moving for summary judgment must separately file:

(1) a motion;

(2) a supporting brief;

(3) a Statement of Material Facts with numbered paragraphs for each material fact the moving party contends is undisputed which includes:

(A) a short statement of each fact; and

- (B) a citation to evidence supporting each fact; and
 - (4) the Notice in Appendix C, if an opposing party is unrepresented.
- (b) **Opposing Party's Obligations.** A party opposing the motion must, within twenty-eight days after the moving party served the motion, separately file:
- (1) a response brief; and
 - (2) a Response to Statement of Material Facts which includes:
 - (A) a verbatim restatement of the Statement of Material Facts;
 - (B) a correspondingly numbered response immediately following each paragraph of the Statement of Material Facts;
 - (C) a citation to evidence supporting each dispute of fact; and
 - (D) additional facts in a section titled Additional Material Facts with numbered paragraphs continuing the sequential numbering of the Statement of Material Facts for each additional material fact the opposing party contends is undisputed which includes:
 - (i) a short statement of each fact; and
 - (ii) a citation to evidence supporting each fact.
 - (3) In cases where any party is unrepresented, the opposing party is not required to restate verbatim the Statement of Material Facts.
- (c) **Reply.** The moving party may, within fourteen days after a response is served, separately file:
- (1) a reply brief; and
 - (2) a Reply to Statement of Additional Material Facts which includes:
 - (A) a verbatim restatement of the Statement of Additional Material Facts;
 - (B) a correspondingly numbered response immediately following each paragraph of the Statement of Additional Material Facts; and
 - (C) a citation to evidence supporting each dispute of additional fact.

- (3) In cases where any party is unrepresented, the moving party is not required to restate verbatim the Statement of Additional Material Facts.
- (d) **Additional Briefs.** Additional briefs must not be filed without leave of court.
- (e) **Citations to the Record.** The court may find a fact is not supported if the citation does not include a page or paragraph number to evidence in the record which can be presented in an admissible form unless the court may take judicial notice of the fact.
- (f) **Disputes About Evidence.** Disputes about the admissibility or materiality of evidence must be raised in the parties' briefs. A separate motion to strike must not be filed.
- (g) **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.

Local Rules Advisory Committee Comments
Re: 2022 Amendment

The amendment assists the court with identifying genuinely disputed facts by requiring facts to be presented in separately numbered paragraphs and for responses to be in correspondingly numbered paragraphs. Normally, a fact will either be admitted or denied with a citation to evidence supporting the dispute unless the fact can be judicially noticed. The Committee recognized that pursuant to Fed. R. Civ. Pro. 56(c)(1)(B), a party need not always point to specific record materials. *See also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (“[W]e find no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials negating the opponent’s claim.”). Thus, 56-1(a)(3)(b) only requires a moving party to provide a citation for each fact, not for allegations of the absence of a fact.

The amendment removes the provision that disputes about admissibility be addressed in a separate motion. Consistent with the 2010 amendment to Fed. R. Civ. P. 56(c)(2), disputes about inadmissibility and immateriality must be presented in a brief. *See* Rule 56 Advisory Committee Notes 2010 Amendment.

The amendment does not require a verbatim restatement in cases with an unrepresented party, but such cases still require responses with correspondingly numbered paragraphs.

The amendment clarifies there is no provision for briefing other than a supporting brief, a response brief, and a reply brief without leave of court.

The Committee considered whether the rule should provide for cases with cross-motions for summary judgment, but concluded they would be better addressed in individualized case-management plans.