Visited 12/17/2019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

LOCAL RULES

With Amendments Through September 16, 2019

The Local Rules of Alternative Disposition Resolution (ADR) and Local Rules of Disciplinary Enforcement can be found on the court's website at www.insd.uscourts.gov or by clicking the links above.

District Judges

Chief Judge Jane E. Magnus-Stinson
Senior Judge Sarah Evans Barker
Judge Richard L. Young
Senior Judge William T. Lawrence
Judge Tanya Walton Pratt
Judge James R. Sweeney II
Judge James Patrick Hanlon

Magistrate Judges

Magistrate Judge Tim A. Baker
Magistrate Judge Debra McVicker Lynch
Magistrate Judge Mark J. Dinsmore
Magistrate Judge Matthew P. Brookman
Magistrate Judge Doris L. Pryor

Clerk of Court Laura A. Briggs

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LOCAL RULES OF THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA

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Local Rule 1-1 - Scope of the Rules

(a) Title and Citation. The local rules of the United States District Court for the Southern District of Indiana may be cited as "S.D. Ind. L.R."

(b) Effective Date and Scope of Rules. These rules, as amended from time to time, take effect February 1, 1992. They govern all civil and criminal cases on or after that date. However, 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.

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Local Rule 1-2 – Access to Local Rules, Attorney's Handbook, and Amendments

(a) Availability of Rules and Attorney's Handbook. These rules and the *Attorney's Handbook* may be purchased from the clerk's office or accessed for free on the court's web site at www.insd.uscourts.gov.

(b) Notice of Amendments. These rules may not be amended without public notice and an opportunity for public comment. Notice will be submitted for publication in *Res Gestae*, the Indiana State Bar Association's monthly publication, and may also be published elsewhere.

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Local Rule 1-3 - Sanctions for Errors as to Form

The court may strike from the record any document that does not comply with the rules governing the form of documents filed with the court, such as rules that regulate document size or the number of copies to be filed or that require a special designation in the caption. The court may also sanction an attorney or party who files a non-compliant document.

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Local Rule 5-1 - Format of Documents Presented for Filing

(a) Filing. A document or item submitted in relation to a matter within the court's jurisdiction is deemed filed upon delivery to the office of the clerk in a manner prescribed by these rules or the Federal Rules of Civil Procedure or authorized by the court. Any submission directed to a Judge or Judge's staff, the office of the clerk or any employee thereof, in a manner that is not contemplated by this rule and without prior court authorization is prohibited.

(b) General. Any pleading, motion, brief, affidavit, notice, or proposed order filed with the court, whether electronically or with the clerk, must:

- be plainly typewritten, printed, or prepared by a clearly legible copying process;
- have at least 1-inch margins;
- use at least 12-point type in the body of the document and at least 10-point type in footnotes;
- be double spaced (except for headings, footnotes, and quoted material);
- have consecutively numbered pages;
- include a title on the first page;
- if it has four or more exhibits, include a separate index that identifies and briefly describes each exhibit;
- if it is a form of order, include a statement of service, in the format required by S.D. Ind. L.R. 5-5(d) in the lower left corner of the document; and
- in the case of pleadings, motions, legal briefs, and notices, include the name, complete address, telephone number, facsimile number (where available), and e-mail address (where available) of the *pro se* litigant or attorney who files it.

(c) Electronic Filings. Any document submitted via the court's electronic case filing (ECF) system must be:

- in .pdf format;
- converted to a .pdf file directly from a word processing program, unless it exists only in paper format (in which case it may be scanned to create a .pdf document);

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- submitted as one or more .pdf files that do not exceed 35 megabytes each (consistent with the *CM/ECF Policies and Procedures Manual*); and
- otherwise prepared and filed in a manner consistent with the *CM/ECF Policies and Procedures Manual*.

(d) Non-Electronic Filings.

(1) ***Form, Style, and Size of Documents.*** Any document that is not filed electronically must:

- be flat, unfolded, and on good-quality, 8.5" x 11" white paper;
- be single-sided;
- not have a cover or a back;
- be (if consisting of more than one page) fastened by paperclip or binder clip and may not be stapled;
- be two-hole punched at the top with the holes 2 ¾" apart and appropriately centered; and
- include the original signature of the *pro se* litigant or attorney who files it.

(2) ***Request for Nonconforming Fastening.*** If a document cannot be fastened or bound as required by this rule, a party may ask the clerk for permission to fasten it in another manner. The party must make such a request before attempting to file the document with nonconforming fastening.

(e) Nonconforming Documents. The clerk will accept a document that violates this rule, but the court may exclude the document from the official record.

Local Rules Advisory Committee Comments
Re: 2016 Amendment

In certain instances, the court will direct the parties to submit items directly to chambers (*e.g.*, confidential settlement statements). However, absent specific prior authorization, counsel and litigants should not submit letters or documents directly to chambers, and such materials should be filed with the clerk.

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Local Rule 5-2 – Filing of Documents

(a) Electronic Filing. Electronic filing of documents is generally required pursuant to Fed. R. Civ. P. 5(d)(3)(A).

(b) Documents Exempt from Electronic Filing. Any document that is exempt from electronic filing must be filed directly with the clerk and served on other parties in the case as required by those Federal Rules of Civil Procedure and these rules that apply to the service of non-electronic documents. Only the following documents are exempt from the electronic filing requirement of Fed. R. Civ. P. 5(d)(3)(A):

(1) documents filed by *pro se* litigants;

(2) exhibits in a format that does not readily permit electronic filing (such as videos and large maps and charts);

(3) documents that are illegible when scanned into .pdf format;

(4) documents filed in cases not maintained on the ECF system; and

(5) any other documents that the court or these rules specifically allow to be filed directly with the clerk.

(c) Case Initiating Documents. The initial pleading and accompanying documents, including the complaint and issuance of the summons, may be filed either in paper form or electronically through the court's ECF system. Case initiating documents must be served in the traditional manner on paper. All subsequent documents must be filed electronically except as provided in these rules or as ordered by the court.

(d) Document Filing by Non-Exempt Party. When a party who is not exempt from the electronic filing requirement files a document directly with the clerk, the party must:

(1) electronically file a notice of manual filing that explains why the document cannot be filed electronically;

(2) present the document to the clerk within 1 business day after filing the notice of manual filing; and

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(3) present the clerk with a copy of the notice of manual filing when the party files the document with the clerk.

Note: Amended December 1, 2018, for consistency with Fed. R. Civ. P. 5, which becomes effective on December 1, 2018. Amended Fed. R. Civ. P. 5(d)(3)(A) establishes a uniform national rule that mandates electronic filing by persons represented by counsel, except when local rules require or allow nonelectronic filing, or for good cause. Effective January 1, 2012, former Local Rule 5.6 was combined with former Local Rule 5.10 to create new Local Rule 5-2.

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Local Rule 5-3 – Eligibility, Registration, Passwords for Electronic Filing; Exemption from Electronic Filing

(a) Registration. To register to use the ECF system, an attorney must complete the registration form adopted by the clerk. The form must require:

(1) the attorney's name, address, and telephone number;

(2) the attorney's e-mail address; and

(3) a declaration that the attorney is admitted to this court's bar.

(b) Change in Information; Compromise of Password. An attorney who has registered to use the ECF system must notify the clerk:

(1) in writing within 30 days after the attorney's address, telephone number, or e-mail address changes; and

(2) immediately upon learning that the attorney's password for the ECF system has been compromised.

(c) Exemption from Participation Pursuant to Fed. R. Civ. P. 5(d)(3)(A). An attorney must file a petition for ECF exemption and a CM/ECF technical requirements exemption questionnaire in each case in which the attorney seeks an exemption. (The CM/ECF technical requirements exemption questionnaire is available on the court's website, www.insd.uscourts.gov).

(d) Suspension of Electronic Filing. Only attorneys who are active and in good standing with the court's bar may utilize the ECF system. Upon receipt of a court order subjecting an attorney to suspension or disbarment, or notice that the attorney's license to practice law is inactive, the clerk will suspend the attorney's ECF rights, pending the attorney's reinstatement to active, good standing status.

(e) Electronic Filing by an Unrepresented Person. If authorized to file electronically pursuant to Fed. R. Civ. P. 5(d)(3)(B), the person's electronic signature in accordance with Local Rule 5-7 constitutes the person's signature on the document for purposes of the Federal Rules of Civil Procedure, including Rule 11, and these local rules, and for any other purpose for which

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the unrepresented person's signature may be required in connection with the court's activities.

Note: Amended December 1, 2018, for consistency with amended Fed. R. Civ. P. 5(b)(2)(E), which explicitly provides that service is accomplished by filing with the court's electronic filing system. The amendment also is consistent with Fed. R. Civ. P. 5(d)(3)(A), which generally requires electronic filing. Amended July 1, 2017, to clarify that attorneys in good standing with the court are required to file electronically, and provide a mechanism for permissive filing by pro se litigants. Effective January 1, 2012, former Local Rule 5.7 became Local Rule 5-3.

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Local Rule 5-4 – Timing and Consequences of Electronic Filing

(a) Deadlines. A document due on a particular day must be filed before midnight local time of the division where the case is pending.

(b) When Electronic Filing Is Completed. Electronic transmission of a document to the Electronic Case Filing System consistent with these rules, together with the transmission of a notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure and the court's local rules.

(c) Consequences of Electronic Filing. When a document has been filed electronically:

(1) it is deemed entered on the clerk's docket under Fed. R. Civ. P. 58 and 79;

(2) the document's electronic recording stored by the court is the official record of the document;

(3) the document, as filed, binds the filing party;

(4) the notice of electronic filing for the document serves as the court's date-stamp and proof of filing;

(5) transmission of the notice of electronic filing generated by the ECF system to an attorney's e-mail address constitutes service of the document on that attorney; and

(6) no other attempted service will constitute electronic service of the document.

(d) Service on Exempt Parties. A filer must serve a copy of the document consistent with Fed. R. Civ. P. 5 on any party or attorney who is exempt from participating in electronic filing.

Note: Effective January 1, 2012, former Local Rule 5.8 becomes Local Rule 5-4.

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Local Rule 5-5 – Orders and Judgments in Cases Filed Electronically

(a) Court Will File Electronically. The court will file electronically any document it issues. Doing so will constitute entry on the clerk's docket under Fed. R. Civ. P. 58 and 79.

(b) Notice of Order or Judgment.

(1) A notice of electronic filing will be generated and emailed to all ECF users who have appeared in a case immediately after an order or judgment is entered in that case. Issuance of the notice of electronic filing constitutes notice as required by Fed. R. Civ. P. 77(d)(1).

(2) If a party is represented by multiple attorneys from the same law firm and one or more is an ECF system user, notice of entry of an order or judgment in a case assigned to the ECF system will be transmitted only to the ECF system user. The clerk will send notice of the order or judgment to any party in the case that is not represented by at least one attorney using the ECF system. The clerk need not send any other notice of the order or judgment.

(c) Electronically Filed Orders. The court must file orders electronically. The court may issue orders signed electronically without an original signature or as "text-only" entries on the docket without an attached document.

(d) Proposed Orders from Parties. A party must include a suitable form of order with any document that requests the judge or the clerk to enter a routine or uncontested order. A party electronically filing a proposed order—whether voluntarily or because required by this rule— must convert the order directly from a word processing program and file it as an attachment to the document it relates to. Proposed orders must include in the lower left-hand corner of the signature page a statement that service will be made electronically on all ECF-registered counsel of record via email generated by the court's ECF system, without listing all such counsel. A service list including the name and postal address of any *pro se* litigant or non-registered attorney of record must follow, stating that service on the listed individuals will be made in the traditional paper manner, via first-class U. S. Mail.

(e) Other Documents Requiring a Judge's Signature. A party electronically filing any other document that requires a judge's signature must do so consistent with the *CM/ECF Policies and Procedures Manual*.

Note: Effective January 1, 2012, former Local Rule 5.9 is combined with former Local Rule 5.1(a)(5) and former Local Rule 5.12 to create new Local Rule 5-5.

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Local Rule 5-6 – Attachments and Exhibits in Cases Filed Electronically

(a) General Requirements. Each electronically filed exhibit to a main document must be:

(1) created as a separate .pdf file;

(2) submitted as an attachment to the main document and given a title which describes its content; and

(3) limited to excerpts that are directly germane to the main document's subject matter.

(b) Excerpts. A party filing an exhibit that consists of excerpts from a larger document must clearly and prominently identify the exhibit as containing excerpted material. Either party will have the right to timely file additional excerpts or the complete document to the extent they are or become directly germane to the main document's subject matter.

Note: Effective January 1, 2012, portions of former Local Rule 5.10 are incorporated into Local Rule 5-2 and the remainder of former Local Rule 5.10 becomes Local Rule 5-6.

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Local Rule 5-7 – Signatures in Cases Filed Electronically

(a) Form of Electronic Signature. A document that is converted directly from a word processing application to .pdf (as opposed to scanning) must be signed in accordance with Fed. R. Civ. P. 5(d)(3)(C).

(b) Other Documents. A signature on a document other than a document filed as provided under subdivision (a) must be an original handwritten signature and must be scanned into .pdf format for electronic filing.

(c) Documents with Multiple Attorneys' Signatures. A document signed by more than one attorney and electronically filed must:

(1) include a representation on the signature lines where the handwritten signatures of the non-filing attorneys would otherwise appear that the non-filing attorneys consent to the document;

(2) identify in the signature block the non-filing attorneys whose signatures are required and be followed by notices of endorsement filed by the other attorneys within three business days after the original document is filed; or

(3) include a scanned document containing all necessary signatures.

(d) Unauthorized Use of ECF Log-in and Password. No one may knowingly allow anyone other than a filer's authorized agent to use the filer's ECF log-in and password.

