UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

LOCAL RULES

GENERAL, CIVIL, AND

CRIMINAL

Effective February 1, 2010.

LOCAL RULES COMMITTEE
FOR THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
September 2019

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INTRODUCTION

The Local Rules are divided into three parts: (1) General Local Rules applicable to civil and criminal cases; (2) Civil Local Rules applicable only to civil cases; and (3) Criminal Local Rules applicable only to criminal cases. Each part begins with a rule defining its scope.

Following the recommendation of the Judicial Conference, the numbering of the General and the Civil Local Rules has been tied to the Federal Rules of Civil Procedure and, in the case of the Criminal Local Rules, to the Federal Rules of Criminal Procedure.

Some of the Local Rules are similar to certain Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure. The Local Rules do not, however, repeat the Federal Rules in their entirety, and practitioners are advised to consult both the Local Rules and the applicable Federal Rules.

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parties and the neutral evaluator agree. After eight hours in one or more ENE sessions, if all the parties agree that further assistance of the neutral evaluator is desired, the neutral evaluator may charge his or her standard hourly billing rate or such other rate that is acceptable to the neutral evaluator and all parties.

Committee Comment: *Civil L. R. 16(a) has been updated to expand the list of topics the parties must be expected to discuss at the Rule 16 conference. Counsel for the parties are expected to have good faith and meaningful discussions of all of the enumerated topics in advance of the Rule 16 conference.*

Nothing in Civil L. R. 16(d)(3) prohibits parties from entering into written agreements resolving some or all of the case or entering into and filing procedural or factual stipulations based on suggestions or agreements made in connection with these ADR processes. Any written agreements or stipulations filed with the Court are public records, unless otherwise sealed pursuant to General L. R. 79(d)(4).

Civil L. R. 16(d) has been expanded to include an additional form of alternative dispute resolution (ADR)—Early Neutral Evaluation (ENE)—that each judge is to consider at the ADR evaluation conference held during the early stages of the case. As with other forms of ADR, the judge may encourage and even order the parties to participate in ENE. Unlike some other forms of ADR, which typically take place after substantial discovery has been completed, ENE is intended to occur early in the litigation, before the parties have invested substantial time and resources in the case and before substantial attorney fees have been incurred. ENE is intended to be inexpensive and is not a substitute for other forms of ADR. It may be used in addition to other forms of ADR that typically occur later in the case.

Under Fed. R. Civ. P. 16(b)(3)(B)(v) effective December 1, 2015, absent contrary Congressional action, practitioners are encouraged to seek a pre-motion conference with the court.

IV. PARTIES [Reserved]

V. DISCLOSURES AND DISCOVERY

Civil L. R. 26. Duty to Disclose; General Provisions Governing Discovery.

(a) Conference of the Parties; Planning for Discovery. The parties' discovery plan must indicate whether they anticipate any party will be required to disclose or be requested to produce electronically stored information. If so the parties must consider:

(1) the reasonable accessibility of electronically stored information and the burdens and expense of discovery of electronically stored information;

(2) the format and media for the production of electronically stored information;

(3) measures taken to preserve potentially discoverable electronically stored information from alteration or destruction;

(4) procedures for asserting post-production claims of privilege or of protection as trial-preparation material; and

(5) other issues in connection with the discovery of electronically stored information.

(b) Disclosure of Expert Testimony.

(1) Unless otherwise stipulated or ordered by the Court, each party must disclose to every other party the substance of all evidence under Fed. R. Evid. 702, 703 or 705 that the party may use at trial, including the evidence of witnesses who have not been retained or specially employed to provide testimony, subject to the following:

> **(A)** Each party must provide the written report required under Fed. R. Civ. P. 26(a)(2)(B) for a witness who has been retained or specially employed to provide expert testimony or one whose duties as the party's employee regularly involve giving expert testimony.
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> **(B)** A person, including a treating physician, who has not been retained or specially employed to provide expert testimony, or whose duties as the party's employee do not regularly involve giving expert testimony, may be used to present evidence under Fed. R. Evid. 702, 703 or 704 only if the party offering the evidence discloses to every other party the information identified in Fed. R. Civ. P. 26(a)(2)(C).

(2) Absent a stipulation or a Court order, disclosures required under this rule must be made in accordance with Fed. R. Civ. P. 26(a)(2)(C).

(c) Completion of Discovery. Unless the Court orders otherwise, all discovery must be completed 30 days before the date on which trial is scheduled. Completion of discovery means that discovery (including depositions to preserve testimony for trial) must be scheduled to allow depositions to be completed, interrogatories and requests for admissions to be answered, and documents to be produced before the deadline and in accordance with the provisions of the Federal Rules of Civil Procedure. For good cause, the Court may extend the time during which discovery may occur or may reopen discovery.

(d) Standard Definitions Applicable to All Discovery.

(1) The full text of the definitions set forth in subparagraph (2) is deemed incorporated by reference in all discovery, and may not be varied by litigants, but does not preclude (i) the definition of other terms specific to the particular litigation, (ii) the use of abbreviations, or (iii) a more narrow definition of a term defined in paragraph (2).

(2) Definitions. The following definitions apply to all discovery:

(A) Communication. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

(B) Document. The term "document" is defined to be synonymous in meaning and equal in scope of the usage of this term in Fed. R. Civ. P. 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

(C) To Identify.

(i) With Respect to Persons. When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(ii) With Respect to Documents. When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

(D) Person. The term "person" is defined as any natural person or any business, legal, or governmental entity, or association.

(e) Confidentiality of Discovery Materials.

(1) All motions and stipulations requesting a protective order must contain sufficient facts demonstrating good cause. Upon a showing of good cause, the Court may enter a protective order regarding confidentiality of all documents produced in the course of discovery, all answers to interrogatories,

all answers to requests for admission, and all deposition testimony. A protective order template is attached as an Appendix to these Local Rules.

(2) A party may challenge the designation of confidentiality by motion. The movant must accompany such a motion with the statement required by Civil L. R. 37. The party prevailing on any such motion is entitled to recover as motion costs its actual attorney fees and costs attributable to the motion.

(3) At the conclusion of the litigation, all material not received in evidence and treated as confidential under this Rule must be returned to the originating party. If the parties so stipulated, the material may be destroyed.

(f) Filing Papers Under Seal. A party seeking to file a paper under seal must follow the procedure set forth in General L. R. 79(d). This includes the filing of information covered by a protective order.

Committee Comment: *The provisions of Civil L. R. 26 do not apply to actions for review on an administrative record.*

The Committee members disagreed on the question of whether Civil L. R. 26(b)(1)(A) should require a written report from a treating physician who regularly gives expert testimony for the physician's employer in other contexts.

The disclosure obligations relating to witnesses who may be used to present evidence under Fed. R. Evid. 702, 703 or 704, but have not been retained or specially employed to provide expert testimony, or whose duties as the party's employee do not regularly involve giving expert testimony, should be discussed at the Rule 16 conference.

Practitioners should review Banister v. Burton*, 636 F.3d 828 (7th Cir. 2011) and related cases regarding treating physicians.*

The designation of a paper as confidential under the terms of a protective order is not sufficient to establish the basis for filing that document under seal. The party seeking to withhold the document from the public record must file a motion to seal in accordance with General L. R. 79(d).

Civil L. R. 33. Interrogatories.

(a) Limitation on Interrogatories.

(1) Any party may serve upon any other party no more than 25 written interrogatories. The 25 permissible interrogatories may not be expanded by the creative use of subparts.