Note: Amended December 1, 2018, to eliminate the court's prior signature requirement including an "s/". The amendment is consistent with amendments to Fed. R. Civ. P. 5(d)(3)(C), effective December 1, 2018, which require that documents filed through a person's electronic filing account contain the person's name on a signature block. Effective January 1, 2012, former Local Rule 5.11 became Local Rule 5-7.

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Local Rule 5-8 – Public Access to Cases Filed Electronically

Any person may review any unsealed document that has been filed with the court:

(a) in person at the clerk's office; or

(b) via the court's internet site (www.insd.uscourts.gov) if they have a PACER log-in and password.

Note: Effective January 1, 2012, former Local Rule 5.13 becomes Local Rule 5-8.

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Local Rule 5-9 - Retention of Documents in Cases Filed Electronically

A person who electronically files a document that requires an original signature must maintain the original signed document for two years after all deadlines for appeals in the case expire. On request of the court, the Filing User must provide original documents for review.

Note: Effective January 1, 2012, former Local Rule 5.14 becomes 5-9.

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Local Rule 5-10 – Non-Electronic Filings

(a) When Completed. A document or other item that is not required to be filed electronically is deemed filed:

(1) upon delivery in person, by courier, or via U.S. Mail or other mail delivery service to the clerk's office during business hours;

(2) when the courtroom deputy clerk accepts it, if the document or item is filed in open court; or

(3) upon completion of any other manner of filing that the court authorizes.

(b) Return of File-Stamped Copies. To receive a file-stamped copy of a document filed directly with the clerk, a party must include with the original document an additional copy and a self-addressed envelope. The envelope must be big enough to hold the copy and have enough postage on it to send the copy via regular first-class mail.

(c) Form of Orders. A party must include a suitable form of order with any document that requires the judge or the clerk to enter a routine or uncontested order.

(d) Form of Notices. If a party files a document directly with the clerk that requires the clerk to give others notice, the party must provide the clerk with sufficient copies of the notice and the names and addresses of each person who is to receive the notice.

(e) Faxed Document. The clerk may not file a faxed document without court authorization. The court may not authorize the clerk to file faxed documents without finding that compelling circumstances justify it. A party must submit a copy of the document that otherwise complies with this rule to replace the faxed copy within seven days after faxing the document.

(f) Notice by Publication. The clerk must send notices required to be published to the party originating the notice. The party must deliver the notice to the appropriate newspapers for publication.

(g) Signature. The court will strike any document filed directly with the clerk that is not signed by an attorney of record or the *pro se* litigant filing it, but the court may do so only after giving the attorney or *pro se* litigant notice of the omission and reasonable time to correct it. Rubber-stamp or facsimile signatures are not original signatures and the court will deem documents containing them to be unsigned for purposes of Fed. R. Civ. P. 11 and 26(g) and this rule.

Note: Effective January 1, 2012, provisions formerly contained in Local Rule 5.1(b) become Local Rule 5-10.

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Local Rule 5-11 - Filing Under Seal – Civil Cases

(a) Filing Cases Under Seal. To seal a case, a party must file a motion requesting that the court seal the case with a proposed order at or before the time the party files its initial pleading. The clerk will seal the case until the court rules on the motion. If the court denies the motion, the clerk will unseal the case 21 days after service of the order, absent a Fed. R. Civ. P. 72(a) objection; motion to reconsider; or notice by a party of an intent to file an interlocutory appeal.

(b) Filing Documents Under Seal - General Rule. The clerk may not maintain under seal any document unless authorized to do so by statute, rule, or court order. Once a document is sealed, the clerk may not, without a court order, allow anyone to see it other than:

(1) the court and its staff;

(2) the clerk's staff; and

(3) the attorneys who have appeared or been appointed on appeal, and any pro se party in the case in which the document has been filed.

(c) Redaction in Lieu of Filing Under Seal.

(1) Documents redacted pursuant to Fed. R. Civ. P. 5.2(a) must not be filed under seal.

(2) When any of the confidential information in a document is irrelevant or immaterial to resolution of the matter at issue, the filing party may redact, by blacking out, the confidential information in lieu of filing under seal. Any party who files such a redacted document must serve an unredacted and complete version of the document upon all counsel and pro se parties.

(d) Filing Documents Under Seal - Procedure.

(1) To file a document under seal, a party must file it electronically as required under section 18 of the *ECF Policies and Procedures Manual* unless exempt from electronic filing under S.D. Ind. L.R. 5-2(a) or 5-3(e). In either case, the party must include a cover sheet as the first page for each document being filed under seal that must include:

(A) the case caption;

(B) the title of the document, or an appropriate name to identify it

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on the public docket if the title cannot be publicly disclosed;

(C) the name, address, and telephone number of the person filing the document; and

(D) if a motion requesting that it be sealed does not accompany the document, identification of the statute, rule, or court order authorizing the document to be sealed. A protective order does not authorize a party to file a document under seal.

(2) Unless the sealed filing is authorized by statute, rule, or prior court order (other than a protective order), a party filing a document under seal must contemporaneously:

(A) file a Motion to Maintain Document(s) Under Seal, and

(i) if the filing party designated the subject information confidential, a Brief in Support that complies with the requirements of subsection (e), and a redacted (confidential portions blacked out) public version of the document that is being filed under seal; and/or

(ii) if the filing party did not designate the subject information confidential, an identification of the designating party(ies); and

(B) serve an unredacted and complete version of the document upon all counsel and pro se parties.

(3) The designating party(ies) identified according to subsection (2)(A)(ii) must, within 14 days of service of the Motion to Maintain Document(s) under Seal, file a Statement Authorizing Unsealing of Document (or specific portions thereof) and/or a Brief in Support that complies with the requirements of subsection (e) and a redacted (confidential portions blacked out) public version of the document that was designated as confidential and filed under seal. If the designating party fails to file a supporting Statement or Brief, then the filing party must notify the court of that failure. The court may summarily rule on the (d)(2)(A) motion to seal if the designating party does not file the required Statement or Brief.

(e) Brief in Support. A Brief in Support must not exceed 10 pages in length, without prior leave of court, and must include:

(1) identification of each specific document or portion(s) thereof that the party contends should remain under seal;

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(2) the reasons demonstrating good cause to maintain the document, or portion(s) thereof, under seal including:

(A) why less restrictive alternatives to sealing, such as redaction, will not afford adequate protection;

(B) how the document satisfies applicable authority to maintain it under seal; and

(C) why the document should be kept sealed from the public despite its relevance or materiality to resolution of the matter; and

(3) a statement as to whether maintenance of the document under seal is opposed by any party; and

(4) a proposed order as an attachment.

(f) Opposition to Maintenance Under Seal. Any opposition to a Motion to Maintain Document(s) Under Seal must be filed within 14 days of service of the Brief in Support. Any Brief in Opposition must not exceed 10 pages in length. A member of the public may challenge at any time the maintenance of a document filed under seal.

(g) Denial of Motion to Maintain Under Seal. If the court denies the motion, the clerk will unseal the document(s) after 21 days, absent Fed. R. Civ. P. 72(a) objection, motion to reconsider, appeal, or further court order.

Local Rules Advisory Committee Comment Re: 2015 Amendment

The 2015 revision includes a more detailed procedure for obtaining permission from the court to maintain filed documents under seal in civil matters. Filings under seal in criminal matters are the subject of new Local Criminal Rule 49.1-2. The parties are encouraged to consider and confer regarding redaction whenever practical and possible to avoid multiple filings of the same document and unnecessary motion practice. Parties should note that a protective order does not authorize a party to file or maintain a document under seal. In addition, the parties should follow Seventh Circuit guidance on the legal parameters for maintaining documents under seal enunciated in cases such as *City of Greenville, Illinois v. Syngenta Crop Protection, LLC*, 764 F.3d 695 (7th Cir. 2014); *Bond v. Utreas*, 585 F.3d 1061 (7th Cir. 2009); and *Baxter International, Inc. v. Abbott Laboratories*, 297 F.3d 544 (7th Cir. 2002).

Note: Adopted effective January 1, 2015.

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Local Rule 5-12 – Social Security Appeals

(a) Social Security Appeals – Initial Process. Where a complaint for administrative review is filed pursuant to 42 U.S.C. § 405(g) concerning benefits under the Social Security Act, by agreement with the United States Attorney, no actual service of initial process (*i.e.*, summons and complaint) will be required in any case, unless otherwise ordered. The Social Security Administration will treat notification through the court's Case Management and Electronic Filing System (CM/ECF) as service under Rule 4 of the Federal Rules of Civil Procedure.

(b) Response to Complaint. The Social Security Administration must respond to a complaint for administrative review of an agency determination about Social Security benefits within 60 days after notification of the filing of the complaint through the court's CM/ECF by filing either 1) a motion to dismiss or 2) the certified administrative record. The filing of the certified administrative record will suffice as the Social Security Administration's answer to the complaint.

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Local Rule 5.1-1 – Constitutional Challenge to a Statute – Notice

(a) Time for Filing. A notice of constitutional challenge to a statute filed in accordance with Fed. R. Civ. P. 5.1 must be filed at the same time the parties tender their proposed case management plan, if one is required, or within 21 days of the filing drawing into question the constitutionality of a federal or state statute, whichever occurs later.

(b) Additional Service Requirements. If a federal statute is challenged, in addition to the service requirements of Fed. R. Civ. P. 5.1(a), the party filing the notice of constitutional challenge must serve the notice and documents on the United States Attorney for the Southern District of Indiana, either by certified or registered mail or by sending it to an electronic address designated for that purpose by that official.

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Local Rule 6-1 - Extensions of Time

(a) Motion Ordinarily Required. Ordinarily, a request 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;

(3) provide the reasons why an extension is requested; and

(4) if all parties are represented by counsel, either:

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

(B) describe all attempts made to obtain an agreement to the extension and state whether opposing counsel objects to it.

(5) be filed at least three business days prior to the deadline absent extraordinary circumstances, or summary denial may result.

(b) Automatic Initial Extension. The deadline for filing a response to a pleading or to any written request for discovery or admissions will automatically be extended upon filing a notice of the extension with the court that states:

(1) the deadline has not been previously extended;

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

(3) the extension does not interfere with the Case Management Plan, scheduled hearings, or other case deadlines;

(4) the original deadline and extended deadline;

(5) that all opposing counsel the filing attorney could reach agreed to the extension; or that the filing attorney could not reach any opposing counsel, and providing the dates, times and manner of all attempts to reach opposing counsel.

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

Note: Amended December 1, 2018, to add a requirement that motions for extensions of time must be filed at least three business days prior to a filing deadline absent extraordinary circumstances, or summary denial may result.

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Local Rule 7-1 - Motion Practice

(a) Motions Must Be Filed Separately. Motions must be filed separately, but alternative motions may be filed in a single document if each is named in the title. A motion must not be contained within a brief, response, or reply to a previously filed motion, unless ordered by the court.

(b) Brief Required for Certain Motions. The following motions must also be accompanied by a supporting brief:

(1) a motion to dismiss, for judgment on the pleadings, or for more definite statement under Fed. R. Civ. P. 12.

(2) any motion made under Fed. R. Civ. P. 37.

(3) a motion for summary judgment under Fed. R. Civ. P. 56.

(4) a motion for a temporary restraining order under Fed. R. Civ. P. 65(b) and S.D. Ind. L.R. 65-2(b).

(c) Response and Reply Deadlines.

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

(2) ***Rule 12(b), (e), or (f) Motions***. A party must file any response brief to a motion based on Rule 12(b), (e), 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 Rule 15(a)(1). If a response to a motion to dismiss is filed, any reply is due within 7 days after service of the response.

(3) ***Other Motions.***

(A) *Responses.* Any response is due within 14 days after service of the motion.

(B) *Replies.* Any reply is due within 7 days after service of the response.

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

(5) ***Summary Ruling on Failure to Respond.*** The court may summarily rule on a motion if an opposing party does not file a response within the deadline.

(d) Routine or Uncontested Motions. A party filing a routine or uncontested motion must also file a suitable proposed order. The court may rule upon a routine or uncontested motion before the response deadline passes, unless:

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(1) the motion indicates that an opposing party objects to it; or

(2) the court otherwise believes that a response will be filed.

(e) Page Limits.

(1) ***Generally.*** Supporting and response briefs (excluding tables of contents, tables of authorities, appendices, and certificates of service) may not exceed 35 pages. Reply briefs may not exceed 20 pages.

(2) ***Permission to Exceed Limits.*** The court may allow a party to file a brief exceeding these page limits for extraordinary and compelling reasons.

(3) ***Supporting and Response Briefs Exceeding Limits.*** If the court allows a party to file a brief or response exceeding 35 pages, the document must include:

(A) a table of contents with page references;

(B) a statement of issues; and

(C) a table of authorities including

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

(ii) page numbers where the authorities are cited in the brief.

(f) Copies of Authority. Generally, copies of cited authorities may not be attached to court filings. However, a party must attach to the party's motion or brief a copy of any cited authority if it is not available on Westlaw or Lexis. Upon request, a party must provide copies of any cited authority that is only available through electronic means to the court or the other parties.

(g) Motions for Fees, Sanctions, and Disqualification.

(1) ***Reasonable Efforts to Resolve Dispute.*** The court may not grant the following motions unless the movant's attorney files with the motion a statement showing that the attorney made reasonable efforts to confer with opposing counsel and resolve the matters raised in the motion:

(A) motion for attorney's fees (other than post-judgment).

(B) motion for sanctions under Fed. R. Civ. P. 11.

(C) motion to disqualify an attorney (other than one brought by a *pro se* party).

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(2) ***Statement Regarding Efforts.*** The statement required by subdivision (g)(1) must include:

(A) the date, time, and place of all conferences; and

(B) the names of all conference participants.

(3) ***Refusal or Delay of Conference.*** The court may take action appropriate to avoid unreasonable delay if any party's attorney advises the court in writing that any opposing counsel has refused to meet or otherwise delayed efforts to resolve the matters raised in the motion.

(h) Notice of Settlement or Resolution. The parties must immediately notify the court if they reasonably anticipate settling their case or resolving a pending motion.

Local Rules Advisory Committee Comments
Re: 2018 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 mooting the Rule 12 motion. The amendment to Local Rule 7-1(c) provides consistency with Fed. R. Civ. P. 15(a) by allowing 21 days to respond to Rule 12(b), (e), and (f) motions.

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Local Rule 7-5 - Oral Arguments and Hearings

(a) Request for Oral Argument. A party may request oral argument by filing a separate motion explaining why oral argument is necessary and estimating how long the court should allow for the argument. The request must be filed and served with the supporting brief, response brief, or reply brief.

(b) No Additional Evidence at Oral Argument. Parties may not present additional evidence at oral argument.

(c) Request for Evidentiary Hearing. A party may request an evidentiary hearing on a motion or petition by serving and filing a separate motion explaining why the hearing is necessary and estimating how long the court should allow for the hearing.

(d) Directed by the Court. The court may:

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

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

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

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Local Rule 8-1 - *Pro Se* Complaints

Parties representing themselves must file the following types of complaints on forms that the clerk supplies:

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

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Local Rule 9-2 - Request for Three-Judge Court

(a) Procedure. To request a three-judge court in a case, a party must:

(1) print "Three-Judge District Court Requested" or the equivalent immediately following the title on the first pleading the party files; and

(2) set forth the basis for the request in the pleading or in a brief 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 is a sufficient request under 28 U.S.C. § 2284.

(c) Non-Electronic Filings. Parties in a case where a three-judge court has been requested must file an original and three copies of any document filed directly with the clerk (instead of electronically) until the court:

(1) denies the request;

(2) dissolves the three-judge court; or

(3) allows the parties to file fewer copies.

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Local Rule 10-1 –Names of Parties – Pseudonym Litigant

(a) Notice. If a litigant seeks to proceed under a pseudonym, at the time of filing his or her initial pleading, the party must file under seal a Notice of intention to seek leave to proceed under such pseudonym and disclose the litigant's true name. This notice will be maintained under seal.

(b) Motion. Contemporaneously with the Notice, the litigant must file a motion to proceed under the pseudonym, setting forth the justification under applicable law.

(c) Service. The Notice and motion must be served on each opposing party within 7 days of the opposing party's appearance.

(d) Objection. Any objection to the motion must be filed by the opposing party within 21 days of the party's appearance.

(e) Denial of Motion. If the motion is denied, the litigant has 14 days to file the complaint in his or her true name.

Local Rules Advisory Committee Comments
Re: 2018 Amendment

Recognizing that there is a strong presumption in favor of openness in court proceedings, this rule is adopted to provide procedural guidance to litigants who seek to proceed anonymously. The court has an independent duty to determine whether the potential harm to a litigant exceeds the presumption that judicial proceedings are open to the public, such that the litigant should be permitted to proceed under a pseudonym. See *Doe v. City of Chicago*, 360 F.3d 667, 669 (7th Cir. 2004) (Courts may consider a number of factors in making such a determination.); see also *Doe v. Indiana Black Expo, Inc.*, 923 F. Supp. 137, 139-40 (S.D. Ind. 1996) (Hamilton, J). This rule provides a vehicle for a litigant's identity to be disclosed to the court and to the opposing party but not to the public at large pending the outcome of the court's determination of whether the litigant is entitled to proceed anonymously.

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Local Rule 15-1 - Motions to Amend Pleadings

(a) Supporting Documents. A motion to amend a pleading must:

(1) if it is filed electronically, include as attachments the signed proposed amended pleading and a proposed order; or

(2) if it is filed directly with the clerk, be accompanied by a proposed order and one signed original and one copy of the proposed amended pleading.

(b) Form of Amended Pleading. Amendments to a pleading must reproduce the entire pleading as amended.

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Local Rule 16-1 - Pretrial Procedures

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

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

(c) Case Management Plan. Unless otherwise ordered or exempted under (f) of this rule, the parties in a civil case must confer, prepare, and file a joint case management plan:

(1) within 90 days after the case was either filed or removed to the court; and

(2) according to the instructions and form available on the court's website (http://www.insd.uscourts.gov/case-management-plans).

(d) Parties' Responsibilities for Case Management Plan. The plaintiff must initiate and coordinate the efforts to confer about, prepare, and file the case management plan. If the plaintiff fails to do so, the defendant must appear at the initial pretrial conference with a proposed case-management plan.

If the parties cannot agree on all provisions of the case management plan the parties must file a joint plan that contains their respective positions in the disputed portions of the case management plan. The court will enter a case management plan that the court deems most appropriate with or without additional input from the parties.

(e) Additional Conferences. The court may set additional pretrial conferences. The parties must confer before each conference and must be prepared to address case-management plan issues, settlement, trial readiness, and any other matters specifically directed by the court.

(f) Deadlines. Absent court order, deadlines established in any order or pretrial entry under this rule may not be altered unless the parties and the court agree, or for good cause shown.

(g) Exempted Cases. Unless otherwise ordered by the court, the following types of cases will be exempted from the scheduling and planning requirements of Fed. R. Civ. P. Rule 16(b):

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

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

(3) an action brought by a person in custody of the United States, a State or a State subdivision;

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

(5) an action by the United States to recover benefit payments;

(6) an action by the United States to collect on a student loan guaranteed by the United States;

(7) a proceeding ancillary to proceedings in another court;

(8) an action to enforce, vacate or modify an arbitration award;

(9) mortgage foreclosures in which the United States is a party; and

(10) civil forfeiture cases.

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Local Rule 16-2 - Responsibilities for Cases Remanded or Transferred

Within 21 days after the court receives a case remanded by the court of appeals for further proceedings or that is transferred from another district, each party must file a statement of position as to what action the court should take in the case.

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Local Rule 16-3 - Continuances in Civil Cases

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

(1) how the evidence is material;

(2) that the party has used due diligence to obtain the evidence;

(3) where the party believes the evidence is; 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 any other witness whose testimony can be readily procured.

(d) Stipulation to Absent 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 Due to Continuance. The court may order a party seeking a continuance to reimburse other parties for their actual expenses caused by the delay.

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Local Rule 23-1 - Designation of "Class Action" in the Caption

(a) Designation in Complaint. 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:

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

(2) 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.

(b) Counterclaims and Crossclaims. The provisions of the Rule will apply, with appropriate adaptations, to any counterclaim or crossclaim alleged to be brought for or against a class.

Notes: Former subsection (b) was deleted from the rule on January 1, 2011, thereby removing the requirement that a separate motion seeking class certification be filed within 90 days of filing of a complaint in a class action, leaving the timing of such a motion to be determined within the Case Management Plan for each case.

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Local Rule 26-1 - Form of Certain Discovery Requests

(a) Form of Discovery Requests. A party propounding written discovery under Fed. R. Civ. P. 33, 34, or 36 must number each interrogatory or request sequentially and, upon request, supply the written discovery to the responding party in an editable word processing format.

(b) Form of Discovery Responses. A party responding (by answer or objection) to written discovery must fully quote each interrogatory or request immediately before each response and number each response to correspond with the interrogatory or request.

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Local Rule 26-2 - Filing of Discovery Materials

Discovery materials (whether discovery requests, responses, or deposition transcripts) may not be filed with the court except in the following circumstances:

(a) Relevant to Certain Motions. A party seeking relief under Fed. R. Civ. P. 26(c) or 37, or by way of a pretrial motion that could result in a final order on an issue, must file with the motion those parts of the discovery materials relevant to the motion.

(b) For Anticipated Use at Trial. When a party can reasonably anticipate using discovery materials at trial, the party must file the relevant portions at the start of the trial.

(c) Materials Necessary for Appeal. A party seeking for purposes of appeal to supplement the record with discovery materials not previously filed may do so by stipulation of the parties or by court order approving the filing.

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Local Rule 30-1 - Conduct of Depositions

(a) Questions About an Asserted Privilege. An attorney may question a deponent who refuses to answer a question on the basis of privilege about information related to the appropriateness of the privilege, including whether:

(1) the privilege applies under the circumstances;

(2) the privilege has been waived; and

(3) circumstances exist to overcome a claim of qualified privilege.

(b) Private Conference Regarding a Pending Question. A deponent's attorney may not initiate a private conference with the deponent during the deposition about a pending question except to determine whether to assert a claim of privilege.

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

(1) could cause the deposition to be terminated; and

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

(d) Scheduling Depositions. Under the Standards for Professional Conduct within the Seventh Federal Judicial Circuit, Lawyers Duty to Other Counsel, paragraph 14, attorneys will make a good faith effort to schedule depositions in a manner that avoids scheduling conflicts. Unless agreed by counsel or otherwise ordered by the court, no deposition will be scheduled on less than 14 days notice.

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Local Rule 36-1 - Requests for Admissions

No party may serve on any other party more than 25 requests for admission without leave of court. Requests relating to the authenticity or genuineness of documents are not subject to this limitation. Any party desiring to serve additional requests for admission must file a written motion setting forth the proposed additional requests for admission and the reason(s) for their use.

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Local Rule 37-1 – Discovery Disputes

(a) Required Actions Prior to Court Involvement. Prior to involving the court in any discovery dispute, including disputes involving depositions, counsel must confer in a good faith attempt to resolve the dispute. If any such dispute cannot be resolved in this manner, counsel shall contact the chambers of the assigned Magistrate Judge to determine whether the Magistrate Judge is available to resolve the discovery dispute by way of a telephone conference or other proceeding prior to counsel filing a formal discovery motion. When the dispute involves an objection raised during a deposition that threatens to prevent completion of the deposition, any party may recess the deposition to contact the Magistrate Judge's chambers.

(b) Requirements of Motion to Compel. In the event that the discovery dispute is not resolved at the conference, counsel may file a motion to compel or other motion raising the dispute. Any motion raising a discovery dispute must contain a statement setting forth the efforts taken to resolve the dispute, including the date, time, and place of any discovery conference and the names of all participating parties. The court may deny any motion raising a discovery dispute that does not contain such a statement.

(c) Pro Se Parties. Discovery disputes involving *pro se* parties are not subject to S.D. Ind. L.R. 37-1.

Notes: Note: Amended December 1, 2018, to require counsel contact the Magistrate Judge to request a conference to resolve discovery disputes before filing a motion. January 1, 2011 - Local Rule 37.1 was amended and consolidated with Local Rule 37.3, to encourage informal resolution of discovery disputes, including disputes that might otherwise derail a deposition. More complex discovery disputes may benefit from full briefing, but the amended rule recognizes that most discovery disputes can be resolved or at least narrowed by good faith efforts of counsel and intervention by the Magistrate Judge as necessary. The amendment also deletes prior language in the rule suggesting parties were required to file a separate statement regarding efforts to resolve the discovery dispute. The amended rule provides that such a statement must be contained in the motion.

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Local Rule 38-1 - Jury Demand

A party demanding a jury trial in a pleading as permitted by Fed. R. Civ. P. 38(b) must include the demand in the title by way of a notation placed on the front page of the pleading, immediately following the title of the pleading, stating "Demand for Jury Trial." Failure to do so will not result in a waiver under Rule 38(d) if a jury demand is otherwise properly filed and served under Rule 38(b).

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Local Rule 39-1 - Authorization of Bankruptcy Judges to Conduct Jury Trials

As allowed by 28 U.S.C. § 157(e), bankruptcy judges may, with the express consent of all parties, conduct jury trials in cases for which the law provides a right to a jury trial. Bankruptcy judges conducting jury trials under this rule may use the court's pool of prospective jurors.

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Local Rule 40-1 - Assignment of Cases

(a) Assignment According to Court Order. The clerk must assign cases to judicial officers according to the method that the court orders from time to time.

(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 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:

(1) upon filing an appeal from a bankruptcy case, if another appeal arising out of the same case (including from an adversary proceeding) has already been filed; or

(2) as soon as it appears that the party's case and another pending case:

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

(B) involve the same property; or

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

(e) Transfer of Related Cases. When the court determines that two cases are related, the case filed later may, in the court’s discretion, be transferred to the judicial officer handling the earlier-filed case.

(f) Reassignment of Cases. The court may reassign cases among judicial officers if workload and the speedy administration of justice so require. If it is necessary to reassign a case for reasons other than workload, the chief judge will refer the case to the clerk and the clerk must reassign the case using a system similar to that used when cases are first filed.

(g) Remands for New Trials. The clerk must assign cases remanded for a new trial under Seventh Circuit Rule 36 by random lot unless:

(1) the remand order directs otherwise; or

(2) within 15 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.

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(h) Direct Assignment of Cases. Certain case types will be directly assigned as follows:

(1) Habeas petitions brought under 28 U.S.C. §2255 are assigned to the judge of the underlying criminal case;

(2) Any cases for which assignment is mandated by statute or rule will be assigned accordingly.

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Local Rule 40-3 – Trial Start Dates

The court expects that cases will be tried within 18 months after the complaint is filed, unless the court determines that this deadline is unreasonable due to:

(a) the case's complexity;

(b) staging provided by the case management plan; or

(c) the demands of the court's docket.

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Local Rule 40-4 - Division of Business Among District Judges

(a) Assignment to Divisions. The court may assign a judge to any of the district's four divisions (Indianapolis, Evansville, New Albany, or Terre Haute) permanently or by cause number.

(b) Divisions with Permanent Judges. A division with at least one permanently assigned judge must remain in continuous session.

(c) Motions Judge. The court will designate a "motions judge" to hear:

(1) emergency matters in cases where the assigned judge is absent; and

(2) other matters in cases not yet assigned to a judge.

(d) Identity of Motions Judge. The clerk must identify the motions judge upon request.

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Local Rule 41-1 - Dismissal of Actions for Failure to Prosecute

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

(a) the plaintiff has not taken any action for 6 months;

(b) the judicial officer assigned to the case or the clerk has given notice to 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.

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Local Rule 42-1 – Motions to Consolidate

A party seeking to consolidate two or more civil cases must:

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

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

Note: Effective January 1, 2012, former Local Rule 42.2 becomes Local Rule 42-1.

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Local Rule 45-1 – Service of Subpoena on Non-Parties – Notice Requirement

If a subpoena to produce or permit is to be served upon a nonparty, a copy of the proposed subpoena must be served on all other parties at least 7 days prior to service of the subpoena on the nonparty, unless the parties agree to a different time frame or the case management plan provides otherwise. Provided, however, that if such subpoena relates to a matter set for hearing within such 7 day period or arises out of a bona fide emergency, such subpoena may be served upon a nonparty 1 day after a notice and copy of the subpoena is served on each party.

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Local Rule 47-1 - Voir Dire of Jurors

(a) Voir Dire Conducted by Court. The court will conduct the voir dire examination in jury cases. However, nothing in this rule is intended to preclude or otherwise limit the court from allowing attorneys to conduct voir dire examination in any manner permitted by Fed. R. Civ. P. 47.

(b) Requests to Cover Particular Subjects and Questions. Parties may file with the clerk requests for the court to cover particular subjects or to ask particular questions during voir dire. Requests must be filed at least 24 hours before the trial starts unless the court orders otherwise.

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

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Local Rule 47-2 - Communication with Jurors

(a) Communication Not Allowed. No party or attorney (or any of their employees or agents) may communicate or attempt to communicate off the record:

(1) with a member of the venire from which the jury will be selected; or

(2) with a juror.

(b) Exceptions. The court may allow a party or attorney to communicate with jurors after the trial if all other parties are given notice. In criminal cases, a party or attorney must show good cause before the court will allow communication with a juror.

(c) Control by Court. Any juror contact permitted by the court will be subject to the control of the judge.

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Local Rule 47-3 - Juror Costs

(a) Failure to Notify the Court of Settlement. The court may order the parties to pay juror costs (including marshal's fees, mileage, and per diem) in a case if:

(1) the parties settle or otherwise dispose of the case before trial; and

(2) the clerk's office is not notified at least 1 full business day before the trial is set to begin.

(b) Division of Juror Costs. The court may divide juror costs among the parties, their attorneys, or both in its discretion.

Note: Effective January 1, 2012, former Local Rule 42.1 becomes Local Rule 47-3.

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Local Rule 47-4 – Jury; Unanimous Verdict

(a) Number of Jurors. Each civil jury must have at least 6 members, unless the law requires otherwise.

(b) Additional Jurors. The court in its discretion may impanel up to 4 additional jurors. If it impanels additional jurors, the court may allow the parties additional peremptory challenges.

(c) Unanimous Verdict Required. Regardless of the number of jurors, the jury's verdict must be unanimous and be rendered by at least six jurors.

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Local Rule 54-1 - Taxation of Costs and Attorney's Fees

(a) Deadline for Requests for Costs and Attorney's Fees. A party cannot recover attorney's fees and costs unless the party files and serves a bill of costs and a motion for fees within 14 days after final judgment is entered. The court may extend this deadline for good cause if a motion requesting an extension is filed before the original deadline.

(b) Form for Bill of Costs. The court prefers that parties use AO form 133 (available from the clerk) for the bill of costs.

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Local Rule 56-1 – Summary Judgment Procedure

(a) Movant's Obligations. A party seeking summary judgment must file and serve a supporting brief and any evidence (that is not already in the record) that the party relies on to support the motion. The brief must include a section labeled "Statement of Material Facts Not in Dispute" containing the facts:

(1) that are potentially determinative of the motion; and

(2) as to which the movant contends there is no genuine issue.

(b) Non-Movant's Obligations. A party opposing a summary judgment motion must, within 28 days after the movant serves the motion, file and serve a response brief and any evidence (that is not already in the record) that the party relies on to oppose the motion. The response must include a section labeled "Statement of Material Facts in Dispute" that identifies the potentially determinative facts and factual disputes that the party contends demonstrate a dispute of fact precluding summary judgment.

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

(d) Surreply. A party opposing a summary judgment motion may file a surreply brief only if the movant cites new evidence in the reply or objects to the admissibility of the evidence cited in the response. The surreply must be filed within 7 days after the movant serves the reply and must be limited to the new evidence and objections.

(e) Citations to Supporting Facts. A party must support each fact the party asserts in a brief with a citation to a discovery response, a deposition, an affidavit, or other admissible evidence. The evidence must be in the record or in an appendix to the brief. The citation must refer to a page or paragraph number or otherwise similarly specify where the relevant information can be found in the supporting evidence.

(f) Court's Assumptions About Facts. In deciding a summary judgment motion, the court will assume that:

(1) the facts as claimed and supported by admissible evidence by the movant are admitted without controversy except to the extent that:

(A) the non-movant specifically controverts the facts in that party's "Statement of Material Facts in Dispute" with admissible evidence; or

(B) it is shown that the movant's facts are not supported by admissible evidence; or

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(C) the facts, alone or in conjunction with other admissible evidence, allow the court to draw reasonable inferences in the non-movant's favor sufficient to preclude summary judgment.

(2) facts that a non-movant asserts are true to the extent admissible evidence supports them.

(g) Stipulation to Facts. The parties may stipulate to facts in the summary judgment process, and may state that their stipulations are entered only for the purpose of the motion for summary judgment and are not intended to be otherwise binding.

(h) No Duty to Search Record. The court has no duty to search or consider any part of the record not specifically cited in the manner described in subdivision (e).

(i) Collateral Motions. The court disfavors collateral motions—such as motions to strike— in the summary judgment process. Any dispute over the admissibility or effect of evidence must be raised through an objection within a party's brief.

(j) Oral Argument or Hearing. The court will decide summary judgment motions without oral argument or hearing unless the court otherwise directs or grants a request under S.D. Ind. L.R. 7-5.

(k) Notice Requirement for *Pro Se* Cases. A party seeking summary judgment against an unrepresented party must file and serve the notice contained in Appendix A.

(l) Compliance. The court may, in the interest of justice or for good cause, excuse failure to comply strictly with this rule.

Local Rules Advisory Committee Comments
Re: 2002 Amendment

The 2002 revision completely replaces the former rule. It is designed to reduce the length of briefs related to motions for summary judgment, particularly the statement of undisputed material facts. In some cases, the statement of undisputed material facts has grown to an unmanageable level for the courts and for the parties. The parties have included facts which are not material to the legal issues to be resolved by summary judgment. Including the statement of undisputed material facts in the 35-page limit for initial briefs established by S.D. Ind. L. R. 7.1(b) will require the parties to discipline their presentation.

Note to subdivision (a). This provision sets forth the general requirements for all briefs to be submitted by the parties. It requires that the movant's brief contain a "Statement of Material Facts Not in Dispute." Emphasis is made that "material" facts are ones which are potentially determinative (former Rule 56.1(h)). The Statement should not contain mere background facts which a party feels puts the case in perspective – that can be done in an introduction or background section of the brief. Further, the Statement of asserted material facts is to state facts, not the party's argument which should be in the argument portion of the brief. Asserted material facts must be supported by specific citations to the

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admissible evidence in the record, which requires that any material not already in the Court's file be contained in an appendix. Although the strict formatting requirements of former Rule 56.1(h) are eliminated, separately numbering the facts is recommended for presentation clarity.

Note to subdivision (b). The specific rules for the non-movant's response are contained in this section. The brief shall contain a "Statement of Material Facts in Dispute" identifying: (1) the material facts which preclude summary judgment and/or (2) disputed material facts which do so. Like movant's Statement, the non-movant's Statement should not contain mere background facts or be argumentative.

Note to subdivision (d). A non-moving party may file a surreply brief in two limited circumstances. It is permitted only when: (1) the moving party submits in its reply brief evidence not previously cited; or (2) the moving party objects in its Reply to the admissibility of evidence cited by the non-movant.

Note to subdivision (e). This provision sets forth the effect of facts asserted. If supported by cited admissible evidence, a party's asserted material facts will be assumed admitted unless the opposing party submits admissible evidence of a genuine issue of material fact, demonstrates that the movant's assertions are not supported by admissible evidence or, through argument, shows that reasonable inferences can be drawn from admissible facts which preclude summary judgment. Obviously, the parties may, and are encouraged to, stipulate to undisputed material facts. Any such fact stipulations may be for purposes of the summary judgment motion only. The Court will <u>not</u> search the record to find admissible evidence to support an asserted material fact.

Note to subdivision (f). Motion practice about the admissibility of evidence cited in support of asserted material facts is strongly discouraged. Challenges to the evidence belong in the parties' briefs.

Cross Motions. If the parties anticipate cross-motions for summary judgment, the briefing schedule and format should be addressed in the case management plan.

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Local Rule 65-2 - Motions for Preliminary Injunctions and Temporary Restraining Orders

(a) Preliminary Injunctions. The court will consider a request for preliminary injunction only if the movant files a separate motion for relief and complies with Fed. R. Civ. P. 65(a). Supporting and response briefs are not required, but the court may request them.

(b) Temporary Restraining Orders. The court will consider a request for temporary restraining order only if the movant files a separate motion for relief with a supporting brief. The movant must also comply with Fed. R. Civ. P. 65(b).

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Local Rule 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 has undertaken 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.

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Local Rule 69-1 - Execution

All procedures on execution must accord with Fed. R. Civ. P. 69 and applicable state law. This rule applies to proceedings supplementary to, and in aid of, a judgment and to procedures on, and in aid of, execution.

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Local Rule 69-2 - Interrogatories to Garnishees

(a) Order to Answer Interrogatories Required. Garnishees may be ordered to answer interrogatories. An order requiring a garnishee to answer interrogatories must accompany each set of interrogatories served on the garnishee. The interrogatories may be part of another document or pleading.

(b) Content of Order. The order to answer interrogatories must advise the garnishee:

(1) that the plaintiff has a judgment against the defendant;

(2) of the judgment amount;

(3) of the time, date and place of the hearing on a motion for proceedings supplemental;

(4) that if the garnishee has a claim or defense to a proceedings supplemental or a garnishment order, the garnishee must present the claim or defense at the hearing; and

(5) that the garnishee has the option to either:

(A) answer the interrogatories in writing on or before the date specified, or

(B) appear in court and answer the interrogatories in person.

(c) Motion for Proceedings Supplemental. A motion for proceedings supplemental must be served on the garnishee when the garnishee is served with the interrogatories and the order to answer them.

(d) Requirements for Hold on Depository Account. If the order to answer interrogatories is to operate as a hold on a judgment-debtor's depository account, the order must comply with Indiana law.

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Local Rule 69-3 - Final Orders in Wage Garnishment

All final orders garnishing wages must comply with Ind. Code § 24-4.5-5-105.

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Local Rule 69-4 - Body Attachments; Hearings

(a) Failure to Appear. If a judgment debtor fails to appear for a hearing despite service and actual notice, the magistrate judge may issue a body attachment.

(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.

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Local Rule 72-1 - Authority of United States Magistrate Judges

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

(b) Authority of Magistrate Judges. Magistrate judges are judicial officers. 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.

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Local Rule 72-2 - Forfeiture of Collateral in Lieu of Appearance

(a) Nature of Offense. A person charged with an offense made criminal pursuant 18 U.S.C. § 13, and for which the penalty provided by state law is equal to or less than that of a misdemeanor, other than an offense for which a mandatory appearance is required may, in lieu of appearance, post collateral before a United States Magistrate Judge and consent to forfeiture of collateral.

(b) Schedule of Offenses. These offenses, and the amounts of collateral to be posted (if applicable), will appear on a schedule and be available for public inspection in the clerk's office in each of the district's divisions. The schedule will be effective until rescinded or superseded by court order.

(c) Failure to Appear. Posted collateral will be forfeited if the person charged with an offense covered by this rule fails to appear before the magistrate judge. The forfeiture will signify that the offender does not contest the charge and does not request a hearing before the magistrate judge. The forfeiture is tantamount to 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 the commission of an offense (including those for which collateral may be posted and forfeited); and

(2) either:

(A) requiring the person charged to appear before a magistrate judge, or

(B) taking that person before a magistrate judge immediately after arrest.

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Local Rule 76-1 - Designating Additional Items For Record on Appeal – *Rule deleted effective July 1, 2018*

Note: Local Rule 76-1 was rendered moot by an amendment to Seventh Circuit Rule 10.

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Local Rule 79-1 - Custody of Files and Exhibits

(a) Custody During Pendency of Action. Any item offered into evidence in a case—other than contraband exhibits—will be placed in the clerk's custody. Unless the court orders otherwise, these items may not be claimed from the clerk until the case is disposed of as to all issues, including appeals.

(b) Claiming Items After Disposition of Action. The party that offered the items into evidence must claim them from the clerk:

(1) if the case is not appealed, within 90 days after the case is disposed of as to all issues;

(2) if the case is appealed, within 28 days after the mandate of the reviewing court is filed in the clerk's office and the case is disposed of as to all issues, unless otherwise ordered.

(c) Procedure for Claiming Items. No motion or order is necessary to claim the items. The party withdrawing them must give the clerk a detailed receipt when the items are withdrawn. The clerk must file the receipt in the cause.

(d) Failure to Claim Items. If the parties fail to claim the items within the deadline in subdivision (b), the United States Marshals Service may sell the items in a public or private sale or dispose of them in any manner directed by the court. If sold, the proceeds, less the expense of sale, will be paid into the court's registry.

(e) Contraband Exhibits. Contraband exhibits (such as controlled substances, money, and weapons) may not be placed in the clerk's custody. They must be released to the investigative agency when the case is concluded. The investigative agency must give the clerk a detailed receipt when the contraband exhibits are released.

(f) Withdrawal of Original Records and Documents. No one may withdraw an original pleading, document, record, model or exhibit from the clerk's custody except as provided by this rule or by court order.

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Local Rule 80-1 - Official Transcripts of Court Proceedings

(a) Filing Official Transcripts. Upon completion of an official transcript of any proceeding in this court, the court reporter or transcriber will file electronically a certified copy of the official transcript, in accordance with 28 U.S.C. § 753(b).

(b) Access Restrictions for Official Transcripts. Access to an official transcript of a court proceeding will be restricted for a period of 90 days after the transcript is filed by the court reporter or transcriber (the "Restriction Period"), unless otherwise provided by this rule or ordered by the court.

(1) ***Availability During the Restriction Period.*** During the Restriction Period, the official transcript will be available:

(A) for purchase from the court reporter or transcriber who prepared and filed the transcript;

(B) to attorneys of record who have purchased the transcript from the court reporter and requested electronic access via the ECF system through the court reporter;

(C) for inspection only, via the public computer terminals located in the clerk's office; and

(D) as directed by the court.

(2) ***Availability After the Restriction Period.*** After the Restriction Period has expired and any pending motions related to an official transcript have been resolved, the official transcript and any redacted version of the official transcript will be available as provided by subdivision (b)(1) and as follows:

(A) If the official transcript has not been redacted, it will be available:

(i) for inspection and purchase via the public computer terminals located in the clerk's office; and

(ii) for downloading from the court's ECF system through PACER.

(B) If the official transcript has been redacted pursuant to S.D. Ind. L.R. 80-2, only the redacted version of the official transcript will be available as described in subdivisions (b)(2)(A)(i) and (ii).

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(3) ***Sealed Matters*.** Official transcripts of sealed proceedings, official transcripts filed in sealed cases, and official transcripts which have been sealed by the court will not be publicly available, electronically or otherwise, unless ordered by the court.

(c) Official Transcript Fees. Access fees apply to official transcripts of court proceedings, whether purchased from a court reporter or transcriber, downloaded via PACER, or obtained through the clerk's office. Current schedules of official transcript fees, electronic public access (PACER) fees, and clerk's office printing fees are established by the Judicial Conference and maintained on file in the clerk's office.

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Local Rule 80-2 - Redaction of Official Transcripts of Court Proceedings

(a) Redaction of Personal Data Identifiers. Upon the filing of an official transcript of any court proceeding under S.D. Ind. L.R. 80-1, attorneys of record will review the transcript and determine whether redaction of personal data identifiers within the transcript is necessary to comply with Fed. R. Civ. P. 5.2 or Fed. R. Crim. P. 49.1. The requirements of this rule apply to pro se litigants.

(1) ***Review of Transcript.*** Unless otherwise ordered by the court, attorneys of record who represent a party or parties in a matter in which an official transcript has been filed must review the following portions of the official transcript:

(A) opening and closing statements made on the party's behalf;

(B) statements of the party;

(C) the testimony of any witnesses called by the party;

(D) sentencing proceedings; and

(E) any other portion of the transcript as ordered by the court.

An attorney serving as "standby" counsel appointed to be available to assist a pro se defendant in his or her defense in a criminal case must review the same portions of the transcript as if the pro se defendant were his or her client. If the transcript relates to a panel attorney representation pursuant to the Criminal Justice Act (CJA), including serving as standby counsel, the attorney conducting the review is entitled to compensation under the CJA for functions reasonably performed to fulfill the redaction obligation and for reimbursement for related reasonable expenses.

(2) ***Notice of Intent to Request Redaction.*** If any portion of an official transcript is subject to the requirements of Fed. R. Civ. P. 5.2 or Fed. R. Crim. P. 49.1, the attorneys of record will either jointly or individually file a "Notice of Intent to Request Redaction" within 7 days from the date on which the official transcript was filed. If a Notice of Intent to Redact is not filed within the allotted 7 days, the court will assume redaction of personal data identifiers from the transcript is not necessary.

(3) ***Redaction Statement.*** If redaction of personal data identifiers within an official transcript is required by Fed. R. Civ. P. 5.2 or Fed. R. Crim. P. 49.1, attorneys of record will either jointly or individually file a "Redaction Statement" within 21 days from the date on which the official transcript was filed. The Redaction Statement will certify that

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the official transcript has been reviewed by counsel and identify the following information:

(A) the filed date and document number of the official transcript for which redaction is requested;

(B) a description of each type of personal data identifier to be redacted (*e.g.*, social-security number);

(C) transcript page number(s) and line number(s) identifying the location of each personal data identifier to be redacted; and

(D) the redacted version of each such personal data identifier (e.g., social-security number to read as XXX-XX-1234).

The Redaction Statement must not disclose, in its unredacted form, any personal data identifier.

(b) Redaction of Information other than Personal Data Identifiers. Any party may request redaction of information other than the personal data identifiers set forth in Fed. R. Civ. P. 5.2 and Fed. R. Crim. P. 49.1 by filing a "Motion to Redact Transcript." Such motion must state the grounds for requesting redaction, set forth the information to be redacted in the format required by (a)(3), and be filed within 21 days from the date on which the official transcript was filed.

(c) Filing Redacted Transcripts. After the filing of a Redaction Statement or court order granting a party's Motion to Redact Transcript, the court reporter will prepare and file a redacted version of the official transcript within 31 days from the date on which the official transcript was filed.

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Local Rule 81-1 – Notice of Removal and Response in Diversity Cases

(a) Notice Requirement. Every notice of removal based, in part or in whole, on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) must include:

(1) a statement that the amount in controversy, exclusive of interest and costs at issue satisfies the jurisdictional amount requirement; and

(2) a listing of the citizenship of each party.

(b) Response. Within 30 days after the filing of the notice of removal, every plaintiff who has not filed a motion to remand must file a statement responding to the notice of removal's allegations as to the citizenship of the parties and the amount in controversy. If the plaintiff lacks sufficient information upon which to form a belief about those allegations despite meeting and conferring in good faith with the removing party about them, the plaintiff may so state.

(c) Burden of Proof. Nothing in this rule alters the burden of proof with respect to jurisdictional allegations.

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Local Rule 81-2 – State Court Record and Pending Motions in Removed Actions

(a) Attachment of State Court Record. When removing an action from state court, the removing party must file a copy of the State Court Record as an attachment to the Notice of Removal. The State Court Record must include a copy of the state court docket sheet, all pleadings, motions, orders, and all other filings, organized in chronological order by the state court filing date.

(b) Format and Description of Electronic Attachment. Notwithstanding Local Rule 5-6, if the State Court Record is filed electronically, it should be created and filed as an attachment to the Notice of Removal as a single .pdf file. The filing party should describe the attachment as the State Court Record, listing each document filed. (*E.g.*, "State Court Record (Complaint, Appearance, Summons, Motion for Temporary Restraining Order)").

(c) Attachment of Operative Complaint. In addition to including the operative complaint in the State Court Record (as defined in paragraph (b) above), the removing party must file an additional copy of the operative complaint as a separate attachment to the Notice of Removal.

(d) Pending State Court Motions.

(1) Notice. At the time of removal, the removing party must file a separate notice listing any state court motions that remain pending at the time of removal.

(2) Obligation to Refile. If any motion remains pending in state court at the time of removal, and if the movant wishes the District Court to rule on the motion, the party that initially filed the motion must refile the motion in the District Court case, and attach any responses thereto, within seven (7) days of the filing party's appearance.

Note: Effective December 1, 2018, the rule is added to facilitate the court's receipt of the full state court record when a case is removed.

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Local Rule 83-3 - Courtroom and Courthouse Decorum

(a) Prohibited Activities. The following may not be done in connection with a judicial proceeding anywhere on a floor where a courtroom is located:

(1) taking photographs;

(2) making sound recordings (except by court reporters in the performance of their duties and Judicial Conference approved digital audio recordings made utilizing court-owned equipment); and

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

(b) Exceptions. The court may permit these activities when they are incidental to investitive, ceremonial, or naturalization proceedings.

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Local Rule 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.*** Attorneys admitted *pro hac vice* pursuant to Local Rule 83-6 may represent parties in a case.

(3) ***Foreign Legal Consultants.*** Foreign legal consultants may not be admitted to practice in the court (despite the provisions of Rule 5 of the Indiana Rules for the Admission to the Bar and the Discipline of Attorneys).

(b) Bar Membership. The bar consists of those persons who:

(1) have been admitted by the court to practice and have signed the roll of attorneys; and

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

(c) Admission.

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

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

(A) has good private and professional character; and

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

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(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 the *Seventh Circuit Standards of Professional Conduct* and the *Local Rules for the United States District Court for the Southern District of Indiana;*

(C) pays the required fees (law clerks to the court's judges and attorneys representing the United States are exempt from these fees);

(D) signs the roll of attorneys;

(E) registers for electronic case filing;

(F) gives a current address; and

(G) 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. The Indiana 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.

(f) Sanctions. Attorneys may be disbarred or suspended from practicing in the court for good cause, but only after having an opportunity to be heard. They may also be reprimanded as provided for in the court's Rules of Disciplinary Enforcement.

Note: Amended December 1, 2018, to add a requirement that new admittees to the court's bar certify they will abide by the court's Local Rules.

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Local Rule 83-6 - *Pro Hac Vice* Admission

(a) Authority to Represent Parties in a Case. An attorney who is not a member of the bar of the court may represent parties in a case if the nonmember has paid the required *pro hac vice* admission fee to the clerk of court and been granted leave by the court to appear *pro hac vice* in the case. A motion requesting *pro hac vice* admission must include the following information.

(1) Admission Status. The motion must include a statement indicating that the attorney requesting admission is admitted to practice, currently in active status, and in good standing as an attorney in another United States court or the highest court of any state.

(2) Disciplinary History. The motion must include a statement indicating whether the attorney requesting admission is currently or has ever been disbarred or suspended from practice before any court, department, bureau or commission of any state or the United States, or has ever received a reprimand or been subject to other disciplinary action from any such court, department, bureau or commission pertaining to conduct or fitness as a member of the bar.

(3) Certification as to Standards of Conduct. The attorney requesting admission must certify that he or she has reviewed the *Seventh Circuit Standards of Professional Conduct* and the Local Rules of the court, including the Rules of Disciplinary Enforcement, and will abide by these rules.

(b) Form of Filing *Pro Hac Vice* Motion. A motion requesting *pro hac vice* admission may be filed by:

(1) The Attorney Seeking Admission. The motion must be filed electronically if the attorney seeking *pro hac vice* admission is already registered for electronic filing in this district as required by Rule 5-3. Otherwise, the *pro hac vice* motion must be filed in paper form.

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(2) An Admitted Attorney of Record in the Case on Behalf of the Attorney Seeking Admission. When filed by an attorney of record on behalf of the attorney seeking admission, the motion must be filed electronically and be accompanied by a certification addressing requirements (a)(1) through (3) of this rule and bearing the original signature of the attorney seeking admission.

(c) 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.

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Local Rule 83-7 - Appearance and Withdrawal of Appearance

(a) General. Every attorney who represents a party or who files a document on a party's behalf must file an appearance for that party. Only those attorneys who have filed an appearance in a pending action are entitled to be served with case documents under Fed. R. Civ. P. 5(a).

(b) Removed and Transferred Cases. Attorneys whose names do not appear on the court's docket after a case has been removed from state court must file an appearance or a copy of the appearance they previously filed in state court. An attorney of record who is not admitted to practice before the court must either comply with this court's admission policy (see S.D. Ind. L.R. 83-5), or withdraw his or her appearance (see subdivision (c) of this rule) within 21 days after the case is removed or transferred to the court.

(c) Withdrawal of Appearance.

(1) An attorney must file a written motion to withdraw his or her appearance.

(2) The motion must fix a date for the withdrawal and must contain satisfactory evidence that the attorney provided the client with written notice of his or her intent to withdraw at least 7 days before the withdrawal date.

(3) If an attorney's withdrawal will leave a party without counsel, the motion must also include the party's contact information, including a current address and telephone number.

(4) The requirements of subparagraphs (2) - (3) do not apply when another attorney has appeared and remains of record for that party.

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Local Rule 83-8 – Referral of Cases to Bankruptcy Court

(a) Cases Referred to Bankruptcy Court. Consistent with 28 U.S.C. § 157(a), all cases and proceedings arising under Title 11 of the United States Code, or relating to a case under Title 11 of the United States Code, are referred to the district's bankruptcy court. This includes all cases removed under 28 U.S.C. §§ 1441(a) or 1452.

(b) Documents Filed in Cases in Bankruptcy Court. Documents filed in these cases, including the original petition, must be filed with the bankruptcy-court clerk and be captioned "United States Bankruptcy Court for the Southern District of Indiana."

(c) Promulgation of Bankruptcy Rules. Bankruptcy judges may make and amend rules of practice and procedure that:

(1) comply with—but do not duplicate—Acts of Congress and the Federal Rules of Bankruptcy Procedure, and

(2) do not prohibit or limit the use of the official forms.

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Local Rule 87 – Representation of Indigent Litigants

Preamble: All attorneys admitted to the bar of this court have agreed to follow the Indiana Rules of Professional Conduct, which state that it is "the basic responsibility" and an "ethical and social obligation" of all lawyers to provide pro bono legal services. Because of this obligation, the Indiana Rules of Professional Conduct provide that a lawyer "shall not seek to avoid appointment by a tribunal to represent a person except for good cause."

(a) Recruitment of Counsel. If the court determines that a litigant is unable to afford representation, the court may recruit counsel to represent an indigent litigant using the Voluntary Panel or the Obligatory Panel.

(1) ***Voluntary Panel.*** The Voluntary Panel consists of attorneys who have applied for membership and who are willing to volunteer to represent litigants who are unable to afford representation. Any attorney who is a member of this court's bar may join the Voluntary Panel.

(2) ***Obligatory Panel***. The Obligatory Panel consists of attorneys who are members of this court's bar and have appeared in a threshold number of civil cases in this district during the previous calendar year.

(A) Creation of the Obligatory Panel. The Obligatory Panel will be created annually. The threshold number of appearances used to determine which attorneys are eligible for the Obligatory Panel will depend on the need for representation in a given year. The threshold number will be set forth in a General Order. All attorneys who are in good standing and meet this threshold are eligible for selection to the Obligatory Panel unless exempted under Local Rule 87(a)(2)(B). Attorneys will be notified by the clerk's office if they are selected for the Obligatory Panel.

(B) Exemptions. An attorney is exempt from selection to the Obligatory Panel if the attorney:

(i) has a principal place of business more than sixty miles outside of this District; or

(ii) is employed full-time as an attorney by an agency of the United States, a state, a county, or any sub-division thereof; or

(iii) is employed full-time as an attorney by the Indiana Federal Community Defenders, Inc.; or

(iv) is employed full-time as an attorney by a not-for-profit legal aid organization.

(3) ***Frequency of Recruitment***. No attorney will be obligated to represent an indigent

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litigant more than once during a calendar year, except as provided in Local Rule 87(d), nor will an attorney be recruited to represent an indigent litigant sooner than twelve months after the conclusion of the attorney's most recent service as recruited counsel. Any recruited counsel who spends more than 100 hours in the course of representation under this rule may move for an exemption from the Obligatory Panel for an additional period of time. Any such motion must be filed within 30 days of the conclusion of the representation.

(b) Duties of Recruited Counsel. An Order of Recruitment serves as an appearance for recruited counsel effective 7 days after issuance, unless relief from the appointment is granted. The 7 days is tolled while any motion to withdraw is pending. Promptly following the filing of an Order of Recruitment, recruited counsel must communicate with the newly-represented litigant concerning the action.

(c) Duration of Representation. An attorney recruited under this rule must represent the litigant from the date the Order of Recruitment becomes effective until:

(1) the attorney withdraws as allowed under this rule; or

(2) the attorney is discharged or removed from the case; or

(3) the expiration of the time set forth in the court's Order of Recruitment in instances of limited appointments; or

(4) the court enters final judgment (if reasonable collection and enforcement efforts are not appropriate); or

(5) the attorney undertakes reasonable collection and enforcement efforts after final judgment.

(d) Withdrawal of Representation. After the filing of the Order of Recruitment in a case, recruited counsel may file a motion to withdraw pursuant to Local Rule 83-7 only on the following grounds, or on such other grounds as the assigned judge finds adequate for good cause shown:

(1) a conflict of interest precludes counsel from accepting the responsibilities of representing the litigant in the action; or

(2) in counsel's opinion, he or she is not competent to represent the litigant in the particular type of action assigned; or

(3) because of the temporary burden of other professional commitments involved in the practice of law, counsel lacks the time necessary to represent the litigant; or

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(4) some personal incompatibility or a substantial disagreement on litigation strategy exists between counsel and the litigant; or

(5) in counsel's opinion the litigant is proceeding for purpose of harassment, or the litigant's claims or defenses are not warranted under existing law and cannot be supported by good faith argument for extension, modification, or reversal of existing law; or

(6) relief from recruitment is warranted due to recent substantial prior assistance to the court as recruited counsel.

Any motion by recruited counsel for relief from an Order of Recruitment on any of the grounds set forth in this section must be made to the assigned judge promptly after recruited counsel becomes aware of the existence of such grounds, or within such additional period as may be permitted by the assigned judge for good cause shown.

(e) Consequences of Relief from Recruitment. Recruited counsel permitted to withdraw pursuant to subsections (d)(1), (d)(2), or (d)(3) of this rule will remain eligible for another recruitment during the remaining calendar year. Attorneys relieved from recruitment pursuant to subsection (d)(4), (d)(5), or (d)(6) of this rule will have completed their service for the remaining calendar year and will not be recruited for twelve months after the date in which they were relieved from recruitment. Should recruited counsel be permitted to withdraw for any other reason, the assigned judge will decide if the relieved counsel will be eligible for another recruitment during the remaining calendar year. In the absence of an affirmative decision on the matter by the assigned judge, the relieved counsel will remain eligible for recruitment.

(f) Attorney's Fees.

(1) ***Fee Agreements.*** Recruited counsel and the litigant may negotiate a fair and reasonable fee agreement at the outset of the representation. If an agreement is entered into that provides for fees, counsel must notify the court by filing a Notice of Fee Agreement within 28 days after the fee agreement is executed. This Notice may be filed *ex parte*. Fee agreements that include attorney compensation are not permitted in instances of limited appointments.

(2) ***Allowance of Fees.*** Upon the filing of a motion for attorney's fee by recruited counsel, the judge may award attorney's fees to recruited counsel for services rendered in the action as authorized by applicable statute (including 42 U.S.C. § 1997e(d)), regulation, rule, or other provision of law, including case law.

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(g) Expenses Incurred by Recruited Counsel. The litigant shall bear the cost of any expenses of the litigation to the extent reasonably feasible in light of the litigant's financial condition. Recruited counsel is not required to advance the payment of such expenses. However, it is permissible for recruited counsel, or the firm with which counsel is affiliated, to advance part or all of the payment of any such expenses without requiring that the

litigant remain ultimately liable for such expenses, except out of the proceeds of any recovery.

(1) ***Eligibility for Prepayment or Reimbursement of Expenses.*** Recruited counsel may move for the prepayment or reimbursement of expenses incurred in the preparation and presentation of the litigation. Any request for funds in excess of One Thousand Dollars ($1,000.00) – in total for the case - must be approved by the assigned judge before the expense is incurred.

(2) ***No Vested Right to Reimbursement or Prepayment.*** Neither the litigant nor recruited counsel has a vested right to prepayment or reimbursement, and the availability of funds may limit such payments.

(3) ***Procedures for Requesting Prepayment or Reimbursement and Authority to Incur Expense.*** The Procedures for requesting prepayment or reimbursement of expenses and the authority to incur expenses are set out in a General Order of the court.

Local Rules Advisory Committee Comments
Re: 2016 New Rule 87

Proposed Rule 87 was adopted out of necessity.

The Southern District of Indiana has an especially high volume of pro se and prisoner litigants. Over half of the district's civil case load is initiated pro se, and over half of the pro se cases are brought by prisoners. This requires the court to frequently recruit counsel to represent pro se litigants pursuant to 28 U.S.C. § 1915(e)(1).

In recent years, the Seventh Circuit has increasingly emphasized that § 1915(e)(1) requires district courts to recruit counsel for pro se litigants in a significant proportion of pro se cases, especially in complex cases brought by prisoners. *See, e.g.*, *Rowe v. Gibson*, 798 F.3d 622 (7th Cir. 2015); *Henderson v. Ghosh*, 755 F.3d 559 (7th Cir. 2014). Moreover, the Seventh Circuit has stated that "courts should strive to implement programs to help locate pro bono assistance for indigent litigants," *Perez v. Fenoglio*, 792 F.3d 768, 785 (7th Cir. 2015), and noted that the "mandatory nature" of the Northern District of Illinois's program makes it superior to strictly voluntary programs, *Dewitt v. Corizon, Inc.*, 760 F.3d 654, 659 (7th Cir. 2014).

Local Rule 87 is the court's effort, after consultation with a broad range of attorneys who regularly practice in this court, to ensure that the court can recruit counsel in every case in which the law requires it. The court estimates recruited counsel will be necessary in approximately 70 civil cases per year – many involving prisoner litigants. Despite the publication of this proposed Rule, it is the court's goal to provide representation to indigent litigants, when needed, by way of volunteer counsel, as happens now. The court will rely on the Obligatory Panel only when efforts to find volunteer counsel fall short.

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To summarize the process, subject to certain exemptions, attorneys who have appeared in the threshold number of cases in the preceding calendar year will be drawn upon to populate the "Obligatory Panel." Attorneys will be assigned a quarter during which they will be eligible for recruitment, and will be notified of the "duty" quarter well in advance.

For each case in which it is determined recruited counsel is required, initial efforts will be made to obtain volunteer counsel. If a motion to appoint counsel is granted, the case will be posted on the "Pro Bono Opportunities" section of the court's website (http://www.insd.uscourts.gov/pro-bono-opportunities). Twice a month an email will be sent to Voluntary Panel members asking them to consider taking a listed case. Any attorney admitted to practice in this district may register to participate in the Voluntary Panel. After two weeks, an email will be sent to the Obligatory Panel members that are "on call," asking for volunteers. After another two weeks, if no one has volunteered, the assigned judge will select an individual from that quarter's list of attorneys.

The court is committed to utilizing limited appointments when appropriate to pull attorneys into the most critical parts of cases (*e.g.*, exhaustion of administrative remedies), then releasing counsel from the case (unless counsel prefers to stay engaged).

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CRIMINAL RULES

Local Criminal Rule 1-1 - Bail in Criminal Cases

(a) The conditions of release of defendants and material witnesses are set forth in 18 U.S.C. § 3141, et seq., and Rule 46, Federal Rules of Criminal Procedure.

(b) When the appearance of a person in a criminal case is required by the Court to be secured by a surety,

(1) every surety except a corporate surety must own fee simple title to real estate, unencumbered except for current taxes and the lien of a first mortgage. The surety's equity in such property shall have a fair market value at least double the penalty of said bond; provided, however, that a proposed surety whose real estate is then subject to an existing appearance bond in this Court or in any other Court in this district, including, state, county or municipal Courts, shall not be accepted as a surety; and

(2) a corporate surety must hold a certificate of authority from the Secretary of the Treasury and must act through a bondsman registered with the Clerk of this Court.

(c) No person who executes appearance bonds for a fee, price or other valuable consideration shall be eligible as a surety on any appearance bond unless such person be a corporate surety which is approved as provided by law.

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Local Criminal Rule 2-1 - Standard Orders in Criminal Cases

The Court may issue a standard order in a criminal case which contains provisions for a plea of not guilty, a change of plea, trial date, attorney appearances, pretrial discovery, pretrial motions, plea agreement, and other matters. When such a standard order is issued, it shall be served on the defendant with the indictment or information. Copies of the form standard order are available from the Clerk of the Court.

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Local Criminal Rule 3-1 - Provisions for Special Orders in Appropriate Cases

(a) On motion of any party or on its own motion, when the Court deems it necessary, to preserve decorum and to maintain the integrity of the trial, the Court may issue a special order governing such matters as extra-judicial statements by parties and witnesses likely to interfere with the rights of any party to a fair trial, the seating and conduct in the Courtroom of parties, attorneys and their staff, spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order. Such special order may be addressed to some or all, but not limited to the following subjects:

(1) A proscription of extra-judicial statements by participants in the trial, including lawyers and their staff, parties, witnesses, jurors, and Court officials, which might divulge prejudicial matter not of public record in the case.

(2) Specific directives regarding the clearing of entrances to and hallways in the Courthouse and respecting the management of the jury and witnesses during the course of the trial to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers, and others, both in entering and leaving the Courtroom and Courthouse, and during recesses in the trial.

(3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations.

(4) Sequestration of the jury on motion of any party or the Court, without disclosure of the identity of the movant.

(5) Direction that the names and addresses of the jurors or prospective jurors not be publicly released except as required by statute, and that no photograph be taken or sketch made of any juror within the environs of the Court.

(6) Insulation of witnesses from news interviews during the trial period.

(7) Specific provisions regarding the seating of parties, attorneys and their staff, spectators and representatives of the news media.

(b) Unless otherwise permitted by law and ordered by the Court, all preliminary criminal proceedings, including preliminary examinations and hearings on pretrial motions, shall be held in open Court and shall be available for attendance and observation by the public.

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If the Court orders closure of a pretrial hearing pursuant to this Rule, it shall cite for the record its specific findings that compel the need for same.

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Local Criminal Rule 4-1 - Release of Information by Court Supporting Personnel

All Court supporting personnel, including among others, Marshals, Deputy Marshals, Court Clerks, Deputy Court Clerks, Bailiffs, and Court or Grand Jury reporters and their employees or subcontractors, are prohibited from disclosing to any person, without authorization by the Court, information relating to a grand jury or pending criminal case that is not part of the public records of the Court. This Rule shall be applicable also to divulgence of information concerning grand jury proceedings, arguments, hearings held in chambers or otherwise outside the presence of the public.

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Local Criminal Rule 5-1 - Release of Information by Attorneys in Criminal Cases

It is the duty of the attorneys for the government and the defense, including the law firm, not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, if such dissemination poses a serious and imminent threat of interference with the fair administration of justice.

The following actions will presumptively be deemed to pose a serious and imminent threat of interference with the fair administration of justice:

(a) With respect to a grand jury or other pending investigation of any criminal matter, the release, by a government lawyer participating in or associated with the investigation, of any extra-judicial statement, which a reasonable person would expect to be disseminated by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is under way, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers or otherwise to aid in the investigation.

(b) From the time of arrest, issuance of an arrest warrant or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without a trial, the release or giving of authority to release by a lawyer or law firm associated with the prosecution or defense, of any extra-judicial statement, which a reasonable person would expect to be disseminated, by any means of public communication, relating to that matter and concerning:

(1) the prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, the release by a lawyer associated with the prosecution of any information necessary to aid in the apprehension of the accused or to warn the public of any dangers he/she may present;

(2) the existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) the performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

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(4) the identity, testimony, or credibility of prospective witnesses, except announcement of the identity of the victim if the announcement is not otherwise prohibited by law;

(5) the possibility of a plea of guilty to the offense charged or a lesser offense;

(6) any opinion as to the accused's guilt or innocence or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his/her or its official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him/her and stating without elaboration the general nature of the defense.

(c) During a trial of any criminal matter, or any other proceeding that could result in incarceration, including a period of selection of the jury, the release or giving authority to release by a lawyer associated with the prosecution or defense, of any extra-judicial statement or interview, relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by any means of public communication, other than a quotation from or reference without comment to public records of the Court in the case.

Nothing in this Rule is intended to preclude the formulation or application of more restrictive Rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

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Local Criminal Rule 6-0 - Petitions for Habeas Corpus Motions Pursuant to 28 U.S.C. Sections 2254 and 2255 by Persons in Custody

Petitions for writs of habeas corpus and motions filed pursuant to 28 U.S.C. Sections 2254 and 2255 by persons in custody shall be in writing and signed under the penalty of perjury. Such petitions and motions shall be on the form contained in the Rules following 28 U.S.C. Section 2254, in the case of a person in state custody, or 28 U.S.C. Section 2255, in the case of a person in federal custody, or on forms adopted by general order of this Court, copies of which may be obtained from the Clerk of the Court.

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Local Criminal Rule 7-1 - Continuance in Criminal Cases

A motion for continuance in a criminal case will be granted only if the moving party demonstrates that the ends of justice served by a continuance outweigh the best interest of the public and the defendant to a speedy trial, as provided by 18 U.S.C. §3161(h)(8), or that the continuance will not violate the Speedy Trial Act deadlines for trial because of some other reason. The moving party shall submit with the motion a proposed entry setting out the findings as to these ends of justice, or such other reason why the continuance will not violate the Speedy Trial Act, 18 U.S.C §3151 *et seq*.

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Local Criminal Rule 8-1 - Assignment of Related Cases

(a) Conditions for Reassignment. A criminal case may be reassigned to another judge if it is found to be related to a lower-numbered criminal case assigned to that judge and each of the following criteria is met:

(1) all defendants in each of the cases are the same, or if the defendants are not all the same but at least one is the same, the cases are based upon the same set of facts, events or offenses;

(2) the handling of both cases by the same judge is likely to result in an overall saving of judicial resources; and

(3) neither case has progressed to the point where reassigning a case would likely delay substantially the proceedings in either case, or the Court finds that the assignment of the cases to the same judge would promote consistency in resolution of the cases or otherwise be in the interest of justice.

(b) Motion to Reassign. A motion for reassignment based on relatedness may be filed by any party to a case. The motion must be filed with, and will be decided by the judge to whom the lowest numbered case of the claimed related set is assigned for trial or other final disposition. If the set includes both felony cases, and one or more misdemeanors assigned to a magistrate judge, then the motion must be filed with, and will be decided by the district judge assigned to the lowest numbered felony case in the set. Copies of the motion must be served on all parties and on the judges for all of the affected cases. The motion must:

(1) set forth the points of commonality of the cases in sufficient detail to indicate that the cases are related within the meaning of subsection (a), and

(2) indicate the extent to which the conditions required by subsection (a) will be met if the cases are found to be related.

Any objection to the motion must be filed within 7 days of the filing of the motion.

(c) Order. The judge must enter an order finding whether or not the cases are related, and, if they are, whether the higher numbered case or cases should be reassigned to that judge. Where the judge finds that reassignment should occur, the Clerk of Court must reassign the higher numbered case or cases to the judge deciding the motion and to whom the lowest numbered case is assigned. A copy of any finding on relatedness and whether or not reassignment should take place must be sent to each of the judges before whom any of the higher numbered cases are pending.

(d) Scope of Reassignment Order. An order under this rule reassigning cases as related does not constitute a joinder order under Fed. R. Crim. P. 13.

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Local Criminal Rule 9-1 - Processing of Cases in Division Without a Resident Judge

(a) In any criminal case presided over by a Judge to whom such case was not regularly assigned upon its filing, in which there is more than one defendant and in which one or more but not all of the defendants enter a plea of guilty, the Judge taking such plea shall retain control over the defendant or defendants making such plea and proceed toward final disposition of the case in so far as it concerns such defendants. The Judge may then elect to retain the case in his/her control for purposes of trial and final disposition as to the remaining defendants or may refer the case back to the Judge to whom such case was originally assigned.

(b) In any criminal case in which a defendant enters a plea of guilty or is found guilty upon trial, the Judge taking such plea or presiding at trial, as the case may be, shall retain control of such case for disposition and sentencing.

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Local Criminal Rule 10-1 - The Grand Jury

(a) A regular session of the grand jury shall be called on the second Monday of February and August in each year, and shall serve for a six-month term. Each Indianapolis-based Judge shall in rotation impanel the grand jury.

(b) A petition to extend the session of a grand jury impaneled pursuant to this Rule shall be made to and decided by the Judge who impaneled that grand jury, the Motions Judge, or the Chief Judge.

(c) Each newly impaneled grand jury shall be assigned a number on the miscellaneous docket. All motions, orders, and other filings pertaining to matters before that grand jury shall bear that particular docket number and shall be maintained by the Clerk under seal, without the necessity for a motion to seal or order.

(d) All pre-indictment challenges to grand jury subpoenas or grand jury proceedings shall be made in writing and filed with the Clerk, and shall recite all pertinent facts including the grand jury number, the date of service of the subpoena, the appearance or production date of the subpoena, and the law. Such matters shall be ruled on by the District Judge who impaneled the grand jury, or, in his/her absence, the Motions Judge or the Chief Judge.

(e) Motions to quash the appearance of a witness or the production of records commanded by grand jury subpoena shall be filed and served upon the United States no later than 48 hours prior to the appearance or production date unless good cause exists for a later filing.

(f) Upon the filing of any objection to a grand jury subpoena, the appropriate District Judge will endeavor to rule upon the motion on or prior to the return date of the subpoena.

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Local Criminal Rule 11-1 - Records Relating to Presentence Reports and Probation Supervision

(a) Records maintained by the Probation Office of this Court relating to the preparation of presentence investigation reports are considered to be confidential. Such information may be released only by Order of the Court. Requests for such information in a presentence report being released shall be by written petition establishing, with particularity, the need for specific information contained in such reports.

(b) When a demand by way of subpoena or other judicial process is made of the probation officer either for testimony concerning information contained in such presentence reports or for copies of the presentence reports, the probation officer may petition the Court for instructions. The probation officer shall neither disclose the information nor provide the presentence report or copies of the presentence report except on Order of this Court or as provided in Rule 32(b)(3) of the Federal Rules of Criminal Procedure.

(c) Supervision records on persons under probation supervision are considered to be confidential. The occasional need to release information on probationers to governmental agencies is recognized as being conducive to the rehabilitative process. In those infrequent cases, the Chief U.S. Probation Officer has in his/her discretion the authority to release or not release the requested information.

Note: Subsection (d) deleted effective January 1, 2002.

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Local Criminal Rule 13-1 - Sentencing Procedure

(a) The sentencing hearing in each criminal case will be scheduled by the court in accordance with the following timetable, which commences with either the filing of a plea agreement, the entry of a guilty plea, or a verdict of guilty. In the event there is an intent on the part of the defendant to plead guilty, but no written plea agreement is filed, the parties shall file a petition to enter a plea of guilty.

(b) If the defendant is a cooperator and is petitioning to plead guilty, counsel for the defendant must file, under seal in the *individual defendant's* case, a Motion to Exclude Cooperator Information, which specifically references the Presentence Investigation Report ("PSR"). If the defendant is potentially eligible for relief from a mandatory minimum sentence, by way of the "Safety Valve" provision of 18 U.S.C. § 3553(f) (United States Sentencing Guidelines ("U.S.S.G.)§ 5C1.2(a)(1)-(5)), counsel may also request, in the same motion, that narrative concerning the Defendant's qualification for the Safety Valve reduction be excluded from the PSR, and request that only a reference to U.S.S.G. § 2D1.1(b)(17) be made (in order to accurately calculate the sentencing guideline range). Defense counsel should file such motion contemporaneously with the actions in subsection (a) above. In the event of a guilty verdict, defense counsel will have 14 days within which to file the Motion to Exclude Cooperator Information, and Safety Valve narrative, from the presentence report.

(c) Within 14 days after the commencement of one of the actions in subsection (a) above, counsel for the government and counsel for the defendant must submit in writing their respective versions of the facts pertaining to the instant offense to the probation officer of the court for inclusion in the Presentence Investigation Report.

(d) The Presentence Investigation Report, including guideline computations, will be completed and disclosed to the parties as early as feasible. If a Motion to Exclude Cooperation Information is granted, information regarding cooperation will be kept confidential and excluded from the presentence report. The presentence report will be deemed to have been disclosed when the document is electronically served upon counsel through the court's CM/ECF system or, if an attorney is not registered to receive electronic service, 3 days after a notice of the report's availability is mailed to the attorney. The probation office will also mail a disclosure letter to the defendant advising that the presentence report has been made available to both parties. The sentence recommendation provided to the court by the probation office will not be disclosed except to the court.

(e) Within 14 days following disclosure of the presentence report, unless the court determines otherwise, all counsel must file in writing with the probation officer and serve on each other all objections they may have as to any material information, sentencing classifications, sentencing guideline calculations, and policy statements contained in or omitted from the Report.

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(f) After receiving counsels' objections, if any, the probation officer will conduct any further investigation and make any necessary revisions to the Presentence Investigation Report. The officer may require counsel for both parties to meet with the officer in person or by telephone to discuss unresolved factual and legal issues. It is the obligation of an objecting party to seek administrative resolution of disputed factors or facts through consultation with opposing counsel and the probation officer prior to the sentencing hearing.

(g) The probation officer will submit the Presentence Investigation Report to the sentencing judge immediately after the receipt and processing of objections but no later than 7 days before the sentencing date. The probation officer will notify the court immediately if additional time is necessary to investigate and resolve disputed issues raised by the attorneys and the defendant during the review period. The Report will be accompanied by an addendum setting forth any objections any counsel may have asserted that have not been resolved, together with the officer's comments thereon. The probation officer will certify that the contents of the Report, including any revisions thereof, have been disclosed to the defendant and to counsel for the defendant and counsel for the government, and that the addendum fairly summarizes any remaining objections.

(h) Any party objecting to the Presentence Investigation Report, the guidelines, computations, or commentary will have a reasonable opportunity, usually at the sentencing hearing, but in any event in advance of imposition of the sentence, to present evidence or argument to the court regarding disputed factors or facts. The court may consider any reliable information presented by the probation officer, the defendant, or the government. The manner and form of such presentations are committed to the discretion of each sentencing judge on a case by case basis.

(i) The presentence report will be disclosed to the defendant's counsel and the government's counsel by the probation officer. Defense counsel will be responsible for making the necessary arrangements for review of the report by defendants within the schedules set out by the sentencing court. The unauthorized disclosure of the information contained in the presentence report, statements, and other attachments may be considered a contempt and punished accordingly. The presentence report will be filed under seal with the clerk of court and retained as part of the case file for whatever further judicial purposes may occur or be necessary.

Notes: July 1, 2017, amendment inserting (b) and technical amendment of (d) to clarify the means to request that cooperator information be excluded from a presentence investigation report. The amendment comes, in part, based on the actions of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, which is examining means to control the use of court documents to identify, threaten, and harm cooperators. August 7, 2015, amendment to (a) clarifies that the filing of a plea agreement can trigger the scheduling provisions of the rule. It also clarifies that if no plea agreement is filed, a petition to enter a plea of guilty must be filed. January 1, 2011, amendment to allow electronic service of presentence report and reflect previously adopted practice of defense counsel providing report to defendant rather than probation officer.

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December 1, 2009, stylistic amendment and technical amendment to (b) to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

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Local Criminal Rule 38-2 – Cases Challenging the Conviction and/or Sentence Where a Sentence of Death Has Been Imposed

(a) Applicability. This Rule applies to any case challenging the conviction and/or sentence where a sentence of death has been imposed including, but not limited to:

(1) a petition filed pursuant to 28 U.S.C. §§ 2241, 2254 or 2255; or

(2) a complaint brought pursuant to 42 U.S.C. § 1983, *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), or the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*

(b) Caption. The caption of the initiating document for any case filed pursuant to subdivision (a) must include the following language immediately below the case number:

DEATH PENALTY CASE
[if applicable] EXECUTION SCHEDULED [insert DATE]

(c) Contents of Petition or Complaint. Any petition or complaint filed pursuant to subdivision (a) must:

(1) identify by cause number and jurisdiction all other legal actions challenging the conviction or sentence challenged in the current complaint, petition, or motion; and

(2) cite every relevant judicial opinion, memorandum decision, order, and/or transcript from legal actions referenced in subdivision (1).

If the cited documents are not accessible through PACER or Odyssey, the documents must be provided to the clerk on paper.

(d) Action by Court Upon Filing of Petition or Complaint. Upon receipt of a petition or complaint under subdivision (a), the clerk will electronically forward the case initiating document, together with copies of any motions or requests submitted therewith to the following: (i) the Indiana Attorney General if the prisoner is in state custody or the United States Attorney for the Southern District of Indiana if the prisoner is in federal custody; (ii) the United States Marshal for the Southern District of Indiana; and (iii) the Warden or Superintendent of the institution where the prisoner is confined.

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(e) Accessibility of the Clerk's Office. The clerk will adopt procedures for filing of emergency motions or applications pursuant to this Rule when the clerk's office is closed. These procedures will be made available by the clerk to counsel of record in any case described in subdivision (a) in which a motion for stay of execution is filed.

Note: Effective September 16, 2019, former Local Criminal Rule 6-1 was deleted in its entirety and replaced with the text above. The revised rule no longer references "the form set out in Appendix A" - Criminal – Notice of Intention to File First Petition for Writ of Habeas Corpus by Person in State Custody Under Sentence of Death," which has been rendered obsolete due to the other revisions to this rule.

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Local Criminal Rule 49-1 – Filing of Documents

(a) Electronic Filing. Electronic filing of documents is generally required pursuant to Fed. R. Crim. P. 49(b)(3)(A).

(b) Documents Exempt from Electronic Filing. Any document that is exempt from electronic filing must be filed with the clerk and served on other parties in the case as required by Fed. R. Crim. P. 49(a)(4) and Fed. R. Crim. P. 49(b) as they relate to the service of non-electronic documents. Original documents consisting of more than one page must be fastened by paperclip or binder clip and may not be stapled. Copies for service on other parties must be stapled in the top left corner. Only the following documents are exempt from the electronic filing requirements of Fed. R. Crim. P. 49(b)(3):

(1) any case initiating document resulting in the assignment of a criminal or magistrate case number and/or any charging instrument, initiating or superseding, and accompanying documents;

(2) documents requiring the oath or affirmation of a law enforcement officer in the presence of a judge or magistrate;

(3) documents filed in open court;

(4) documents filed by *pro se* defendants;

(5) exhibits in a format that does not readily permit electronic filing (such as videos and large maps and charts);

(6) documents that are illegible when scanned into .pdf format;

(7) documents filed in cases not maintained on the ECF system; and

(8) any other documents that the court or these rules specifically allow to be filed directly with the clerk.

(c) Documents Requiring Hand Signatures. Waivers, plea agreements and other documents that require a defendant's signature or the signature of a person other than an attorney of record must be signed by hand and scanned into .pdf format for electronic filing, pursuant to Local Rule 5-7(b). All hand-signed

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documents that contain the signature of the defendant must be maintained in the custody of the filing attorney.

Note: Amended December 1, 2018, for consistency with amendments to Fed. R. Crim. P. 49, which become effective on December 1, 2018. Amended Fed. R. Crim. P. 49 addresses what papers must be served, service through the court's electronic-filing system and by other electronic means, and when certificates of service are required. The amended Rule largely parallels the amendments to the Civil Rules on each of these subjects.

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Local Criminal Rule 49.1-2 - Filing Under Seal

(a) Maintaining Cases Under Seal. There is a presumption upon the initial appearance of a defendant on a sealed charging instrument that the entire case, including a multi-defendant case in which the defendant is the first to appear, should be unsealed. To maintain a case under seal, no later than at the time of the initial appearance, a party must file a motion and brief in support establishing good cause why the court should maintain the case under seal following the procedures set forth in subsections (d) and (e). The clerk will maintain a seal on the case until the court rules on the motion. If the court denies the motion, the clerk will unseal the case 21 days after service of the Order, absent Fed. R. Crim. P. 59(a) objection, motion to reconsider, notice by a party of an intent to file an interlocutory appeal, or further court order.

(b) Filing Documents Under Seal - General Rule. Unless authorized in subsection (c), other rule, statute or court order, the clerk may not maintain under seal any document. Once a document is sealed, the clerk may not, without a court order, allow anyone to see it other than:

(1) the court and its staff;

(2) the clerk's staff; and

(3) the attorney(s) who has/have appeared or been appointed on appeal in the individual defendant's case to which the document pertains.

(c) No Separate Motion Necessary. 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:

(1) charging instruments (e.g., complaint, information, indictment) and accompanying documents (prior to the initial appearance of the defendant as set forth above in subsection (a);

(2) warrant-type applications (e.g., arrest warrants, search warrants, pen registers, trap and trace devices, tracking orders, cell site orders, and wiretaps under 18 U.S.C. §§ 2516 and 2703);

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

(4) documents filed in grand jury proceedings;

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(5) documents filed in juvenile proceedings;

(6) plea agreements that reference a defendant's cooperation and related documents, whether filed by the government or the defendant;

(7) motions for sentence variance filed pursuant to Fed. R. Crim. P. 35(b), 18 U.S.C. § 3553(e), or U.S.S.G. § 5K1.1, and supporting or related documents, including motions for temporary custody and sentencing memoranda;

(8) motions for competency evaluation and related documents, filed under the provisions of Fed. R. Crim. P. 12.2 and 18 U.S.C. § 4241.

With the exception of charging documents addressed in subsection (c)(1), such documents shall remain under seal subject to further order of the court.

(d) Separate Motion Necessary - Filing Documents Under Seal - Procedure.

(1) To file a document under seal, a party must file it electronically as required under section 18 of the *ECF Policies and Procedures Manual* unless excused from electronic filing under S.D. Ind. L.R. 5-2(a) and 5-3(e). In either case, the party must include a cover sheet as the first page for each document being filed under seal that must include:

(A) the case caption;

(B) the title of the document, or an appropriate name to identify it on the public docket if the title cannot be publicly disclosed; and

(C) the name, address, and telephone number of the person filing the document.

(2) Except as provided under subsection (c), a party filing a document under seal must contemporaneously:

(A) file a Motion to Maintain Document(s) Under Seal, and

(i) if the filing party designated the subject information confidential, *e.g.*, a trade secret, proprietary information, or a business practice or procedure, a Brief in Support that complies with the requirements of subsection (e); and/or

(ii) if the filing party did not designate the subject information confidential, an identification of the designating party(ies); and

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(B) unless the motion is to be considered *ex parte,* in which case no service is required, serve an unredacted and complete version of the sealed document upon all counsel and *pro se* parties.

(3) The designating party(ies) identified according to subsection (2)(A)(ii) must, within 14 days of service of the Motion to Maintain Document(s) under Seal, file a Statement Authorizing Unsealing of Document (or specific portions thereof), or a Brief in Support that complies with the requirements of subsection (e). If the designating party fails to file such Statement or Brief, then the filing party must notify the court of that failure. The court may summarily rule on the (d)(2)(A) motion to seal if the designating party does not file the required Statement or Brief.

(e) Brief in Support. A Brief in Support must not exceed 10 pages in length and must include:

(1) identification of the case and/or each specific document or portion(s) thereof that the party contends should remain under seal;

(2) the reasons demonstrating good cause to maintain the case and/or document, or portion(s) thereof, under seal including:

(A) why less restrictive alternatives to sealing, such as redaction, will not afford adequate protection; and

(B) how the case and/or document satisfies applicable authority for it to be maintained under seal; and

(C) the time period for which the case and/or document should remain sealed; and

(3) a statement as to whether maintenance of the case and/or document under seal is opposed by any party or why such party's position is unknown; and

(4) a proposed order as an attachment.

(f) Opposition to Maintenance Under Seal. The filing of an Opposition to a Motion to Maintain Case or Document(s) Under Seal is governed by S.D. Ind. L.R. 7-1, but the time for response is triggered by the filing of the Brief in Support. Any Brief in Opposition must not exceed 10 pages in length.

(g) Denial of Motion to Maintain Under Seal. If the court denies the motion, the clerk will unseal the document(s) 21 days after service of the Order, absent Fed. R. Crim. P. 59(a)

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objection, motion to reconsider, notice by a party of an intent to file an interlocutory appeal, or further court order.

Local Rules Advisory Committee Comments
Re: 2015 New Rule

New Local Criminal Rule 49.1-2 replaces Local Rule 5-11 for filing cases and/or documents under seal in criminal matters and includes a list of documents that may be filed under seal without a motion and a detailed procedure for obtaining permission from the court to maintain cases and filed documents under seal. Whenever practical, the parties should confer regarding redaction in lieu of filing sealed documents. In addition, the rule encourages the parties to follow Seventh Circuit guidance on the legal parameters for maintaining cases and documents under seal.

Note: Adopted effective January 1, 2015.

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Local Criminal Rule 57-1 – Public Access to Criminal Case Information - *Rule deleted effective December 1, 2007*

Note: The Local Rule was deleted effective December 1, 2007, as the enactment of Fed. R. Crim. P. 49.1, "Privacy Protection For Filings Made with the Court" - rendered Local Criminal Rule 57-1 duplicative and/or inconsistent.

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Local Criminal Rule 58-1 - Authority of United States Magistrate Judges in Criminal Matters

(a) Authority of Magistrate Judges. The authority of United States magistrate judges in criminal misdemeanor matters is governed by 18 U.S.C. § 3401 et seq., 28 U.S.C. § 636(a), and this Rule.

(b) Class A Misdemeanors.

i. **Special designation; Order of Reference.** The magistrate judges are hereby specially designated to try persons accused of, and sentence persons convicted of, Class A misdemeanor offenses. A magistrate judge may exercise this jurisdiction following an Order of Reference issued by the district judge.

ii. **Consent.** Both parties seeking an Order of Reference shall file, jointly or severally, their respective consents to proceed before the magistrate judge. The district judge may issue the Order of Reference in the judge's discretion.

iii. **Procedure.** The magistrate judge must advise the defendant of his/her right to trial, judgment and sentencing by the district judge, conduct all other proceedings required by 18 U.S.C. § 3401(b), and obtain the defendant's informed consent on the record.

(c) Petty Offenses (Class B and C Misdemeanors and infractions). The magistrate judge is authorized by statute and this Rule to conduct all proceedings relating to petty offenses without necessity of consent by the defendant or Order of Reference.

Local Rules Advisory Committee Comment Re: 2016 Amendment

Renumbering Explanatory Note: This is technical amendment. Local Rules are generally numbered consistently with the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, when practical. Fed. R. Crim. P. 12 applies to Pleadings and Motions. Consequently, this Rule is renumbered to become Local Criminal Rule 58-1, which achieves consistency with Fed. R. Crim. P. 58, Petty Offenses and Other Misdemeanors.

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S.D. Indiana – Appendix A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

_____,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
_____,	)	
	)	
Defendant.	)	

NOTICE REGARDING RIGHT TO RESPOND TO AND SUBMIT EVIDENCE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

[Moving party(ies)] has/have filed a motion seeking summary judgment. This means that the [moving party(ies)] seek(s) to have some part or all of this lawsuit decided against you without a trial. This motion is based on the evidence presented in the affidavits and documents attached to or referenced in the motion for summary judgment or based on the argument that you are unable to offer admissible evidence in support of your claim.

You have the right to file a response to the motion. Each of the facts stated in the "Statement of Material Facts Not in Dispute" which accompanies the motion for summary judgment will be accepted by the court as being true unless you submit your own affidavits or other admissible evidence disputing those facts. Your response may also dispute the admissibility of the evidence relied on in support of the motion for summary judgment. *However,*

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a failure to properly respond will be the same as failing to present any evidence in your favor at a trial.

You must file and serve a copy of your response to the motion for summary judgment by [date certain equal to 28 days after service of the motion, plus 3 days if served by mail] or by other such date ordered by the court. If you need more time to respond, you must file a motion with the court asking for more time before the deadline expires. The court may, but is not required to, give you more time.

Your response must also comply with all other portions of Federal Rule of Civil Procedure 56, and with Local Rule 56-1, copies of which are attached. Please note that for these rules you are considered a "party," the "non-moving party" and/or the "non-movant."

[Insert Federal Rule of Civil Procedure 56]

[Insert Local Rule 56-1]

Like other documents filed with the court, your response must comply with Southern District of Indiana Local Rule 5-1, which provides:

(a) Filing. A document or item submitted in relation to a matter within the court's jurisdiction is deemed filed upon delivery to the office of the clerk in a manner prescribed by these rules or the Federal Rules of Civil Procedure or authorized by the court. Any submission directed to the office of the clerk or any employee thereof in a manner that is not contemplated by this rule and without prior court authorization is prohibited.

(b) General. Any pleading, motion, brief, affidavit, notice, or proposed order filed with the court, whether electronically or with the clerk, must:

- be plainly typewritten, printed, or prepared by a clearly legible copying process;
- have at least 1-inch margins;
- use at least 12-point type in the body of the document and at least 10-point type in footnotes;
- be double spaced (except for headings, footnotes, and quoted material);

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- have consecutively numbered pages;
- include a title on the first page;
- if it has four or more exhibits, include a separate index that identifies and briefly describes each exhibit;
- if it is a form of order, include a statement of service, in the format required by S.D. Ind. L.R. 5-5(d) in the lower left corner of the document; and
- in the case of pleadings, motions, legal briefs, and notices, include the name, complete address, telephone number, facsimile number (where available), and e-mail address (where available) of the *pro se* litigant or attorney who files it.

(c) Electronic Filings. Any document submitted via the court's electronic case filing (ECF) system must be:

- in .pdf format;
- converted to a .pdf file directly from a word processing program, unless it exists only in paper format (in which case it may be scanned to create a .pdf document);
- submitted as one or more .pdf files that do not exceed 35 megabytes each (consistent with the *CM/ECF Policies and Procedures Manual*); and
- otherwise prepared and filed in a manner consistent with the *CM/ECF Policies and Procedures Manual*.

(d) Non-Electronic Filings.

(1) ***Form, Style, and Size of Documents.*** Any document that is not filed electronically must:

- be flat, unfolded, and on good-quality, 8.5" x 11" white paper;
- be single-sided;
- not have a cover or a back;
- be (if consisting of more than one page) fastened by paperclip or binder clip and may not be stapled;
- be two-hole punched at the top with the holes 2 ¾" apart and appropriately centered; and

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- include the original signature of the *pro se* litigant or attorney who files it.

(2) ***Request for Nonconforming Fastening.*** If a document cannot be fastened or bound as required by this rule, a party may ask the clerk for permission to fasten it in another manner. The party must make such a request before attempting to file the document with nonconforming fastening.

(e) Nonconforming Documents. The clerk will accept a document that violates this rule, but the court may exclude the document from the official record.

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S.D. Indiana – 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 existing 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

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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.

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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 an 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

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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 expense or 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

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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 an 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.

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11. We will not adopt procedures that needlessly increase litigation expense.

12. We will bring to lawyers' attention uncivil conduct which we observe.

Judges' Duties to Each Other

1. We will be courteous, respectful, and civil in opinions, ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.

2. In all written and oral communications, we will abstain from disparaging personal remarks or criticisms, or sarcastic or demeaning comments about another judge.

3. We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice.