COMPILED LOCAL RULES and COMMITTEE COMMENTS

of the

UNITED STATES DISTRICT COURT

for the

NORTHERN DISTRICT OF INDIANA

by
Roger B. Cosbey
Chairperson, Local Rules Advisory Committee and United States Magistrate Judge

Effective Date: December 1, 2009

2008 ACKNOWLEDGMENT

The substantial body of work conducted by the Local Rules Advisory Committee over the years is revealed and memorialized in this compilation. If there is any praise due for the current state of this District's Local Rules, it belongs to the members of this Committee.

Particular recognition is due, however, to Professor Jay Tidmarsh of the University of Notre Dame Law School for his early and continuing contributions to the analysis, drafting and editing of the Local Rules, as well as all of the 1994 Comments.

Finally, appreciation is due to Committee member Lori Kuchmay, career law clerk to Judge William C. Lee, for her editing assistance and to Samantha Davis, intern in the chambers of Magistrate Judge Roger B. Cosbey, for her excellent word processing skills.

December 22, 2008.

Roger B. Cosbey
Chairperson Local Rules Advisory
Committee and Magistrate Judge
United States District Court
Northern District of Indiana

2009 ACKNOWLEDGMENT

In 2009, the Local Rules Advisory Committee conducted, through various sub-committees, a comprehensive review of the Court's local rules with particular attention devoted to the new time computation amendments imposed by the Federal Rules of Civil Procedure effective December 1, 2009. The Committee's hard work yielded an extensive series of amendments.

In addition, Professor Jay Tidmarsh was asked to canvass the local rules of some other districts to see if they have provisions we might want to use. His comprehensive report revealed, however, that our local rules require no augmentation, which is one reason why there are few, truly new local rules this year.

Finally, this year's Compilation benefitted from the excellent editing work of Michelle Floyd, a third year law student at Valparaiso University, and an intern with the Court. The Court is grateful for her assistance.

January 11, 2010

Roger B. Cosbey
Chairperson Local Rules Advisory
Committee and Magistrate Judge
United States District Court
Northern District of Indiana

EXPLANATORY STATEMENT CONCERNING THE COMPILATION

In 1986 the Judicial Conference of the United States authorized its Committee on Rules of Practice and Procedure to undertake a study of the local rules of the district courts. Just prior to that action, and after more than a year of study, this court adopted a new set of local rules with an effective date of January 1, 1987.

As instructed, the Committee on Rules of Practice and Procedure soon embarked on a Local Rules Project that resulted in some model rules and a suggested uniform numbering system. With these improvements in place, and recognizing that its local rules did not follow the recommended numbering convention, this court undertook a major effort to revise the local rules throughout the early 1990's. The result was a re-styled and recast set of local rules bearing an effective date of January 1, 1994.

The Advisory Committee Comments from the 1994 revision begin the comment section for each rule adopted on that date. To the extent that a present rule can trace its lineage to a rule before 1994, it is noted in the text of the Comments. If a rule was amended or added later, that too is noted in the Comments.

Editorial changes or explanatory notations that were necessary or desirable to the understanding or use of any original comment, are illustrated by bracketing. In some instances, Committee Comments have been shortened for stylistic reasons, but with no change to their overall meaning. Longer editorial comments that offer some explanatory context to a local rule are denoted by brackets and with the notation “Compiler’s Note”. Finally, no effort was made to include comments concerning various General Orders that have from time to time altered certain court practices (particularly concerning Local Rule 16.1), as those were generally transient in nature and for the most part, eventually incorporated into the applicable rule with a Committee Comment.

The reader will note that the rules in this volume are in 14 point type with a Times New Roman font; the comments are in 12 point type and also uses a Times New Roman font.

With this volume in hand, the Northern District practitioner will, for the first time, have a comprehensive set of Local Rules that traces the evolution and intent of each local rule and its amendments.

R.B.C.

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L.R. 1.1

Scope of the Rules

(a) **Title and Citation**. These rules shall be known as the Local Rules of the United States District Court for the Northern District of Indiana. They may be cited as "N.D. Ind. L.R. __."

(b) **Effective Date**. These rules, as amended, become effective on December 1, 2009.

(c) **Scope of Rules**. These rules shall govern all proceedings in civil and criminal actions in this court. No litigant shall be bound by any local rule or standing order which is not passed in accordance with Fed. R. Civ. P. 83 and 28 U.S.C. §§ 2071 and 2077.

(d) **Relationship to Prior Rules; Actions Pending on Effective Date**. These rules supersede all previous rules promulgated by this court or any judge of this court. They shall govern all applicable proceedings brought in this court after they take effect. They also shall apply to all proceedings pending at the time they take effect, except to the extent that in the opinion of the court the application thereof would not be feasible or would work injustice, in which event the former rules shall govern.

(e) **Modification or Suspension of Rules.** In individual cases the court, upon its own motion or the motion of any party, may suspend or modify any of these rules if the interests of justice so require.

Committee Comments

1994 Amendment

This rule is adopted from proposed Model Rules, with a slight change in subparagraph (c). The Committee intends these rules to apply to both civil and criminal cases, unless the context of a particular rule indicates that the rule applies to only civil or criminal cases.

2000 Amendment

The effective date of L.R. 1.1(b) was changed to reflect the current year. The Committee also changed the citation abbreviation for Federal Rules of Civil Procedure to Fed. R. Civ. P., throughout the local rules and has corrected these citations throughout.

2002 Amendment

The effective date of L.R. 1.1(b) was changed to reflect the current year.

2004 Amendment

The effective date of L.R. 1.1(b) was changed to reflect the current year.

2009 Amendment

In light of the new time calculations coming to the Federal Rules on December 1, 2009, the Committee recommended making any amendments contemporaneously effective as of that date. In addition, the phrase "as amended" was added to paragraph (b) to reflect prior and current amendments.

L.R. 1.2

Availability of the Local Rules

Copies of these rules, as amended and with any appendices attached hereto, are available from the clerk's office for a reasonable charge, and available free of charge at the court's website at *www.innd.uscourts.gov*.

When amendments to these rules are made, notice of such amendments shall be provided among other places, in *Res Gestae*, published monthly by the Indiana State Bar Association.

When amendments to these rules are proposed, notice of such proposals and of the ability of the public to comment shall be provided.

Committee Comments

1994 Amendment

Committee adopted this rule from the Local Rules Project's proposed Model Rules.

2000 Amendment

Because of the convenience and prevalence of the internet and the ability of the court to facilitate requests for general information via the internet, the Committee revised this rule to include the address of the court's website and to indicate that copies of the local rules are available on the website at no charge.

L.R. 1.3

Limitations on Sanctions for Errors as to Form

The court may sanction any attorney or person appearing *pro se* for violation of any local rule governing the form of pleadings and other papers filed with the court by the imposition of a fine not to exceed $1,000.00, or by ordering stricken, after notice and opportunity to be heard or to cure the defect, a paper which does not comply with these rules. Local rules governing the form of pleadings and other papers filed with the court include, but are not limited to, those local rules regulating the paper size, the number of copies filed with the court, and the requirement of a special designation in the caption.

Committee Comments

Amendment in 1994

This [new] rule is intended to extend to attorneys, parties, and *pro se* litigants. The text is based on the Local Rule Project's proposed Model Rules, with some minor changes and the addition of the final sentence. The final sentence makes clear that the entry of a sanction is not the court's only remedy for non-conforming filings; the court can in proper circumstances order the clerk to strike the paper. In light of the recent amendment to Fed. R. Civ. P. 5 (e) [now, Rule 5(d)(4)], however, the clerk will no longer have the power to strike non-conforming pleadings.

1996 Amendment

The rule was stylistically amended by incorporating the former last sentence ("nothing in this rule shall prohibit the court from ordering stricken from the record a paper which does not comply with these rules") into the first sentence and providing the requirement that there first be notice and an opportunity to be heard.

2000 Amendment

A minor editorial change was made.

L.R. 4.3 PAYMENT OF FEES BY IN FORMA PAUPERIS STATUS
(deleted 2009)
~~L.R. 4.3~~

~~Payment of Fees by in Forma Pauperis Status~~

~~An applicant who seeks leave to proceed *in forma pauperis* without prepayment of fees and costs may be required to make a partial payment of filing fees in an amount to be determined by the court. An applicant who is ordered to make a partial fee payment shall have thirty (30) days to show cause why he cannot make the partial fee payment.~~

Committee Comments

1994 Amendment

This [new] rule is intended to ensure that persons who wish to proceed *in forma pauperis* should pay at least an equitable portion of the filing fees in appropriate cases.

2009 Amendment

The Committee recommended deleting this rule because individual orders are entered in these types of cases addressing the partial payment requirement.

L.R. 5.1

Filing of Documents by Electronic Means

Documents may be filed, signed and verified by electronic means to the extent and in the manner authorized by the CM/ECF User Manual approved by the court. A document filed by electronic means in compliance with this Local Rule constitutes a written paper for the purposes of these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

Committee Comments

2003 Amendment

The Committee has modeled Local Rules 5.6 and 5.7 relating to electronic filing from the two enabling rules from the Middle District of Pennsylvania and believes that these two rules, with modifications, are the appropriate enabling rules to enact CM/ECF in this district. The Committee has omitted from the rule a reference to a "Standing Order regarding Electronic Case Filing Policies and Procedures" because the Committee is uncertain that the court needs a standing order or desires one.

In addition, the Committee added language to expressly state that the CM/ECF User Manual must be approved by the court. This language is proposed to alleviate a concern, expressed by some Committee members, that the CM/ECF User Manual would be enacted or modified without approval of the court.

2009 Amendment

The Committee recommended re-ordering the 5 series Local Rules to advance the electronic filing Local Rules for consistency with the Southern District and to give them more prominence. Correspondingly, Local Rule 5.1 which largely deals with paper filing has been re-numbered to 5.4. This Local Rule was formerly 5.6, but has now been re-numbered to 5.1.

L.R. 5.2

Service of Documents by Electronic Means

Documents may be served through the court's transmission facilities by electronic means to the extent and in the manner authorized by the CM/ECF User Manual approved by the court. Transmission of the Notice of Electronic Filing through the court's transmission facilities constitutes service of the filed document upon each party in the case who is registered as a Filing User. Any other party or parties shall be served documents according to these Local Rules and either the Fed. R. Civ. P. or the Fed. R. Crim. P.

Committee Comments

2003 Amendment

See Committee Comments relating to the 2003 adoption of L.R. 5.6.

2009 Amendment

The Committee recommended this Local Rule be re-numbered for the reasons set out in the comment concerning Local Rule 5.1. This Local Rule was formerly 5.7, but has now been re-numbered to 5.2.

L.R.5.2 PROTECTION OF CERTAIN PERSONAL IDENTIFIERS
(deleted 2008)
~~L.R. 5.2~~

~~Protection of Certain Personal Identifiers~~

~~(a) **General rule.** The parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all papers filed with the court, including exhibits thereto, whether filed electronically or in paper:~~

~~(1) **Social Security numbers.** If an individual's social security number must be included in a paper, only the last four digits of that number should be used.~~

~~(2) **Names of minor children.** If the involvement of a minor child must be mentioned, then only the initials of that child, or some other means of identification approved by the court under seal, should be used to protect the child's anonymity.~~

~~(3) **Dates of birth.** If an individual's date of birth must be included in a paper, only the year should be used.~~

~~(4) **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.~~

~~(b) **Sealing of unredacted papers.** A party wishing to file a paper containing the personal data identifiers listed above may:~~

~~(1) file an unredacted version of the document under seal, or~~

~~(2) file a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its(their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete~~

~~personal data identifier. The reference list must be filed under seal, and may be amended as of right.~~

~~The unredacted version of the document or the reference list shall be retained by the court under seal as part of the record. This paper shall be retained by the court as part of the record. The court may, however, still require the party to file a redacted copy for the public file.~~

~~(c) **Social Security cases.** In cases filed under the Social Security Act, 42 U.S.C. § 405(g), there is no need for redaction of any information from the documents filed in the case.~~

~~(d) **Responsibility for redaction.** The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The clerk will not review each paper for compliance with this rule.~~

Committee Comments

2003 Amendment

The new rule is in response to the E-Government Act of 2002 which requires redaction of personal identifiers in filings. The Committee modified this rule from a proposed model rule endorsed by the Judicial Conference. Subsection (c) involves a special rule requiring both an unredacted and a redacted copy of the Complaint to be filed in social security cases. The unredacted version must be filed under seal. This provision is proposed in response to the Government's concern that the filing of redacted copies only would omit critical information such as the complainant's social security number, birth date and other identifiers which are necessary for the Government to accurately identify the complainant.

2005 Amendment

The revisions to the rule are in compliance with the policy of the Judicial Conference of the United States and E-Government Act of 2002, and intended to promote electronic access to case files while also protecting personal privacy and other legitimate interests. Subsection (c) is revised to reflect that there is no need for redaction of documents filed in social security cases since those cases are not electronically available to the public. In addition, the revisions are consistent with the Southern District's local rule 5.2.

2006 Amendment

The amendments to this rule are intended to conform the Northern District rule, at least in part, to the Southern District's rule. The Southern District recently amended its rule relating to the naming of minor children in a complaint due to its concern that the privacy rights of juveniles were compromised by referring to the child's initials, especially if the child's parents are required to be

named, as the rule previously provided. The Southern District remedied this concern through use of court approved pseudonyms pursuant to a motion. The Committee's proposed revisions capture the essence of the Southern District's rule without adopting it verbatim. The Committee believed that the issue was properly addressed by a revision to subsection (a)(2). Further, the amendment is not intended to limit pseudonyms to only the name of the minor child; rather, it is contemplated that in some instances the parent's name should also appear as a pseudonym.

2008 Amendment

This rule captioned "Protection of Certain Personal Identifiers" was deleted by General Order 2008-12 on August 18, 2008. The rule was no longer considered necessary in light of Fed. R. Civ. P. 5.2 that became effective on December 1, 2007.

L.R. 5.3

Filing Documents Under Seal

(a) General Rule. No document will be maintained under seal in the absence of an authorizing statute, court rule, or court order.

(b) Filing of Cases Under Seal. Any new case submitted for filing under seal must be filed on paper with the clerk pursuant to the CM/ECF Civil and Criminal User Manual for the Northern District of Indiana and accompanied by a motion to seal and proposed order. Any case presented in this manner will be assigned a new case number, District Judge, and magistrate judge. The clerk will maintain the case under seal until a ruling granting the motion to seal is entered. If the motion to seal is denied, the case will be immediately unsealed with or without notice to the filing party.

(c) Filing Ex Parte and Sealed Documents in a Civil Case. Materials presented as sealed documents or filed ex parte in civil cases, other than case originating documents, shall be filed electronically pursuant to the CM/ECF Civil and Criminal User Manual for the Northern District of Indiana.

(d) Filing Ex Parte and Sealed Documents in a Criminal Case. Materials presented as sealed documents or filed ex parte in criminal cases shall be filed manually on paper inside an envelope which allows them to remain flat. Affixed to the exterior of the envelop shall be an 8 ½ x 11" cover sheet containing:

(1) the case caption;

(2) the name of the document if it can be disclosed publicly, otherwise an appropriate title by which the document may be identified on the public docket;

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

(4) in the event the motion requesting the document be filed under seal does not accompany the document, the cover sheet must set forth the citation of the statute or rule or the date of the court order authorizing filing

under seal.

(e) Notice of Manual Filing.. The party manually filing a sealed document in a criminal case shall file electronically a Notice of Manual Filing (see Form in CM/ECF Civil and Criminal User Manual for the Northern District of Indiana.)

Committee Comments

2005 Amendment

This new Local Rule is adopted from the Court's General Order 2004-19. The Southern District has an identical local rule and the Committee concluded that the information in the General Order was well-suited for inclusion in the local rules for conformity with the Southern District. The Committee also concluded that conversion of the General Order to a local rule would call the information in the rule to the attention of the practicing bar. The Committee removed the phrase "by the assigned District Judge" from subparagraph (b); motions to seal may be granted by either a magistrate judge or district judge and thus the Committee removed the limiting language in that subparagraph.

2008 Amendment

In October 2007 the clerk began using the ability of the CM/ECF system to designate cases, docket entries and PDF documents as "sealed" or "ex parte," and to begin uploading these documents to the system in PDF format with access granted only to the appropriate parties, for civil cases only. All sealed and ex parte materials in both civil and criminal cases have previously been maintained on paper in the clerk's office and not uploaded to the system in PDF format. The proposed changes to L.R. 5.3 address the need to now distinguish between civil cases, where sealed and ex parte documents will be filed electronically, and criminal cases, where sealed and ex parte materials will still be maintained on paper. References to the CM/ECF User Manual, where attorneys can find detailed instructions for filing sealed and ex parte documents have also been added to the rule.

L.R. 5.4

General Format of Papers Presented for Filing

(a) **Form, Style, and Size of Papers.** In order that the files of the clerk's office may be kept under the system commonly known as "flat filing," all papers presented to the clerk for filing shall be flat and unfolded. All filings shall be on white paper of good quality, 8-½" x 11" in size, and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, and double spaced, except for headings, footnotes and quoted material. The filings shall have no covers or backs. The title of each pleading must be set out on the first page. Each page shall be numbered consecutively. Any paper presented to the clerk for filing which contains four or more exhibits shall include a separate index identifying and briefly describing each exhibit. The court encourages the use of recycled paper.

(b) **Signature**. Every pleading, motion, or other paper shall clearly identify the name, complete address, telephone number, facsimile number (where available) and email address (where available) of the *pro se* litigant or attorney. The original of any pleading, motion or other paper that contains a rubber stamp or facsimile signature shall be deemed unsigned for purposes of Fed. R. Civ. P. 11 and 26(g) Affidavits shall require only the signature of the affiant.

(c) **Number of Copies; Return of File-stamped Copies.** If a party wishes to receive by return mail a file-stamped copy of the pleading, motion, or paper, the party shall include an additional copy to be file-stamped, and a self-addressed envelope of adequate size and with adequate postage.

(d) **Filing with Appropriate Office of the Clerk.** Except for time-sensitive matters, all pleadings, motions, and other papers shall be filed with the office of the clerk for the division in which the case is pending. With respect to time-sensitive matters, a paper may be filed with any office of the clerk, but the party filing the time-sensitive paper must include with the filing an envelope of which is of adequate size, which contains adequate postage, and which is addressed to the office of the clerk in the division in which the case is pending. "Time-sensitive" matters are those in which the rights of a party or other person will be prejudiced if the document is not filed on

the date on which it is tendered. All filings must be filed with the clerk of court. The transmission of papers to a judge in any manner for the purpose of filing is prohibited.

(e) **Form of Orders.** The filing of a motion or petition requiring the entry of a routine or uncontested order by the judge or the clerk shall be accompanied by a suitable form of order.

(f) **Form of Notices.** Whenever the clerk is required to give notice, the party or parties requesting such notice shall furnish the clerk with sufficient copies of the notice to be given and the names and addresses of the parties or their counsel to whom such notice is to be given.

(g) **Proof of Service of Papers.** Litigants must be aware that proof or acknowledgment of service is required by several rules including Fed. R. Civ. P. 4, 4.1, and 5(d) .

(h) **Notice by Publication**. All notices required to be published in a case shall be delivered by the clerk of the court to the party originating such notice or the party's counsel, who shall have the responsibility for delivering such notice to the appropriate newspapers for publication.

Committee Comments

1994 Amendment

This rule derives primarily from present L.R. 7 [and prior to 1987, Rule 6] with L.R. 17 [new in 1987] included as the final sentence of sub-paragraph (d) [actually, (e)]. The provisions of this local rule will facilitate compliance with the technical requirements for filing and service of papers.

There are several changes from the present rules. First, the requirement that a pleading be filed in the "appropriate office of the clerk" has been deleted. While the Committee anticipates that filings on a case within a division will generally continue to be made with the office of the clerk in that division, it believes that filing with another office is a useful option for time-sensitive filings by practitioners whose offices are located closer to another office of the clerk. Second, the rule requires that the pages of a filing be consecutively numbered – a requirement which simply reflects presents practice. Third, an index must be included for papers which contain four or more exhibits. Next, attorneys and *pro se* litigants are now required to list their name, address, telephone number, and (in case of attorneys) bar association number on all

filings other than affidavits – a requirement which again is largely reflective of existing practice. L.R. 7(e), which concerned the procedures for filing and service, was deleted in its entirety, due to its potential conflict with Federal Rules of Civil Procedure 5, 7(b), 8(e), and 10. Finally, all persons serving papers are now allowed to attach a certificate of service or acknowledgment rather than an affidavit.

1995 Amendment

Paragraph (b) of the rule was amended to clarify that on each pleading, motion, or "other paper" attorneys shall provide their bar association number.

1996 Amendment

[Compiler's Note: The last sentence of paragraph (e) was re-lettered paragraph (f) and given the caption "Form of Notices," and amended to its present language.]

2000 Amendment

The Committee added the requirement that filings shall be two-hole punched at the top. This requirement was recently added to the Southern District's Local Rule 5.1 to facilitate docket filings in the clerk's office. In view of the Committee's belief that conformity with the Southern District is beneficial, the Committee added the requirement to the present rules. In addition, the Committee added e-mail addresses, if available, to the list of identifying information required on pleadings and motions filed with the court. The addition of an e-mail address, although absent from the Southern District's rule, was added with some foresight in the event that the Northern District opts to permit electronic filings.

The Committee also added language to paragraph (d) prohibiting the filing of papers with chambers unless specific permission is granted from the court.

2002 Amendment

Because of concerns of identity fraud, the Committee struck language in paragraph (b) that requires attorneys to provide their attorney bar number on all the filings with the court. The Committee learned of one case where a pro se litigant fraudulently used an attorney bar number to make filings in state court and thus, the Committee concluded that requiring attorney bar numbers on all filings could facilitate fraud. The bar number is utilized by the clerk's office in its in-house database, but it obtains the number via the attorney admission forms submitted to the judicial officers so it never appears in a court file. Thus, the Committee saw no impediment to removing this requirement.

2007 Amendment

[Minor changes, (*e.g.*, the deletion of the requirement that all filings be two-holed punched at the top) were made in light of the use of electronic case filing.]

2009 Amendment

The Committee did not recommend any changes to this rule but did recommend re-ordering L.R. 5.1 through 5.7 in light of electronic filing. See the Committee comments to Local Rule 5.1. This Local Rule was formerly 5.1, but has now been re-numbered to 5.4.

Local Rule 5.1.1

Constitutional Challenge to a Statute – Notice

A notice of constitutional challenge to a statute filed in accordance with Federal Rule of Civil Procedure 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. The party filing the notice of constitutional challenge must serve the notice and paper on the Attorney General of the United States and the United States Attorney for the Northern District of Indiana if a federal statute is challenged--or on the Attorney General for the State if a state statute is challenged--either by certified or registered mail or by sending it to an electronic address designated by those officials for this purpose.

Committee Comments

2009 Amendment

This rule supplanted local rule 24.1 and conformed to the Southern District's proposed Local Rule 5.1.1. The Southern District concluded that the local rule was necessary to clarify the meaning of the word “promptly” in Federal Rule of Civil Procedure 5.1(a) which implements 28 U.S.C. § 2403. That is, the local rule spells out just how “promptly” the party raising the constitutional challenge must give the required notice. It is also noteworthy that the two government entities most interested in this issue in the Southern District, the U.S. Attorney’s office and the Attorney General of Indiana, both have come out strongly in favor of the proposed local rule.

L.R. 6.1
Extensions of Time

(a) **Initial extension.** In every civil action pending in this court in which a party wishes to obtain an initial extension of time not exceeding twenty-eight (28) days within which to file a responsive pleading or a response to a written request for discovery or request for admission, the party shall contact counsel for the opposing party and solicit opposing counsel's agreement to the extension. In the event opposing counsel does not object to the extension or cannot with due diligence be reached, the party requesting the extension shall file a notice with the court reciting the lack of objection to the extension by opposing counsel or the fact that opposing counsel could not with due diligence be reached. No further filings with the court nor action by the court shall be required for the extension. In the event the opposing counsel objects to the request for extension, the party seeking the same shall file with the clerk a formal motion for such extension and shall recite in the motion the effort to obtain agreement. In the absence of the recitation, the court, in its discretion, may reject the formal motion for extension.

(b) **Other extensions.** Any other request for an extension of time, unless made in open court or at a conference, shall be made by written motion. In the event the opposing counsel objects to the request for extension, the party seeking the same shall recite in the motion the effort to obtain agreement; or recite that there is no objection.

(c) **Due dates.** Any notice or motion filed pursuant to this rule shall state the date such response was initially due and the date on which the response will be due pursuant to the request for extension.

Committee Comments

1994 Amendment

This [new] rule is derived from Judge Lee's present standing order. The rule permits the parties to obtain an initial extension for the filing of a responsive pleading or responses to written discovery or requests for admission of not more than 30 days. If the parties can agree upon an

extension, the party seeking an extension must then memorialize the agreement in a letter to the opposing party. A copy of the letter shall also be filed with the clerk of the court. In the event that the parties cannot agree upon an extension, the party must seek leave of court for the extension. No extension will be granted by the court unless the party seeking the extension recites in the request the efforts made to obtain an extension from the opposing party. The parties' ability to extend deadlines is subject to L.R. 16.1(j) [now (i)], which requires an order of the court to extend pretrial proceedings or trial beyond the time specified in the pretrial order.

2000 Amendment

This rule is substantially similar to S.D.Ind. L.R. 6.1. The Committee substituted the words "extensions" in place of the words "initial enlargement" in the heading. The Committee believed this change more accurately reflected the purpose of the local rule and is uniform with S.D.Ind.L.R. 6.1.

The Committee also renumbered the three paragraphs (a), (b) and (c) with headings. Paragraphs (b) and (c) are similar to the Southern District's rule but have been phrased differently to provide clarity.

As part of paragraph (a), the Committee added language permitting counsel to file the motion for extension if the opposing counsel cannot with due diligence be reached. However, counsel must recite this fact within the substance of the notice to properly inform the court of the situation. The Southern District rule does not contain the final two sentences of paragraph (a). However, the Committee retained these two sentences, believing they accurately reflect existing practice.

2009 Amendment

The Committee recommended amending the Rule at paragraph (a) to reflect the anticipated time calculation amendments effective December 1, 2009, and for consistency with the Southern District. The initial extension of time by agreement shall now be twenty-eight days rather than thirty.

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L.R. 7.1

Motion Practice; Length and Form of Briefs

(a) Unless the court otherwise directs, or as otherwise provided in L.R. 56.1, an adverse party shall have fourteen (14) days after service of a motion in which to serve and file a response, and the moving party shall have seven (7) days after service of a response in which to serve and file a reply. Failure to file a response or reply within the time prescribed may subject the motion to summary ruling. Time shall be computed as provided in Fed. R. Civ. P. 6, and any extensions of time for the filing of a response or reply shall be granted only by order of the assigned or presiding judge or magistrate judge for good cause shown.

(b) Each motion shall be separate; alternative motions filed together shall each be named in the caption on the face. Any motion under Fed. R. Civ. P. 12, motions made pursuant to Fed. R. Civ. P. 37, or for summary judgment pursuant to Fed. R. Civ. P. 56 shall be accompanied by a separate supporting brief.

(c) Any defense raised pursuant to Fed. R. Civ. P. 12 must be briefed in accordance with this rule before the court will deem the defense submitted for ruling.

(d) Except by permission of the court, no brief shall exceed 25 pages in length (exclusive of any pages containing a table of contents, table of authorities, and appendices), and no reply brief shall exceed 15 pages. Permission to file briefs in excess of these page limitations will be granted only upon motion supported by extraordinary and compelling reasons.

Briefs exceeding 25 pages in length (exclusive of any pages containing the table of contents, table of authorities, and appendices) shall contain (a) a table of contents with page references; (b) a statement of issues; and (c) a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited. Each brief shall be plainly written, or typed in the style and format set forth in L.R. 5.1(a). Where the document is typed or

printed, (a) the size of the type in the body of the text shall be no less than 12 point, and in footnotes no less than 10 point and (b) the margins, left-hand, right-hand, top and bottom, shall each be 1 inch.

(e) Ordinarily, copies of cited authorities need not be appended to court filings. However, a party citing a decision, statute, or regulation that is not available on Westlaw or Lexis/Nexis shall attach a copy to the document filed with the court . In addition, if a party cites a decision, statute, or regulation that is only available through electronic means (*e.g.* Lexis/Nexis, Westlaw or from the issuing court's website), upon request that party shall promptly furnish a copy to the court and other parties.

Committee Comments

1994 Amendment

This rule is a substantial revision to, and expansion of, prior rules 9 [Rule 7(b)(c) and (d) before 1987], 12[which was new in 1987 and limited briefs to 25 pages], and 38. Under the revision, motions made pursuant to Fed. R. Civ. P. 37 are included on the list of motions covered by this rule. Second, the rule does not require that all Rule 12(b) defenses be separately briefed as a matter of course. However, the court retains the option of ordering a brief in a particular case. Nonetheless, a party raising a 12 (b) defense must file a separate brief in order to obtain a ruling on the defense.

Third, the form of oversized briefs (i.e., those which exceed 25 pages) has been specified, and the standard for the granting of oversized briefs ("extraordinary and compelling reasons") has been specified.

Finally, the list of authorities that must be copied for the court's convenience has been changed. The rule requires that copies of all authorities supplied to the court must be provided to other counsel of record. The Committee anticipates that members of the bar can work cooperatively on this new requirement when all attorneys of record have access to the copied material in their own libraries.

1995 Amendment

Prior to the widespread use of online research, a party was required to supply a copy of any authority not published in recognized reporter systems. Paragraph (c) of the then existing version of the rule [now paragraph (e)] was amended to update and include Federal Reporter 3d as one of those recognized texts.

2000 Amendment

This rule revision reiterates that for all motions, except as provided in L.R. 56.1 or by court order, there shall be 15 days for a response and 7 days for a reply. [Compiler's Note: The 15-day, 7-day briefing schedule was adopted in 1987 in then Local Rules 9; previously, a 15/5 day schedule was employed.] In addition, the local rule establishes standard page limits, margin sizes, space limitations, etc. and specifically incorporates by reference the format and style preferences of L.R. 5.1(a). The Committee reorganized this rule for clarity and to alleviate some confusion among local practitioners as to the time limitations for the filing of briefs for motions not specifically listed in the rule.

Subpart (b) [formerly part of (a)] was reorganized to make it clear which motions must be accompanied by briefs. The Committee changed the former language which required that only a few Fed. R. Civ. P. 12 motions be accompanied by briefs so that it is now clear that all Rule 12 motions must be accompanied by separate supporting briefs.

The Committee also substantially revised subpart (c) [formerly part of (a)] to make it clear that any Fed. R. Civ. P. 12 defense must be fully briefed before it is deemed ripe for consideration. The Committee also removed some repetitive language in this subpart. [Former subpart (b) was re-lettered as (d) and brief formatting standards were imposed].

The Committee added language to subpart (b) in response to a proposal that motions requesting several forms of relief be separately captioned and that alternative motions filed together be jointly listed in the caption. This addition was made to facilitate the work of the clerk's office in tracking motions.

Finally, the Committee discussed subpart (e) [formerly subpart (c)]regarding publications that must be furnished to the court, and other parties, if cited in a brief. Since there were no substantial differences from what the Southern District proposed, the Committee adopted the Southern District's version for the sake of uniformity and because it added provisions relating to Westlaw and Lexis, currently excluded from the local rule.

2009 Amendment

The Committee recommended that the period allowed for filing a response in paragraph (a) be decreased from 15 to 14 days. This change not only comports with the anticipated changes to the time calculation in the federal rules effective December 1, 2009, but also will be consistent with the local rule changes in the Southern District. The Subcommittee in charge of reviewing this rule originally suggested a response deadline of 21 days and 14 days for a reply, but the Committee determined that an extended briefing schedule was not warranted particularly since an additional three days is provided by Federal Rule of Civil Procedure 6(d).

L.R. 7.3

Time for Filing Briefs in Social Security Appeals

In any case seeking review of an agency determination regarding entitlement to Social Security benefits, the following time limits shall apply:

(a) The person challenging the agency determination shall file an opening brief within forty-two (42) days of the date on which the administrative record is filed.

(b) The brief in opposition shall be filed within forty-two (42) days of the date on which the opening brief was filed.

(c) A reply brief may be filed within fourteen (14) days of the filing of the brief in opposition.

The page limits of L.R. 7.1 shall apply to briefs filed under this rule. No motions for summary judgment need to be filed with this brief.

Committee Comments

1994 Amendment

This rule, drafted in response to the Northern District's Civil Justice Expense and Delay Reduction Plan, is designed to avoid unnecessary delay in the disposition of Social Security appeals. Prior to January 1, 1992, an appeal was brought to the court's attention through cross motions for summary judgment. Often there is a delay of several months before the motion was filed and the case was ready for decision. This rule reflects the practice in the district after implementation of the Plan on January 1, 1992, with the exception that the claimant now has 45 days within which to file its opening brief.

2000 Amendment

The Committee discussed a proposal to require the administrative record to be filed within 90 days of the date of the complaint. The Committee rejected this proposal because it was in contravention of 42 U.S.C §405(g) which requires that the administrative record be filed with the Commissioner's answer, which could, through extensions of time, extend beyond the 90 day period. The sole change to this rule was to renumber the paragraphs to be consistent with the format of the other rules.

2009 Amendment

The Committee recommended that the period for filing the opening brief and response be decreased to 42 days from 45 days and that the period for filing a reply be increased from 10 days to 14 days. The proposed amendments will ensure that all filings will be made on a weekday; one of the purposes for the recast time calculations effective on December 1, 2009.

L.R. 7.5

Requests for Oral Arguments and Hearings

(a) A request for oral argument on a motion shall be by separate instrument served and filed with the brief, answer brief, or reply brief. The request for oral argument shall set forth specifically the purpose of the request and an estimate of the time reasonably required for the court to devote to the argument. An oral argument shall be confined to argument and shall not include the presentation of additional evidence. If a request for oral argument is granted, the argument shall be held at such place within this district as the court may designate for its convenience without regard to the division in which the cause shall stand for trial. The granting of a motion for oral argument shall be wholly discretionary with the court. The court, upon its own initiative, may also direct that oral argument be held.

(b) A request for an evidentiary hearing on a motion or petition may be made by any party after a motion or petition has been filed. The request for hearing shall set forth specifically the purpose of the hearing and an estimate of the time reasonably required for the court to devote to the hearing. Dates of hearing shall not be specified in a notice of a motion or petition unless prior authorization is obtained from the court or deputy court clerk. If a request for a hearing is granted, a hearing shall be held at such place within this district as the court may designate for its convenience without regard to the division in which the cause shall stand for trial. The court, upon its own initiative, may also direct that a hearing be held.

Committee Comments

1994 Amendment

The rule modifies former L.R. 10 [L.R. 7(a) prior to 1987] to more clearly distinguish between oral arguments and hearings, and by requiring the requesting party to "set forth specifically the purpose of the request and an estimate of the time reasonably required..." The rule also now makes clear that oral argument is not for the presentation of additional evidence and that the court can direct oral argument on its own initiative.

L.R. 8.1

Pro se Complaints

Form Complaint. The following claims of parties appearing on their own behalf shall be on forms supplied by the clerk of the court:

(a) The Civil Rights Act, 42 U.S.C. § 1983;

(b) The Social Security Act, 42 U.S.C. § 405(g);

(c) Any complaint alleging employment discrimination under a federal statute.

Committee Comments

1994 Amendment

The rule modified former L.R. 33 [L.R. 6A prior to 1987] and added a clerk supplied form for complaints under the Age Discrimination Employment Act, 29 U.S.C. § 621. The rule also requires verified complaints, a power granted to district courts under Fed. R. Civ. P. 11(a).

1996 Amendment

The rule was amended to remove former subpart (a) requiring that all *pro se* complaints be verified. The amendment was presumably recommended and adopted because the court supplied forms do not provide for a verification and instead, utilize the "under penalty of perjury" language specified in 28 U.S.C. §1746.

2000 Amendment

S.D.Ind. L.R. 8.1 has a similar rule which significantly broadens the types of employment discrimination complaints which must be on court-approved forms. The Northern District's prior version of this rule required only that Title VII and Age Discrimination cases be filed on court-approved forms. The court-approved forms requiring *pro se* litigants to indicate whether

the administrative requirements have been met will aid the court in determining whether the complaint is validly filed.

Despite the fact that the former local rule specifically requires *pro se* litigants to file Title VII and age claims on court-approved forms, the only forms available to *pro se* litigants from the clerk relate to Title VII actions, 42 U.S.C. §1983 actions, and actions under the Social Security Act. The clerk's office maintained no form for age discrimination claims and the Title VII form in use does not contain a space for age claims. This situation created a problem for *pro se* litigants who sought to file these types of complaints. Further, since the last revision to the local rules, Congress passed the Americans with Disabilities Act which has similar administrative requirements to Title VII and age discrimination cases. The rule now encompasses this type of claim.

The Committee also concludes that this rule is not an attempt to circumvent the requirement of Fed. R. Civ. P. 8(a) which mandates that a complaint merely be a "short and plain statement of the claim." Complaints submitted on non-approved forms will be filed; however, the court will request *pro se* litigants who file complaints on their own forms to resubmit the complaint on a court-approved form.

L.R. 8.2 CORPORATE AND BUSINESS ENTITY DISCLOSURE STATEMENT

(deleted 2003)

~~**L.R. 8.2**~~

~~**Corporate Disclosure**~~

~~Any nongovernmental corporate party to an action in this court shall file a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party's stock. A party shall file the statement with its initial pleading filed in the court and shall supplement the statement within a reasonable time of any change in the information.~~

Committee Comments

2000 Amendment

This proposed rule is new to the local rules and is in response to a proposal by Circuit Judge Manion advocating that courts adopt an interim local rule requiring corporate disclosure by nongovernmental corporate parties. Canon 3(C)(1)(c) of the Code of Conduct for United States Judges and Advisory Opinion No. 57 advise that judges should recuse when they own stock in a parent company whose subsidiary appears as a party before the judge. The intent of the new local rule is to assist judges in identifying financial conflicts of interest that may require recusal. The Judicial conference Committee on Codes of Conduct is currently pressing for a national disclosure rule, similar to the above local rule, to assist judges in meeting their recusal responsibilities. However, such a rule, as indicated by Judge Manion, may not come into fruition for several years. In the interim, the Codes of Conduct Committee recommended that courts adopt the above language as in interim local rule. The Southern District has also adopted the proposed national rule as a local rule.

2002 Amendment

The Committee adopted minor changes to make the purpose of the rule clear and to make disclosures more comprehensive by encompassing entities such as limited liability companies.

2003 Amendment

The Committee eliminated L.R. 8.2 in light of Fed. R.Civ.P. 7.1 which now provides that non-governmental corporate parties must "file two copies of a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation." Fed. R. Civ. P. 83 expressly provides that local rules " shall be consistent with-but not duplicative of" any federal statute. As currently written, L.R.8.2 is

broader than Fed. R. Civ. P. 7.1 in that it requires all “non-governmental parties” rather than “non-governmental corporate parties” to file such a statement. However, the Committee believes that the broader requirement in the local rule is unnecessary and that the purpose of the local rule is served by Fed. R. Civ. P. 7.1.

L.R. 9.2

Request for Three-Judge Court

In any action or proceeding which a party believes is required to be heard by a three-judge district court, the words "Three-Judge District Court Requested" or the equivalent shall be included immediately following the title of the first pleading in which the cause of action requiring a three-judge court is pleaded. Unless the basis for the request is apparent from the pleading, it shall be set forth in the pleading or in a brief statement attached thereto. The words "Three-Judge District Court Requested" or the equivalent on a pleading is a sufficient request under 28 U.S.C. § 2284.

Committee Comments

1994 Amendment

The rule was suggested as a model rule by the Local Rule Project and greatly expands former L.R. 23 which merely imposed an obligation to provide notice to the clerk of the statutory provision requiring a three-judge court.

2009 Amendment

The Committee recommended striking subsection (b), which concerned the required number of paper copies to be filed, as unnecessary due to the electronic filing requirements. The subparagraph (a) designation was also deleted.

L.R. 10.1

Form of Responsive Pleadings

Except in pro se cases, a responsive pleading under Fed. R. Civ. P. 7(a) shall recite verbatim that paragraph of the pleading to which it is responsive, followed by the response.

Committee Comments

2003 Amendment

This new rule is modeled after a local rule in the Northern District of Illinois which requires each paragraph of a responsive pleading to recite verbatim the paragraph to which it is directed, followed by the response. The Committee believes that such a practice would enable the court and the parties to better reference the matters that are at issue in a case and focus on these issues. In addition, the Committee does not believe such a practice would unduly burden the bar in that most complaints are computer generated and can be readily furnished by e-mail to opposing counsel for their use in the manner contemplated by this rule.

The Committee further believes that an exception for *pro se* cases should exist to minimize the burden on opposing counsel since such complaints are not always neatly set forth in paragraph form.

L.R. 15.1

Form of a Motion to Amend and Its Supporting Documentation

A party who moves to amend a pleading shall attach the original of the amendment to the motion. Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must, except by leave of court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference. A failure to comply with this rule is not grounds for denial of the motion.

Committee Comments

1994 Amendment

The rule is new and is adopted from the model rule proposed by the Local Rules Project. The Southern District did not, and has not, adopted the rule's last sentence. The Committee deemed the possible striking of any non-conforming complaint under L.R. 1.3 as a "more appropriate sanction."

L.R. 16.1

Pretrial Procedure

(a) **Purpose.** The fundamental purpose of pretrial procedure as provided in Fed. R. Civ. P. 16 is to eliminate issues not genuinely in contest and to facilitate the trial of issues that must be tried. The normal pretrial requirements are set forth in Fed. R. Civ. P. 16. It is anticipated that the requirements will be followed in all respects unless any judge of this court shall vary the requirements and shall so advise counsel. The following provisions shall also apply to the conduct of pretrial conferences by a United States magistrate judge and where applicable, reference to the judge of the court shall include a United States magistrate judge.

(b) **Notice.** In any civil case, the assigned or presiding judge may direct the clerk to issue notice of a pretrial conference, directing the parties to prepare and to appear before the court.

Unless otherwise ordered by the court, the following types of cases will be exempted from the scheduling order requirement of Fed. R. Civ. P. 16(b):

(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) Civil forfeiture cases;

(4) An action by the United States to recover benefit payments;

(5) An action by the United States to collect on a student loan guaranteed by the United States;

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

(7) Mortgage foreclosures in which the United States is a party;

(8) A proceeding ancillary to proceedings in another court;

(9) An action to enforce, vacate, or modify an arbitration award.

(c) **Parties Planning Meeting Report.** When an initial pretrial conference is ordered, counsel shall, after conducting a planning meeting under Fed.R.Civ.P. 26(f), complete and file a Report of the Parties' Planning Meeting in accordance with the form found on the Court's website: www.innd.uscourts.gov. The Court may adopt the Report in whole or in part, and may make it part of the Court's scheduling order.

(d) **Additional Conferences.** Counsel should expect that additional conferences may be set. At any such conference, counsel shall be prepared to address case management plan issues, settlement, trial readiness, and any other matters specifically directed by the Court. Prior to all court conferences, counsel shall confer to prepare for the conference.

(e) **Settlement Discussions.** Counsel should anticipate that the subject of settlement will be discussed at any pretrial conference. Accordingly, counsel should be prepared to state his or her client's present position on settlement. Prior to any conference after the initial conference, counsel should have ascertained his or her settlement authority and be prepared to enter into negotiations in good faith. The court may require the parties, an agent of a corporate party, or an agent of an insurance company to appear in person or by telephone for settlement negotiations. Details of such discussions at the pretrial conference should not appear in the pretrial entry.

(f) **Deadlines.** Deadlines established at the pretrial conference shall not be altered except by agreement of the parties and the court, or for good cause shown.

(g) **Notification of Settlement or Disposition.** The parties shall immediately notify the court of any reasonably anticipated settlement of a case or the resolution of any pending motion.

(h) **Sanctions.** Should a party willfully fail to comply with any part of this Rule, the court in its discretion may impose appropriate sanctions.

Committee Comments

1994 Amendment

The rule derives from present L.R. 21[and before 1987, Rules 12 and 13]. The rule made several changes and additions:

1. Interpleader actions are no longer exempt but mortgage foreclosure actions now are exempt. In addition, in accordance with § 5.02(a) of the Court's Civil Justice Expense and Delay Reduction Plan, § 1983 *pro se* litigation is not longer exempt from pretrial scheduling requirements.

2. The conference is to be held within 120 days of the complaint's filing.

3. Paragraph (d)(12)[now (d)(11)] was amended to require that counsel be prepared to discuss the possibility of disposition through mediation or other forms of ADR. The addition was consistent with current practice and the goals of the Judicial Improvement Act of 1990.

4. The requirement of an agenda was deleted in favor of a case-by-case requirement.

5. Paragraph (i) was added to make clear that deadlines will not be altered without agreement of the parties and the court, or for good cause shown. Consistent with the goals of the Judicial Improvement Act of 1990, L.R. 16.1(i) is designed to reduce civil case backlog through firm deadlines. The Committee anticipated that non-consensual requests for extension would "be held to a high standard of review."

6. A new requirement that the court be immediately advised of a settlement or resolution of a motion was added in L.R. 16.1(j).

7. Finally, new language was added to L.R. 16.1 (i) and (k) to reflect § 4.03 of the Court's Plan. Both provisions are designed to enhance the court's power to settle cases effectively. 28 U.S.C. § 1927 and the court's inherent power provide the source of the court's power under L.R. 16.1 (i) and (k). The final sentence of L.R. 16.1 (k) must be read in conjunction with L.R. 47.3, which does not permit the award of juror costs as a sanction except upon the conditions specified in that rule.

1995 Amendment

Subpart (b) was amended to exempt from the meet and confer requirement of Fed. R. Civ. P. 26(f) any case in which all plaintiffs or all defendants were proceeding *pro se.* Subpart (d) was amended to clarify that *pro se* parties should appear at the initial pretrial conference prepared to address the issues identified in Fed. R. Civ. P. 16(c)**.**

1996 Amendment

The rule was amended to delete the provisions inserted by the 1995 amendment and by removing subpart (b)(14), a provision that exempted "Any other case [where] the judge finds that justice would not be serviced by using the scheduling order procedures of Fed. R. Civ. P. 16(b)."

2000 Amendment

Due to inadvertence, two different versions of L.R. 16.1 are being published. The Committee prepared this version which it believes reflects current practice and the intent of the court.

The revised rule is similar to S.D.Ind.L.R. 16.1, but not identical. The exemptions in the rule also exempts the parties from the discovery planning conference requirement of Fed. R. Civ. P. 26(f). This provision is not present in the Southern District's rule because, pursuant to S.D.Ind.L.R. 26.3, all cases filed in the Southern District are exempt from the provisions of Fed. R. Civ. P. 26(f). The Southern District rule specifically exempts cases under 42 U.S.C. §1983 brought by *pro se* prisoners, while the version of this district's rule does not exempt such cases.

After reviewing the Southern District's rule, the Committee modified the Southern District's catch-all exemption from the scheduling order requirement by adding exempted case number 14, which reads: "Any other case where the judge finds that justice would be served by such exemption." [Compiler's Note: Former Rule 21(b) from 1987 also noted that the judge could exempt individual cases.]

2002 Amendment

Revisions to Fed. R. Civ. P. 26(f) eliminated a district court's authority to exempt by local rule certain types of cases from the requirements of a discovery planning conference. Therefore, the Committee deleted the exemption language. Although this revision may result in certain cases undergoing discovery planning conferences even though such cases are exempt from the scheduling order requirements of Rule 16(b) (e.g., mortgage foreclosure cases), the Committee finds the conference requirement beneficial.

The Committee also deleted the language that exempts cases from the discovery planning conferences when "all plaintiffs or all defendants are proceeding *pro se...*" since it conflicts with Fed. R. Civ. P. 26(f) in non-prisoner *pro se* cases. The Committee inserted language inviting any party to seek an exemption in such cases, where appropriate, on a case-by-case basis.

2004 Amendment

The Committee removed language in L.R. 16.1(f) that the Committee deemed inconsistent with Fed. R. Civ. P. 26(a)(3)(A). Fed. R. Civ. P. 26(a)(3) requires disclosure of all witnesses and exhibits except those to be used "solely for impeachment," yet L.R. 16.1(f)(5) and (7) go further and allow non-disclosure of witnesses and exhibits used "solely for impeachment or rebuttal." The Committee believes that well-developed case law should govern the non-disclosure of witnesses called for rebuttal. The requirement of L.R. 16.1(f)(7), which provides that parties must still disclose the general subject matter of each witness's testimony, remains. The deletion of L.R. 16.1(f)(5) required the renumbering of the last two subsection of L.R.16.1(f).

The heading in L.R. 16.1(f) was further revised to read "Pretrial Submissions," since this was a more accurate description of its contents.

Finally, the Committee struck "counsel for" from the introductory paragraph to encompass instances where a litigant is proceeding *pro se.*

2009 Amendment

Overall, the Committee looked to update and simplify Local Rule 16.1 by eliminating statutory references, deleting material already addressed in Federal Rule of Civil Procedure 16 (and elsewhere), and conforming the rule to existing practice.

The changes begin with paragraph (b). Rule 16(b)(1) provides that the Court must issue a scheduling order in every case except those "exempted by local rule . . . [.]" The subcommittee noted that the present version of Local Rule 16.1 provides 14 exemptions that while adequate, can probably be more effectively described.

Federal Rule 26(a)(1)(B)(i - viii) provides that certain proceedings are exempt from initial disclosures and Rule 26(f) similarly makes those proceedings exempt from the requirements of any meeting to prepare a discovery plan and the issuance of a report to the court (unless "the court orders otherwise"). The upshot of these exemptions is that because no report is generated under Rule 26(f), no scheduling order is likely to issue. The subcommittee believes that with one exception, this scheme for the management of cases is not only sound, but consistent with current District practice. Accordingly, like the Southern District, the proposed rule incorporates the exemptions listed at Federal Rule 26(a)(1)(B)(i, ii, iv- viii).

The sole exception is the exemption listed at Rule 26(a)(1)(B)(iii), "an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision[.]" At present, the Court always enters scheduling orders involving such *pro se* prisoners, and sometimes even conducts scheduling conferences, often with a proposed schedule offered by the parties. The subcommittee assumes the Court wishes to continue this practice and the flexibility it affords, and therefore has not exempted those cases from either a scheduling order or a scheduling conference. Notably, the Southern District continues to exempt such cases.

The Committee also recommended deleting the exemption language contained at (b)(14) as it seems to run counter to the mandatory language of Rule 16(b)(1) and also suggests, for a

similar reason, removal of the somewhat ambiguous language contained within the last paragraph of current paragraph (b).

Overall, the amendments to Local Rule 16.1(b) gives the practitioner a clear and shorter version to consider and one that is likely consistent with other districts.

Paragraph (c) was amended to delete language concerning when pretrial conferences are to be held. The subcommittee does not believe that the present language adds any substance to the local rule, particularly since such conferences are routinely held in a timely fashion. New paragraph (c) on the other hand, adds important language alerting the practitioner of the procedure in non-exempt cases and the expectations they may have concerning their Rule 16(b)(1) report.

New paragraph (d) concerns additional pretrial conferences and is identical to Local Rule 16.1(c) in the Southern District. The provision is consistent with current practice and more expansive than this Court's current paragraph (e) addressing the same topic.

Both paragraphs (d) and (f) of current Rule 16.1, addressing preparation for the initial pretrial conference and pretrial submissions respectively, are shown deleted. Paragraph (d) adds nothing to what is already specified for consideration under Federal Rule 16(c)(2) and similarly, paragraph (f) is either subsumed by Rule 26(a)(3) or the orders each trial judge routinely enters concerning trial.

Paragraph (g) is shown deleted as it is no longer necessary or routinely utilized.

Former paragraphs (h), (i) and (j) are retained in full, but re-lettered to (e), (f) and (g).

Former paragraph (k) is re-lettered to (h). In addition, the last sentence, concerning sanctions for a last-minute, substantial and vexatious change in a settlement position, is deleted. The provision was first added to Local Rule 16.1 in 1994 as an adjunct to Local Rule 47.3 (concerning the taxation of juror costs) but apparently never (or rarely, if ever) used. The provision has likely been largely forgotten because it can only be used under the narrowest of circumstances. Accordingly, the Committee recommended deletion of this provision. With the deletion of the sanctioning provision, the Court's new (h) will be identical to the Southern District's Local Rule 16.1(f), except that sanctions in the Northern District can only be imposed if a party "willfully" fails to comply with any part of the Rule. The Southern District does not impose that additional term. The Committee believes the term clarifies the basis for sanctions and therefore recommends its retention.

L.R. 16.3

Continuances in Civil Cases

(a) In general. In any civil action, upon motion, evidence, or agreement of the parties, proceedings may be continued in the discretion of the court. The court expects counsel to have consulted with their clients prior to requesting continuance of a trial . The court may order the moving party to reimburse the other parties for their actual expenses caused by the delay.

(b) **Absence of Evidence.** A motion to postpone a civil trial on account of the absence of evidence can be made only upon affidavit, showing:

(1) the materiality of the evidence expected to be obtained,

(2) that due diligence has been used to obtain it;

(3) where the evidence may be; and

(4) if it is for an absent witness,

(A) the name and residence of the witness, if known;

(b) the probability of procuring the testimony within a reasonable time;

(c) that the absence has not been procured by the act or connivance of the party, nor by others at the party's request, nor with his or her knowledge or consent;

(d) the facts the party believes to be true; and

(e) that the party is unable to prove such facts by any other witness whose testimony can be as readily procured.

(c) **Stipulation by Adverse Party.** If the adverse party will stipulate to the content of the evidence that would have been elicited at trial from the absent document or

witness, the trial shall not be postponed. In the event of a stipulation, the parties shall have the right to contest the stipulated evidence to the same extent as if the absent document or witness had been available at trial.

Committee Comments

1994 Amendment

The proposed rule is based upon present L.R. 20(a) [also was L.R. 20 prior to 1987], and governs continuances of trial and other pretrial proceedings in civil actions. The final two sentences of the present rule were amended in an attempt to clarify the situation in which the absence of significant evidence would not allow delay of the trial. In essence, if the party or parties against whom evidence will be offered will stipulate to the evidence which an unavailable witness or document will provide, the trial will not be continued. In entering such a stipulation, the parties do not stipulate to the relevance, admissibility, or truth of the evidence. Instead, the parties remain free to challenge its relevance or admissibility through proper objection, and to challenge the truth of the evidence through the introduction of impeaching or conflicting evidence. While the intent of present L.R. 20(a) is the same, the Committee believed that its language might lead to unnecessary confusion, and the rule was consequently redrafted.

2000 Amendment

The Committee removed the requirement from the prior version of the local rule that the motion to continue a trial or other proceedings in civil cases must be "verified." The Committee compared the current local rule with the Southern District's recently revised local rule. deleting the verification requirement. The Southern District's rule also admonishes that "the court expects counsel to have consulted with their clients prior to requesting continuances of a trial setting." After considering the Southern District rule, the Committee removed the verification requirement, and adopted the client consultation language. The Committee believed the addition of the client consultation language makes it clear to counsel that he or she has an obligation to advise and consult with the client regarding continuances.

2002 Amendment

All amendments were technical.

L.R. 16.6

Alternative Dispute Resolution

(a) The court may order mediation or early neutral evaluation in any civil case.

(b) Except for cases exempted by L.R. 16.1, the parties shall consider as part of every Fed. R. Civ. P. 26(f) report the use of one of the following Alternative Dispute Resolution Processes:

(1) Mediation;

(2) Early Neutral Evaluation;

(3) Mini-trial;

(4) Any other process upon which the parties may agree.

The parties shall report to the court which, if any, of the processes they wish to employ and when the process will be undertaken. A settlement conference conducted by a judicial officer is not an Alternative Dispute Resolution Process.

(c) Unless otherwise ordered by the court, the Indiana Rules for Alternative Dispute Resolution, including those rules regarding privilege, confidentiality of communications, and disqualification of neutrals, shall apply to all Alternative Dispute Resolution Processes.

(d) To the extent permitted under applicable law, each Mediator shall have immunity in the performance of his or her duties under these Rules, in the same manner, and to the same extent, as would a duly appointed Judge.

(e) A roster of available neutrals shall be maintained in the offices of the clerk and shall be made available to counsel and the public upon request.

Committee Comments

1994 Amendment

[Compiler's Note: This rule was originally numbered 53.2, but was re-numbered 16.6 in 2000 see L.R. 53.2 for original text.] This revision simplifies and clarifies present L.R. 32. [Compiler's Note: Local Rule 32, adopted in 1988 mirrored a Southern District rule adopted in 1984.] As the Judicial Improvements Act of 1990 recognizes, parties should be encouraged to resolve disputes amicably and efficiently, and the court should have available devices which can assist the parties in the settlement process. The experience of the court with present dispute resolution devices such as summary jury trial, arbitration, mediation, and settlement conferences has proven the value of alternative methods of dispute resolution. The proposed rule is designed to build upon that experience. Like L.R. 32, the proposed rule permits the use of non-binding summary trial and alternative methods of dispute resolution. Unlike L.R. 32, the proposed rule makes clear that the parties are entitled to request non-binding resolution by motion, and also explicitly permits the parties to consent to a binding method of dispute resolution.

The Advisory Committee does not intend to suggest, however, that summary jury trial is a preferred method of dispute resolution. In fact, as the Court's Civil Justice Expense and Relay Reduction Plan makes clear, summary jury trials should be considered the exception rather than the rule. *See* § 4.02. The Committee mentioned summary jury trial only to make clear that the court retains the power to order a summary jury trial in appropriate cases.

2000 Amendment

This proposed rule would replace existing L.R. 53.2 [which largely followed former L.R. 32] and is in compliance with the ADR Act of 1998, now codified at 28 U.S.C. § 651, *et seq.* In accordance with Fed. R. Civ. P. 83(a) this rule is being numbered L.R. 16.6 to conform to the uniform numbering system proscribed by the Judicial Council of the United States as promulgated in its March 1996 session.

The proposed rule is not particularly detailed, as the Committee sought to draft a rule that would accommodate the evolving ADR processes in all three divisions. While somewhat similar to what was done in the Southern District, that District went on to draft a local rule on arbitration which the Committee did not believe was either required under the ADR Act, or necessary given its rarity of use.

L.R. 16.6(b) also mandates the consideration of "ADR" in most cases, a requirement missing from prior versions.

While the Southern District applied an admittedly minimalist approach to ADR, the tenor of this proposed local rule makes the utilization of ADR more likely, and encourages the selection of an ADR process by the time a scheduling conference is held.

To comply with the procedural requirements of the ADR Act of 1998, the Committee has provided that the Indiana Rules for Alternative Dispute Resolution are to govern unless otherwise ordered by the court. However, since settlement conferences expressly fall outside the local rule, federal judicial officers will not be governed by state court rules with which they may have little familiarity. Finally, to assist counsel, the rule provides that the clerk's office will maintain a roster of available neutrals, which will probably be the same roster district-wide.

2009 Amendment

The Committee considered adopting the Southern District's extensive rules of alternate dispute resolution but determined that with the exception of the immunity provision currently shown red-lined in new subsection (d) – the Southern District's 1.3 – no changes were necessary. With the addition of a new paragraph (d), the former (d) will be re-lettered (e).

L.R. 23.1

Designation of "Class Action" in the Caption

(a) In any case sought to be maintained as a class action, the complaint shall bear next to its caption the legend "Complaint -- Class Action." The complaint shall also contain a reference to the portion or portions of Fed. R. Civ. P. 23, under which it is claimed that the suit is properly maintained as a class action.

(b) Within ninety (90) days after the filing of a complaint in a class action, unless this period is extended on motion for good cause, the plaintiff shall file a separate motion that a determination be made under Fed. R. Civ. P. 23 (c)(1) whether the case is to be maintained as a class action. In ruling upon such a motion, the court may allow the action to be maintained as a class action, may disallow the action to be so maintained, or may order postponement of the determination pending discovery or other such preliminary procedures as appear to be appropriate and necessary in the circumstances. Whenever possible, where it is held that the determination should be postponed, a date will be fixed by the court for renewal of the motion.

(c) The provisions of this Rule shall apply, with appropriate adaptations, to any counterclaim or cross claim alleged to be brought for or against a class.

Committee Comments

1994 Amendment

This proposed rule revises present L.R. 8. [Compiler's Note: L.R. 8 was new in 1987 and was in accord with the Southern District's rule.] The most significant change is the elimination of the requirement in L.R. 8 that certain matters such as class size, adequacy of representation and common questions of law and fact be pleaded with specificity. The Committee believed that the specificity required by L.R. 8 either conflicted with the "short and plain" pleading requirement of Fed. R. Civ. P. 8, or were duplicative of requirements in Fed. R. Civ. P. 23.

The words "or the court shall direct" were added to the first sentence of sub-paragraph (b) to reflect more accurately the language of Fed. R. Civ. P. 23(c)(1).

1996 Amendment

Subpart (b) was amended to require the filing of a motion to certify a class action within 90 days unless impracticable under Fed. R. Civ. P. 23(c)(1).

2000 Amendment

For uniformity, the Committee adopted the Southern District's rule which modified the first sentence of subpart (b) and provided clarity as to the procedure for class actions. The changes are more editorial than substantive.

L.R. 24.1 Procedure for Notification of Any Claim of Unconstitutionality

(deleted 2009)

~~L.R. 24.1~~

~~Procedure for Notification of Any Claim of Unconstitutionality~~

~~(a) Whenever the constitutionality of any act of Congress affecting the public interest is or is intended to be drawn into question in any suit or proceeding to which the United States, or an officer, agency or employee thereof, is not a party, counsel for the party raising or intending to raise such constitutional issue shall immediately file a "Notice of Claim of Unconstitutionality" with the court, specifying the act or the provisions thereof which are attacked, with a proper reference to the title and section of the United States Code if the act is included therein.~~

~~(b) In any action, suit, or proceeding in which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the party raising the constitutional issue shall , immediately file a "Notice of Claim of Unconstitutionality" with the court specifying the act or the provisions thereof which are attacked, with a proper reference to the title and section of the Indiana Code if the act is included therein.~~

~~(c) The party giving notice of a challenge to the constitutionality of a statute under subsection (a) or (b) shall also move the court to certify the question to the Attorney General of the United States and the United States Attorney in the case of an act of Congress; or to the Attorney General of the state in the case of a state statute, as required by 28 U.S. C. § 2403. In the case of an act of Congress, a copy of the motion and notice shall be served upon the Attorney General of the state. The pertinent attorney general shall not be served with a summons or made a party to the action unless intervention is sought. The moving party shall tender a form of order and include on the distribution list the pertinent attorney general, and in the case of an act of Congress, the United States Attorney, with sufficient copies for service. An order granting certification shall provide a set time within which the attorney general~~

~~may seek to intervene, and the clerk shall serve a copy of the order upon the attorney general, and in the case of an act of Congress, the United States Attorney.~~

~~(d) Failure to comply with this rule will not be grounds for waiving the constitutional issue or for waiving any other rights the party may have. Any notice provided under this rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading requirement set forth in statute or the Fed. R. Civ. P.~~

Committee Comments

1994 Amendment

The proposed rule is derived from present L.R. 22[L.R. 16 prior to 1987], which governs only notification to the court when a federal statute is allegedly unconstitutional. The proposed rule makes no changes in the procedure for notification involving federal statutes, but does expand the rule to require notification when a State statute is allegedly unconstitutional. The notification procedures for both federal and state statutes are identical.

2000 Amendment

The Committee considered S.D.Ind. L.R. 24.1 which recently underwent revision. To provide uniformity, the Committee added paragraph (c) to assure that the notice to the clerk required by L.R. 24.1(a) and (b) is followed by court certification, and notice to the pertinent government official under 28 U.S.C. §2403. Under this rule, certification is not automatic; the court may deny certification, for example, because the public interest is not affected or the action will likely be disposed of on another basis.

This amendment, like the Southern District's revision, also clarifies that it is not appropriate to implead an attorney general merely because the constitutionality of a statute is in question. Section 2403 makes it clear that intervention is at the option of the attorney general.

2002 Amendment

Several clarifying amendments were made to conform the rule to the Southern District's version.

2009 Amendment

This rule should be abandoned in favor of new local rule 5.1.1., for the reasons set out in the Committee Comments in connection with that rule.

L.R. 26.1

Form of Interrogatories, Requests for Production and Requests for Admission

(a) The party propounding written interrogatories pursuant to Fed. R. Civ. P. 33, requests for production of documents or things pursuant to Fed. R. Civ. P. 34, or requests for admission pursuant to Fed. R. Civ. P. 36, shall number each such interrogatory or request sequentially. The party answering, responding or objecting to such interrogatories or requests shall quote each such interrogatory or request in full immediately preceding the statement of any answer, response or objection thereto, and shall number each such response to correspond with the number assigned to the request.

(b) No party shall serve on any other party more than thirty (30) 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 shall file a written motion setting forth the proposed additional requests for admission and the reason(s) for their use.

Committee Comments

1994 Amendment

The present rule derives from L.R. 14 [Rule 8 prior to 1987]. Present L.R. 14(a) was deleted, and the language suggested by the Local Rules Project was inserted. One formal difference between the rules is that proposed L.R. 26.1(a) requires sequential numbering of discovery requests and that a response for production must set out the request immediately before the response. In a more significant change, sub-paragraph (b) clarifies that sub-paragraphs which relate to the subject matter of an interrogatory do not count as separate interrogatories for purpose of the 30 interrogatory limitation. The Committee believes that the requirements of this rule effectively balance the parties' rights to discovery against the court's inherent power to secure the just, speedy, and inexpensive resolution of suits and its obligation to manage pretrial proceedings to avoid undue burden and expense. See Fed. R. Civ. P. 1, 16, and 26.

2000 Amendment

The Southern District of Indiana has a similar local rule to this rule. The Committee revised the title of this local rule, i.e. "Form of Certain Discovery Documents," to reflect that requests for admissions are generally not considered to be discovery. This revision was not made to the Southern District rule, but appears proper in light of the cases which exclude requests for admissions as discovery.

Adoption of this rule places the Northern District in conformity with the Southern District's version of L.R. 26.1, except that our rule expands the maximum number of requests for admission from twenty-five (25) to thirty (30). In addition, the Committee removed the limit on interrogatories, anticipating a change to the Federal Rules which will remove the ability of a court to limit the number of interrogatories by Local Rule. This change to the Federal Rules will, in effect, make the twenty-five (25) written interrogatory limit imposed by Fed. R. Civ. P. 33(a) a national rule.

L.R. 26.2

Filing of Discovery and Other Materials

Because of the considerable cost to the parties of furnishing discovery materials, and the serious problems encountered with storage, this court adopts the following procedure for filing of discovery and other materials with the court:

(a) The following material shall not be filed with the court until used in the proceedings or ordered to be filed: (i) Rule 26(a)(1) and (a)(2) disclosures; (ii) notices of deposition; (iii) depositions; (iv) interrogatories; (v) requests for documents or to permit entry upon land; (vi) requests for admission; (vii) responses or answers to interrogatories, to requests for documents, to requests to permit entry upon land, and to requests for admission; and (viii) notices of service of discovery. The party responsible for service of the discovery material shall retain the original and become the custodian.

(b) If relief is sought under Fed. R. Civ. P. 26(c) or 37, concerning any Rule 26(a)(1) disclosures, interrogatories, requests for production or inspection, answers to interrogatories or responses to requests for production or inspection, copies of the portions of the disclosures, interrogatories, requests, answers or responses in dispute shall be filed with the court contemporaneously with any motion filed under these rules.

(c) If interrogatories, requests, answers, responses or depositions are to be used at trial or are necessary to a pretrial motion which might result in a final order on any issue, the portions to be used shall be filed with the clerk at the outset of the trial or at the filing of the motion insofar as their use can be reasonably anticipated.

(d) No motions to publish depositions are required.

(e) In *pro se* litigation, all discovery shall be filed.

Committee Comments

1994 Amendment

This rule replaces present L.R. 15 [which was new in 1987]. It modifies the present rule in several respects. First, requests for admission and responses, which did not previously need to be filed, must now be filed with the court. Second, present L.R. 15(e), which required that discovery be filed in *pro se* cases, has now been simplified in its language. Third, notices of depositions no longer need to be filed. Fourth, the parties are relieved from filing a notice of discovery, as required under the present rules. The rule clarifies that notices of deposition need not be filed. Finally, the requirement that papers not in the record but necessary for appeal should be filed with the clerk was deleted, for it erroneously implied that counsel have an opportunity to supplement or correct deficiencies in the record when the case is on appeal.

The concern with L.R. 26.2 is its potential conflict with Fed. R. Civ. P. 5(d), which requires filing of all papers with the court unless the court on motion of a party or its own initiative otherwise orders. On the other hand, the clerk of the court has advised that it simply does not have the filing space available to accommodate all discovery filings. The present rule is an attempt to balance these concerns by requiring the filing of certain documents and the parties' retention of other documents. Moreover, to the extent that the purpose of FRCP 5(d) is to allow public access to court records, the Committee believes that this matter can be taken up case-by-case by individuals seeking access to particular documents retained by the parties under this rule. The Committee anticipates that leave to examine documents in a particular case would be freely granted by the court, subject only to privileges of non-disclosure which the parties might assert in response to such a motion**.**

1995 Amendment

Subpart (a) was amended to include disclosures under Fed. R. Civ. P. 26(a)(1) as another category of documents that are not to be filed with the court.

2000 Amendment

The S.D.Ind. L.R. 26.2 is similar but not identical to this local rule. For instance, the Southern District of Indiana local rule does not contain the text currently added by the Committee in paragraph (a). This proposal is based upon the proposed amendment to Fed. R. Civ. P. 5(d), which largely excludes the filing of discovery, to which the Committee added customary local discovery filings such as, "notices of deposition" and "notice of service of discovery."

Paragraph (e) of the rule requires all discovery to be filed in cases where there is a *pro se* litigant. The Committee believes this paragraph serves a useful purpose; however, if proposed Fed. R. Civ. P. 5(d) is adopted, this provision could be in conflict with that Federal Rule.

The Committee, as it did in L.R. 26.1, changed the title from “Filing of Discovery Materials” to “Filing of Discovery and Other Materials.” The “Other Materials” portion again reflects that requests for admission are generally not considered discovery.

L.R. 30.1

Scheduling of Depositions

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

Committee Comments

2000 Amendment

The Southern District has an entirely different rule governing the conduct of counsel at depositions. That rule includes a provision that an attorney for a deponent is not to initiate a private conference with a deponent regarding a pending question except for the purpose of determining whether a claim of privilege should be asserted. S.D.Ind.L.R. 30.1(c). Further, under that rule an attorney is not to interpose objections to questions in the presence of a deponent that would suggest an answer to a pending question. *Id.* at ¶(d).

The Committee reviewed the Southern District's version of L.R. 30.1 and found it to be unnecessary in this district. In lieu of the Southern District's Local Rule 30.1, the Committee adopted a new rule which attempts to eliminate the possibility of scheduling conflicts for depositions being brought to the court's attention. The Committee believes that this local rule in combination with L.R. 37.1 and the Seventh Circuit's "Standards for Professional Conduct" which specifically relate to "Lawyers' Duties to Other Counsel" will encourage counsel to confer and hopefully resolve these types of scheduling issues without involving the court.

L.R. 37.1

Informal Conference to Settle Discovery Disputes

(a) Any certification required to be made under Fed. R. Civ. P. 26(c)(1), 37(a)(1), and 37(d)(1)(B) shall recite, in addition to the information required under the appropriate Federal Rule, the date, time, and place of the conference or attempted conference and the names of all persons participating therein.

(b) With respect to every other motion concerning discovery, the motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party in an effort to resolve the matter without court action. The certification shall also state the date, time, and place of the conference or attempted conference and the names of all persons participating therein.

(c) The certification required under subsection (a) and (b) of this rule shall be made in a separate document filed contemporaneously with the motion. The court may deny any motion described in subsection (a) and (b) (except those motions brought by or against a person appearing *pro se*) if the required certification is not filed.

Committee Comments

1994 Amendment

The rule amends present L.R. 13. [Compiler's Note: L.R. 13 utilized the specific language of L.R. 7(e) that existed prior to 1987.] The first paragraph of the proposed rule is taken from the Model Rule suggested by the Local Rules Project. The Model Rule does not state the precise information to be contained in the statement; the Committee thus adopted a slight revision of the final two sentences of the present L.R. 13 as the second paragraph of this Rule.

The Committee does not intend any change in present practice under L.R. 13. Specifically, the Committee does not intend the proposed rule's substitution of the phrase "reasonable effort to reach agreement" to create a standard different than L.R. 13's present criteria of "sincere attempts to resolve differences." The linguistic changes were motivated by a

desire to ensure uniformity of rule with other district courts which might adopt the Local Rules Project's language.

1995 Amendment

As originally adopted, a non-party seeking relief under Fed. R. Civ. P. 26(c) was exempt from the requirements of this local rule. The 1995 Amendment removed the exemption, leaving only *pro se* litigants exempt from its requirements.

1996 Amendment

The rule was amended to incorporate the certification requirements imposed by Fed. R. Civ. P. 26(c), 37(a)(2)(A), 37(a)(2)(B) and 37(d) and to require a recitation of the date, time, and place of the conference.

2000 Amendment

This amendment seeks to revitalize and expand this Local Rule. The Committee added paragraphs (b) and (c) to the current N.D. Ind. L.R. 37.1 to make clear that motions relating to discovery other than those specifically listed in paragraph (a) must include a certification that the movant in good faith conferred or attempted to confer with counsel prior to bringing the issue to the attention of the court.

2008 Amendment

The changes in this rule remove citations to other local rules that either are no longer in existence or have been amended. No substantive changes to the rule are being proposed.

L.R. 37.3

Mode of Raising Discovery Disputes with the Court

Where an objection is raised during the taking of a deposition which threatens to prevent the completion of the deposition and which is susceptible to resolution by the court without the submission of written materials, any party may recess the deposition for the purpose of submitting the objection by telephone to a judicial officer for a ruling *instanter*, subject to the availability of and within the discretion of the judicial officer. Prior to contacting the court for such a ruling, all parties shall in good faith confer or attempt to confer in an effort to resolve the matter without court action.

Committee Comments

1994 Amendment

This rule is new. Although the court has always been available in appropriate cases to resolve discovery disputes immediately, this rule makes the practice clear.

[Compiler's Note: Prior to adoption, the court added the phrase: "subject to the availability of and within the discretion of the judicial officer," to the first sentence of the rule. The court also added a concluding sentence: "such telephonic submission shall be subject to the requirements of L.R. 37.1."]

2000 Amendment

The prior version of this rule indicated that any telephonic submission of a dispute under this rule would be subject to the requirements of L.R. 37.1. This revision rewrites the last sentence to specifically extend the good faith requirement of L.R. 37.1 to disputes brought to the court's attention under this rule. With the exception of the Committee's revision to the concluding sentence, the rule mirrors S.D.Ind. L.R. 37.3.

L.R. 40.1

Assignment of Cases

(a) The caseload of the court shall be distributed among the judges and magistrate judges as provided by order of the court. All cases, as they are filed, shall be assigned to appropriate judicial officers in accordance with the method prescribed by the court from time to time.

(b) No clerk, deputy clerk, or other employee in the clerk's office shall reveal to any person, other than the judges, the order of assignment of cases until after they have been filed and assigned or assign any case otherwise than as herein provided or as ordered by the district court.

(c) No person shall directly or indirectly cause or procure or attempt to cause or procure any clerk, deputy clerk or other court attache to reveal to any person, other than the judges of the court, the order of assignment of cases until after they have been filed or assigned as provided above. No person shall directly or indirectly cause or procure or attempt to cause or procure any clerk, deputy clerk or other court attache to assign any case otherwise than as herein provided or as ordered by the district court. Any person violating this subparagraph may be punished for contempt of court.

(d) At the time of filing and at any time thereafter when it becomes known, counsel shall file a notice of related action when it appears that any case:

(1) grows out of the same transaction or occurrence,

(2) involves the same property, or

(3) involves the validity or infringement of a patent, trademark or copyright

as is involved in a pending case.

(e) Related cases shall be transferred from one judge to another judge, or from one magistrate judge to another magistrate judge, when it is determined that a later numbered case is related to a pending, earlier numbered case assigned to another judge or magistrate judge.

(f) When required by considerations of workload, in the interest of the expeditious administration of justice, the court by order may reassign cases among the judges or magistrate judges.

(g) If for any reason it should become necessary for a judge, to be disqualified from a civil case assigned to that judge, the case shall be reassigned to another judge within the district on a random basis.

(h) If for any reason it should be necessary for a judge, in a division of this court where more than one judge is in residence, to be disqualified from a criminal case assigned to that judge, the case shall be reassigned to another judge resident in that division on a random basis. If there is a need of recusal by a judge in a division where fewer than two judges are in residence, or if all judges in a division are disqualified, the case shall be transferred to the chief judge of the district for reassignment to another judge within the district. If the chief judge is disqualified from deciding a case from which another judge has been disqualified, the case shall be sent for reassignment to the judge who is next senior in service on the bench and who is not also disqualified.

(i) If for any reason it should become necessary for a magistrate judge to be disqualified from a case consented to under Title 28 U.S.C. Section 636(c)(1), the case should return to the originally assigned district judge for reassignment to another magistrate judge within the district.

(j) Unless the remand order directs otherwise, following the docketing of a mandate for a new trial pursuant to Seventh Circuit Rule 36 and allowing fourteen (14) days thereafter within which all parties may file their request that the judge previously assigned to the case retry the case, the case shall be reassigned in accordance with paragraphs (g), (h), or (i).

Committee Comments

1994 Amendment

This proposed rule is based upon present N.D.Ind. L.R. 40 [L.R. 26 prior to 1987], which governs re-assignments only in the Hammond Division. The Committee believed that it would be beneficial to have an equivalent rule operate throughout the district. Thus, the only change is to expand L.R. 40 to cover the problem of re-assignment in all divisions.

2000 Amendment

The current N.D.Ind. L.R. 40.1 is entitled "Reassignment on Recusal." Under the existing rule, a district judge who has recused himself should notify the chief judge so that the case can be reassigned. However, this is contrary to existing practice for normally the case is reassigned to another judge within that division. The Committee essentially incorporated at paragraphs (g) and (h) existing practice, as set out in a general order from this court dated July 13, 1998. This final version is a combination of the general order and the Southern District's version of L.R. 40.1.

2004 Amendment

Subpart (g) was amended to reflect that in every division of the court there is now more than one district judge, and in one division there are three. The rule was drafted to accommodate future additions or contractions among the court's judiciary.

2007 Amendment

The amendment to paragraph (g), involving the assignment of a case after disqualification, was amended so that it mirrors the present district-wide practice that civil cases are to be randomly assigned to a district judge regardless of the division in which they were filed. In sum, the court saw no reason to have a different practice for cases in which the original district judge disqualified.

Paragraph (h) is new and essentially the criminal case corollary to paragraph (g), but recites current practice. As stated, the rule requires that if a judge disqualifies in a criminal case, that case is to be reassigned within the division on a random basis.

With the addition of an entirely new paragraph (h), former paragraphs (h) and (i) were re-lettered to (i) and (j) respectively.

Paragraph (e) was also amended to correct a small typographical error.

2009 Amendment

The Committee recommended amending the Rule at paragraph (j) to reflect the anticipated time calculation amendments effective December 1, 2009, and for consistency with the Southern District. Accordingly, the time to request the same judge retry a case following a mandate is reduced from fifteen (15) days to fourteen (14) days.

L.R. 40.4

Division of Business Among District Judges

(a) Cases shall be assigned to district judges pursuant to a general order issued by the court or by the chief judge when an assigned district judge is unable to handle the case. The assignment of cases may be made without regard to the division in which the district judge normally sits.

(b) If a matter requires expedited consideration, and the assigned district judge is unavailable, then the other district judge within that division shall consider the matter. If no district judge is available in that division, then the clerk shall notify the chief judge. If the chief judge is also unavailable, the clerk shall notify the next most senior judge who is available.

Committee Comments

1994 Amendment

This proposed rule is new, and is derived from a proposal of the Rules Committee for the United States District Court for the Southern District of Indiana. Their draft of L.R. 40.4 combined several internal administrative rules of their court. The Committee believed that a similar rule describing the divisions of the court and the availability of a motion judge would be beneficial.

The significant difference in this rule from the present practice of the court was the creation of a motion judge to whom all emergency matters would be referred in the absence of a judge assigned to the case. The Committee anticipates that this function will be filled by the judges of the court on a rotating basis, and will provide litigants a more definite procedure to follow when emergency matters arise.

2000 Amendment

The Southern District has no comparable rule to this rule. The Committee struck the language in subsection (c) providing for a motions judge because it is not the general practice to have such a judge in this district. To more accurately reflect current practice, the Committee added the language now in L.R. 40.4(c).

2009 Amendment

The Committee recommended deletion of paragraphs (a) (concerning divisions of the court and trial sessions) and (b) (providing for continuous trial sessions) for two reasons: first, the terms "trial sessions" and "continuous session" are archaic; second, paragraph (a) does not reflect the current policy of random assignment of civil cases. The Committee rejected the Southern District's provision for the designation of a "motions judge" as contrary to this Court's procedure.

L.R. 41.1

Dismissal of Actions for Failure to Prosecute

Civil cases in which no action has been taken for a period of six (6) months may be dismissed for want of prosecution with judgment for costs after twenty-eight (28) days notice given by the clerk or the assigned judge to the attorneys of record (or, in the case of a *pro se* party, to the party) unless, for good cause shown, the court orders otherwise.

Committee Comments

1994 Amendment

The proposed rule is taken nearly verbatim from present L.R. 36(a) [Rules 27(d) and 10 prior to 1987]. The only amendment was to expand the rule so that it now also applies to the *pro se* litigants. L.R. 36(b), which had dealt with dismissal for failure to serve process, has subsequently been superseded by Fed. R Civ. P. 4(j) [now, 4(m)], and was therefore deleted. [Compiler's Note: The court added the phrase "of record" after the word "action" prior to adoption.]

2000 Amendment

L.R. 41.1 is virtually identical in both districts. The Northern District rule begins "Civil cases in which no action of record has been taken . . ." The Southern District version eliminates "of record" from that sentence. In addition to notice from the clerk, the Southern District has added "the assigned judicial officer or the clerk." The Committee, while considering the Southern District's rule, struck the words "of record" and made no other changes. It was the observation of many on the Committee that a civil case can be actually prosecuted, yet that activity would not be revealed "on the record." This may become even more true with the practical elimination of many discovery filings as set out in L.R. 26.2.

2009 Amendment

This change is recommended to comply with the Southern District's Rule 41.1 and current practice where either the clerk or, as now amended, the judge issues the show cause notice. The 30 days notice provision was also amended to 28 days for consistency with the Southern District.

L.R. 42.2

Consolidation of Cases

A motion to consolidate two or more civil cases pending upon the docket of the Court shall be filed in the case bearing the earliest docket number. That motion shall be ruled upon by the Judge to whom that case is assigned. In each case to which the consolidation motion applies, a copy of the moving papers shall be served upon all parties and a notice of consolidation motion shall be filed.

Committee Comments

The Northern District did not have a Local Rule 42.2 dealing with consolidation of cases. The Committee recommended that the Northern District adopt the Southern District's version.

L.R. 47.1

Voir Dire

The court will conduct the voir dire examination in all jury cases. If counsel desires any particular area of interrogation or questions on voir dire examination, such proposal shall be filed with the clerk of the court at such time as the court may order. The court will give counsel an opportunity at the completion of the original voir dire to request that the court ask such further questions as counsel shall deem necessary and proper and which could not have been reasonably anticipated in advance of trial. However, nothing in this rule is intended to preclude or otherwise limit the court, in any individual case, from allowing attorneys to conduct voir dire examination in any other manner as permitted by Fed. R. Civ. P. 47.

Committee Comments

1994 Amendment

The proposed rule is identical to present L.R. 41 [Rule 13(b) prior to 1987], which has been re-numbered to conform to the suggestions of the Local Rules Project.

2000 Amendment

L.R. 47.1 is identical in both districts with the exception of the following sentence which has been added in the Southern District: "However, nothing in this Rule is intended to preclude or otherwise limit the court, in any individual case, from allowing attorneys to conduct voir dire examination in any other manner as permitted by Federal Rule of Civil Procedure 47."

The Committee struck from the existing L.R. 47.1 the words "at least 24 hours before commencement of trial, or at other," because the submission of voir dire questions is governed in each instance by court order. In addition, the Committee, for uniformity, added the concluding sentence from the Southern District's rule. Upon consideration, the Committee felt that this language would not be objectionable because it is left to the discretion of each presiding judge.

L.R. 47.2

Communication with Jurors

No attorney or party appearing in this court, or any of their agents or employees, shall approach, interview, or communicate with any member of the jury except on leave of court granted upon notice to opposing counsel. This rule applies to any communication before trial with members of the venire from which the jury will be selected, as well as any communication with members of the jury during trial, during deliberations, or after return of a verdict. Any juror contact permitted by the court shall be subject to the control of the judge.

Committee Comments

1994 Amendment

[Compiler's Note: In 1987 the court adopted this rule verbatim from one used by a district in Wisconsin and which the Seventh Circuit upheld in *Delvaux v. Ford Motor Co.*, 764 F.2d 469 (7th Cir. 1985). The rule was assigned the title "Juror Contact" and given the number 44. In 1994 the Local Rules Advisory Committee suggested liberalizing the rule to allow limited attorney contact in civil cases after expiration of the juror's panel service and upon notice to the court and all counsel of record. The court rejected the proposed rule and retained the former language, now re-numbered to 47.2.]

2000 Amendment

Local Rule 47.2 is similar in both the Northern and Southern Districts of Indiana. The Southern District rule extends the prohibition against juror communications to *pro se* litigants as well as attorneys. The Committee added the language "or party" in the first sentence to insure that *pro se* parties would also be bound by this rule. The remainder of the rule remains unchanged.

2009 Amendment

In order to grant more discretion to the assigned judge, the committee recommended elimination of the requirement of good cause before communication with a juror is allowed. Leave of Court is still required.

L.R. 47.3

Juror Costs

If for any reason attributable to counsel or parties, including a settlement or change of plea, the court is unable to commence a jury trial as scheduled where a panel of prospective jurors has reported to the courthouse for the voir dire, or a selected jury reports to try the case, the court may, unless good cause is shown, assess against counsel or parties responsible all or part of the cost of the panel including Marshal's fees, mileage and per diem. There shall be no costs assessed if the clerk's office is notified at least one (1) business day prior to the day on which the action is scheduled for trial.

Committee Comments

1994 Amendment

The proposed rule is based upon present L.R. 42 [and formerly, rule 30]. The revision is intended to ensure that juror cost shall be borne by the parties when the tardiness of a settlement forces the court to incur juror costs. In a technical revision, the proposed rule makes it clear that parties who notify the clerk of settlement at least one full business day prior to the start of trial will not be required to bear any juror costs; the present rule was somewhat ambiguous on the latest date at which the parties could advise the court of settlement and avoid assessment of juror costs.

Parties and attorneys who unreasonably and vexatiously delay settlement are still subject to other sanctions. *See* L.R. 16.1(k).

2000 Amendment

Both the Northern District and the Southern District have comparable rules on this issue, although the Southern District's Rule is numbered as L.R. 42.1. For uniformity, the Committee considered changing the numbering of the rule, but opted to retain the current numbering system.

2002 Amendment

This is a substantial revision based on rules from the Northern and Central District of Illinois as well as this district's rule. The goal was to extend the possible assessment of costs to criminal cases.

L.R.48.1 Six- Member Juries

(deleted 2000)

~~L.R. 48.1~~

~~Six-Member Juries~~

~~In all civil jury cases, the jury shall consist of six (6) members, unless otherwise provided by law.~~

~~Provided however, that the court to whom the case is assigned may impanel a jury of not more than twelve (12) members who shall constitute the jury to hear the particular civil case. Each person so impaneled shall be considered a member, and the verdict shall be unanimous unless the parties otherwise stipulate.~~

~~In the event that it becomes necessary to excuse one(1) or more jurors for reasons the court determines to be valid, the unanimous decision of six (6) or more jurors shall constitute the verdict of the case. If fewer than six jurors remain, the provisions of Fed. R. Civ. P. 48 govern.~~

[Compiler's Note: The original rule adopted in 1994 derived from former L.R. 24 (rule 25 prior to 1987) but as the Advisory Committee noted, "it largely overlaps with proposed Fed. R. Civ. P. 48...[.]" The rule was deleted in 2000 because in the Committee's view, "[it] is redundant of [the] federal rule."]

L.R. 51.1

Instructions in Civil Cases

In all civil cases to be tried to a jury, and subject to the requirements of any controlling pretrial order, parties shall use pattern jury instructions whenever possible.

Committee Comments

1994 Amendment

This new rule derives from present CR-7 (as revised by proposed L.R. 110.1), which concerns criminal cases. The benefits of submitting jury instructions in advance of trial are significant in civil cases. Unlike L.R. 110.1, however, it is contemplated that in accordance with Fed. R. Civ. P. 5 and L.R. 5.1, requests for civil jury instructions will be served on opposing counsel at or before the time of filing the requests.

1996 Amendment

This amendment deleted the requirement that jury instructions be filed in triplicate at least 3 business days before trial.

2000 Amendment

There is no Southern District counterpart to this rule. However, the Committee retained the rule but modified it by striking the last sentence [governing exceptions for unanticipated issues] since these matters are routinely governed by the pretrial order as noted in the first sentence. The Committee also changed the language requiring instructions to be submitted on a disk in a format compatible with WordPerfect in favor of requiring the parties to submit instructions in a format compatible with the court's word processing program. The Committee believes this addition will avoid having to amend the rule in the future if the court's word processing program is changed from WordPerfect.

2009 Amendment

Because of electronic filing, the Committee deleted obsolete language concerning the need to submit additional copies of jury instructions.

L.R. 53.2 Arbitration/Alternative Dispute Resolution

(Renumbered 2000)

~~**L.R. 53.2**~~

~~**Arbitration/Alternative Dispute Resolution**~~

~~A judge may, in his or her discretion, upon the judge's own motion or on the motion of a party, set any appropriate civil case for advisory summary jury trial or other alternative methods of dispute resolution. However, the parties may agree to be bound by the result of the alternative method of dispute resolution.~~

[Compiler's Note: Rule re-numbered and amended as L.R. 16.6 in 2000. See L.R. 16.6 for original Committee comment.]

L.R. 54.1

Taxation of Costs and Attorney Fees

Except as otherwise provided by statute, rule, or court order, a party shall have fourteen (14) days from the entry of a final judgment to file and serve a request for the taxation of costs and for assessment of attorney fees. The time may be extended by the court for good cause shown. Failure to file such a request or to obtain leave of court for extensions of time within which to file shall be deemed a waiver of the right to make such a request. A party requesting taxation of costs shall submit a completed bill of costs on AO Form 133, which is available from the clerk and on the court's website.

Committee Comments

1994 Amendment

The present rule derives from present L.R. 43 [which was apparently new in 1987]. The only changes were designed to clarify and simplify the language of the rule. No change in substance was intended.

1995 Amendment

The rule was amended to reduce the time for filing a request for costs and attorney fees from 90 days to 14 days, to conform with Fed. R. Civ. P. 54(d)(2)(B). [Compiler's Note: The original 90 day deadline was inserted in 1987 in accordance with a recommendation by the Seventh Circuit Judicial Council in 1983].

2000 Amendment

L.R. 54.1 deals with the taxation of costs and assessment of attorney fees. The original version of this rule was identical in both districts. However, in their most recent revisions, the Southern District amended its rule to add: "The court prefers that any bill of costs be filed on an AO Form 133, which is available from the clerk." The Committee adopted the premise from the Southern District's rule but revised the language to make mandatory, not just preferential, the requirement that the party requesting taxation of costs submit that request on an AO Form 133.

L.R. 56.1

Summary Judgment Procedure

(a) In the text of the supporting brief or an appendix thereto, filed in support of a motion for summary judgment pursuant to L.R. 7.1, there shall be a "Statement of Material Facts," supported by appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence, as to which the moving party contends there is no genuine issue. Any party opposing the motion shall, within twenty-eight (28) days from the date such motion is served upon it, serve and file any affidavits or other documentary material controverting the movant's position, together with a response that shall include in its text or appendix thereto a "Statement of Genuine Issues" setting forth, with appropriate citations to discovery responses, affidavits, depositions, or other admissible evidence, all material facts as to which it is contended there exists a genuine issue necessary to be litigated. Any reply shall be filed within fourteen (14) days from the date the response is served.

(b) In determining the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are controverted in the "Statement of Genuine Issues" filed in opposition to the motion, as supported by the depositions, discovery responses, affidavits and other admissible evidence on file.

(c) All motions for summary judgment shall be considered as submitted for ruling without oral argument or hearing unless a request for such is granted under L.R. 7.5 or the court otherwise directs.

(d) Any dispute regarding the admissibility of evidence should be addressed in a separate motion in accordance with L.R. 7.1.

(e) If a party is proceeding pro se and an opposing party files a motion for summary judgment, counsel for the moving party must serve a notice upon the unrepresented party as set forth in Appendix C.

Committee Comments

1994 Amendment

The proposed rule revises present L.R. 11 [which was basically a new rule in 1987] regarding summary judgment practice. First, the new rule anticipates that the parties' "Statement of Material Facts" and "Statement of Genuine Issues" will be incorporated into the brief in support of the motion for summary judgment, either in the text or as an appendix. Second, both the "Statement of Material Facts" and the "Statement of Genuine Issues" must contain appropriate citations to the portions of the record which support their factual assertions. Third, the "good faith" requirement presently governing a Statement of Genuine Issues was deleted, since a good faith requirement is already imposed under Fed. R. Civ. P. 11. Finally, and perhaps most significantly, the requirement that finding of fact, conclusions of law, and a proposed order be filed has been deleted. The Advisory Committee received significant input from the Civil Justice Reform Advisory Group, which strongly urged the elimination of these filings due to their cost and limited utility. In its Civil Justice Expense and Delay Reductions Plan, the court indicated its support for elimination of these filings. *See* § 5.06 (b). The Advisory Committee agreed with this suggestion to reduce unnecessary costs.

2000 Amendment

The core provisions of L.R. 56.1 are the same in each district, but the Southern District summary judgment procedures (as recently amended) are much more detailed. Both districts require a statement of material facts from the moving party along with a statement of genuine issues from the party opposing the motion. However, Southern District Rule 56.1(f) requires "a single factual proposition" for each numbered factual assertion. The Southern District also provides an automatic thirty (30) day period for responding to any motions for summary judgment along with a requirement that the motions be filed no later than 120 days prior to trial unless otherwise specified in the case management order. Paragraph (i) of the Southern District rule requires the moving party to provide the *Lewis v Faulkner* [689 F.2d 100(7th Cir. 1982)] notice to *pro se* litigants.

After reviewing the Southern District's rule, the Committee advises against adopting a comparable version of that rule. Rather, the Committee recommends changing the response time for a summary judgment motion from 15 to 30 days, and addition of language at the end of paragraph (a) referencing a reply brief: "any reply shall be filed within 15 days from the date the response is served." The Committee also opted not to add the provision requiring the movant to issue a *Lewis v. Faulkner* notice to *pro se* litigants, as a notice is routinely generated by the court.

2003 Amendment

The Committee undertook a substantial review of current N.D.Ind. L.R. 56.1 in light of major revisions made by the Southern District to their summary judgment local rule. The Committee did adopt an addition to the local rule. Paragraph (d) clarifies that motions to strike, *i.e.* motions disputing the admissibility of evidence, should be addressed in a separate motion as required by L.R. 7.1 rather than addressed in the summary judgment briefs. The Committee

believes that requiring separate motions for disputes about evidentiary matters aids the clerk by clarifying the docket and provides all parties adequate response/reply opportunities.

Paragraph (e) is a codification in the local rules of the Seventh Circuit's requirement in *Lewis v Faulkner*, 689 F.2d 100 (7th Circuit. 1982), and its progeny that opposing counsel must notify an unrepresented party of the nature of a summary judgment motion and the appropriate response to such a motion. The Committee concluded that adding this paragraph to the local rules clarifies that the responsibility of serving such a notice lies first with counsel for the moving party and only secondarily with the court. The Committee also concluded that adding this provision will aid practitioners who may be unfamiliar with the *Lewis* decision. To aid counsel in drafting and serving such a notice, the Committee recommends attaching, as Appendix C to the local rules, the notice previously approved by the court for use where counsel fails to comply with *Lewis v. Faulkner*. [Compiler's Note: Appendix C was amended in 2008 to conform with the stylistic changes made to Fed. R. Civ. P. 56 in 2007.

2009 Amendment

The Committee did not recommend any changes to this Local Rule apart from establishing 28 days for a response to any motion for summary judgment and 14 days for a reply. This change responds to the new time calculation in the federal rules effective December 1, 2009. Although amended Rule 56 (effective December 1, 2009) grants a party 21 days to respond to a motion for summary judgment, that deadline can be modified by local rule, and 28 days for a response is not only consistent with the new time computation requirements, but also a near approximation of the current 30 days.

The Committee recommended that the Northern District, unlike the Southern District, retain the requirement of a separate motion to strike as set out in Local Rule 56.1(d).

Paragraph (e) discusses notice to *pro se* litigants and refers to Appendix C. The Southern District's Local Rule 56.1(h) has the requirements of notice to a *pro se* litigant within the rule. The Committee recommended that the Northern District retain its reference to Appendix C. However, the Committee recommends some changes to Appendix C, which are noted there. In particular, Appendix C is amended to provide *pro se* litigants with the same response deadline, 28 days, as any other litigant and was also modified to extensively quote the new language of Rule 56.

L.R. 65.1

Motions for Preliminary Injunctions and Temporary Restraining Orders

The court will consider a request for a preliminary injunction or a temporary restraining order only when the moving party files a separate motion for such relief. If the motion is for a temporary restraining order, in addition to fully complying with all the requirements of Fed. R. Civ. P. 65(b), the moving party also shall file with its motion a supporting brief.

Committee Comments

1994 Amendment

The proposed rule derives from present L.R. 37 [which incorporated the practice of the Fort Wayne Division]. Unlike L.R. 37, the proposed rule specifically requires that a motion for a preliminary injunction or temporary restraining order be verified. The court's power to require the verified pleading is contained in Fed. R. Civ. P. 11. The requirement of verification is designed to deter groundless motions and to provide the court with evidence in an admissible form for purposes of ruling on the motion.

Several formal changes, such as sub-paragraphs, are intended to clarify the operation of the rule.

2000 Amendment

The Southern District has significantly modified and shortened its L.R. 65.1. The Committee followed the Southern District's lead and shortened the local rule since much of the current rule tracks, and is redundant of, Fed. R. Civ. P. 65. The revisions are identical to the Southern District's modified rule.

L.R. 66.1

Receiverships

(a) **Proceedings to Which This Rule is Applicable.** This rule is promulgated, pursuant to Fed. R. Civ. P. 66 for the administration of estates, other than the estates in bankruptcy, by receivers or by other officers appointed by the court.

(b) **Inventory and Appraisal.** Unless the court otherwise orders, a receiver or similar officer, as soon as practicable after appointment and not later than twenty-eight (28) days after he or she has taken possession of the estate, shall file an inventory and an appraisal of all the property and assets in the receiver's possession or in the possession of others who hold possession as his or her agent, and in a separate schedule, an inventory of the property and assets of the estate not reduced to possession by the receiver but claimed and held by others.

(c) **Periodic Reports.** Within twenty-eight (28) days after the filing of inventory, and at regular intervals of three (3) months thereafter until discharged, unless the court otherwise directs, the receiver or other similar officer shall file reports of the receipts and expenditures and of his or her acts and transactions in an official capacity.

(d) **Compensation of Receiver, Attorneys and Other Officers.** In the exercise of its discretion, the court shall determine and fix the compensation of receivers or similar officers and their counsel and the compensation of all others who may have been appointed by the court to aid in the administration of the estate, and such allowances or compensation shall be made only on petition therefore and on such notice, if any, to creditors, and other interested persons as the court may direct.

(e) **Administration Generally.** In all other respects the receiver or similar officer shall administer the estate as nearly as may be in accordance with the practice in the administration of estates in bankruptcy, except as otherwise ordered by the court.

Committee Comments

1994 Amendment

The proposed rule derives from present L.R. 26 [which tracked verbatim old L.R. 14]. The only difference is in sub-paragraph (b), which now requires the receiver or other officer to file an appraisal in addition to the inventory already required under L.R. 26. The filing of an appraisal, which is sometimes done even under the present rule, is a useful aid to the court.

2000 Amendment

The Committee recommends no changes to this rule except for the format change [to "Fed. R. Civ. P. 66"] in paragraph (a). The current rule is identical in both districts.

2009 Amendment

The Committee recommended amending the Rule at paragraphs (b) and (c) to reflect the anticipated time calculation amendments effective December 1, 2009, and for consistency with the Southern District. In each instance, thirty (30) days was changed to twenty-eight (28) days.

L.R. DEPOSITS

(deleted 2009)

~~L.R. 67.1~~

~~Deposits~~

~~(a) **Deposit into Registry Account and Other Interest-bearing Accounts.** All funds deposited into the court pursuant to Fed. R. Civ. P. 67 and 28 U.S.C. § 2041 shall be deposited into an interest-bearing Registry Account maintained by the clerk. The Order of Deposit should direct the clerk, without further order of the court, to deduct from the income earned on the investment a fee not exceeding the fee authorized from time to time by the Judicial Conference of the United States, as soon as such fee becomes available for deduction from the investment income.~~

~~(b) **Orders Directing Investments of Funds by clerk of court.** A party may petition the court for an Order of Investment which directs the clerk to hold the funds in a form of interest-bearing account other than the Registry Account. Whenever a party seeks a court order for money to be invested by the clerk into an interest-bearing account, the party shall personally deliver a proposed order to the clerk, who will inspect the order for proper form, content, and compliance with this rule. A model proposed order is available from the clerk or on the court's website. The clerk shall immediately forward the proposed order to the judge for whom the order was prepared.~~

~~Any order which, pursuant to 28 U.S.C. § 2041, directs the clerk to invest funds in an interest-bearing account or instrument shall include the following:~~

~~(1) The amount to be invested;~~

~~(2) The name of the financial institution in which the money will be invested;~~

~~(3) The type of instrument or account;~~

~~(4) The term of the investment; and~~

~~(5) If the deposit and/or interest received during the time of investment will exceed the FDIC Insurance amount, then the petitioning party shall obtain a collateral pledge by the financial institution for the remainder of the investment. The collateral pledge shall be approved by the judge.~~

Committee Comments

1994 Amendment

This rule replaces present L.R. 6 [new in 1987, but patterned after a Southern District rule] and the court's General Order of June 12, 1989. This rule reflects the present statutory and administrative constraints which are placed on deposits, as well as the parties' obligations regarding those deposits. The present rule and order are outdated.

2000 Amendment

Local Rule 67.1 deals with money deposited with the clerk's office. The Southern District has no comparable Local Rule. The Committee added language in paragraph (b) which provides: "A model proposed order is available from the clerk on the court's website." The Committee believes this will be a helpful addition to the rule. The Committee also modified the format in paragraph (a) to be consistent with the format throughout the rules.

2009 Amendment

The Committee recommended that Local Rule 67.1 be deleted for three reasons. First, the procedures outlined in the local rule are covered by statute and Rule 67. Second, the order entered approving the deposit generally instructs the clerk whether the money should be kept in an interest bearing account. Third, there is no comparable rule in the Southern District.

L.R 69.2 DISCOVERY IN AID OF JUDGMENT OR EXECUTION

(deleted 2009)

~~**L.R. 69.2**~~

~~**Discovery in Aid of Judgment or Execution**~~

~~An order to answer interrogatories shall accompany each set of interrogatories served on a garnishee defendant and may be part of the same document or pleading. As a minimum, the order to answer interrogatories shall contain the following information:~~

~~(1) that the plaintiff has a judgment against the defendant and the amount of the judgment;~~

~~(2) that the garnishee defendant may answer the interrogatories in writing on or before the date specified or appear in court and answer the interrogatories in person, at the garnishee's option;~~

~~(3) the time, date and place of the hearing; and~~

~~(4) that any claim or defense to a proceedings supplemental or garnishment order to a garnishee defendant must be presented at the time and place of the hearing specified in the order to appear.~~

~~A copy of the motion for proceedings supplemental must be served on the garnishee defendant at the time the order to answer interrogatories and the interrogatories are served upon the garnishee defendant.~~

~~Further, if the order to answer interrogatories is to operate as a hold on a judgment defendant's depository account, the order shall comply with the applicable provisions of the Indiana Code.~~

~~To the extent that they are inconsistent with the Federal Debt Collection Act, the foregoing provisions shall not apply in Federal Debt Collection Act cases.~~

Committee Comments

1994 Amendment

This proposed rule descends from present L.R. 29(b) [new in 1987 and similar to Southern District Rule 29]. The final two paragraphs are new.

2000 Amendment

Both districts have L.R. 69.2 which provides for discovery in proceedings supplemental. The rules are identical except for the following sentences contained in the Northern District version: "To the extent that they are inconsistent with the Federal Debt Collection Act, the foregoing provisions shall not apply in Federal Debt Collection Act cases." The Committee recommends no changes to this rule.

The Southern District also has a L.R. 69.1 which this district does not have. This rule provides that collection procedures shall be in accordance with Fed. R. Civ. P. 69 and applicable state law. The Committee considered adding such a local rule for uniformity but recommends against doing so because the rule adds nothing to Fed. R. Civ. P. 69.

2009 Amendment

Rule 69 of the Federal Rules of Civil Procedure provides that state procedures apply. Both Local Rule 69.2 and Rule 69.3, replicate state procedures as found in the Indiana Trial Rules. Because these rules do not add to the existing state rules and merely replicate them, the Committee recommended deletion of both rules.

L.R. 69.3 FINAL ORDERS IN WAGE GARNISHMENT

(deleted 2009)

~~**L.R. 69.3**~~

~~**Final Orders in Wage Garnishment**~~

~~All final orders garnishing wages shall comply with the applicable provisions of the Indiana Code, and shall take effect after all prior orders in garnishment have been satisfied, and only one wage garnishment will be carried out by the garnishee defendant at a time. Garnishment orders obtained under the Federal Debt Collection Act shall comply with the provisions of that Act.~~

Committee Comments

1994 Amendment

The proposed rule replaces present L.R. 29(c) [new in 1987]. The new language simply requires that final orders in garnishment comply with the Indiana statutes, rather than specifying the content of those orders. Likewise, the second phrase of the proposed rule states the effect of the orders directly; present L.R. 29(c) [new in 1987] requires the parties to type into a proposed order standard language which gives this effect of the order by local rule, rather than by requiring parties to type the effect of a garnishment order into every order submitted to the court. The purpose of the final sentence is evident.

2000 Amendment

L.R. 69.3 is substantially similar in both districts. In the Northern District, the rule provides that any garnishment orders "shall comply with the applicable provisions of the Indiana Code..." The Southern District rule requires specific reference to the Indiana Code §24-4.5-5-105 *et seq.* Also, the Northern District rule contains an express reference to the Fair Debt Collection Act while the Southern District does not. This reference is also included in L.R. 69.2 and, for uniformity, should likewise be retained in this local rule. The Committee recommends retaining the current rule without change.

2009 Amendment

Rule 69 of the Federal Rules of Civil Procedure provides that state procedures apply. Both Local Rule 69.2 and Rule 69.3, replicate state procedures as found in the Indiana Trial Rules. Because these rules do not add to the existing state rules and merely replicate them, the Committee recommended deletion of both rules.

L.R. 69.4

Body Attachments; Hearings

Whenever a judgment debtor fails to appear for a hearing on a complaint in proceedings supplemental, no body attachment warrant shall issue until after the judgment plaintiff files a petition directing the judgment defendant to show cause for the failure to appear. If the defendant fails to appear at the show cause hearing, the court may issue a body attachment warrant upon proof that the defendant was served with notice of the original proceedings supplemental hearing and the show cause hearing.

Whenever a judgment defendant has been brought into court on a body attachment, a hearing shall be conducted at the earliest convenience of the court. Counsel for the moving party shall respond to the telephone request by court personnel to appear at the hearing forthwith, and counsel shall be deemed to have consented to such notice to appear by requesting a body attachment. The hearing requires the presence of the attorney of record, and clerical or secretarial personnel shall not appear to interrogate the attached judgment defendant. Failure to respond promptly to such a request may result in the discharge of the attached defendant or other such appropriate measures taken by the court.

Committee Comments

2000 Amendment

The Southern District's L.R. 69.4 deals with bench warrants when the judgment debtor fails to appear for a hearing. There is no comparable rule in the Northern District of Indiana. However, the Committee adopted a rule similar to the Southern District rule with some minor modifications.

The Southern District rule requires the magistrate judge to make a report and recommendation to the District Judge before a warrant can be issued. The Committee deleted this provision from the rule because it believed the provision was unnecessary.

Additionally, the practice in the Northern District when a judgment defendant fails to appear for a hearing is to require the judgment plaintiff to serve a show cause notice on the judgment defendant. A warrant is issued only after the judgment defendant fails to appear the second time. The rule incorporates this process.

Finally, the Committee changed the language of “magistrate judge” to “court” to address the concern about whether a magistrate judge has jurisdiction to issue a bench warrant.

L.R. 72.1

Authority of United States Magistrate Judges

(a) The term "United States Magistrate Judge" shall include full-time magistrate judges, part-time magistrate judges and magistrate judges recalled pursuant to 28 U.S.C. §636(h).

(b) Magistrate judges of this district are judicial officers of the Court and are authorized and specially designated to perform all duties authorized to be performed by United States magistrate judges by the United States Code and any rule governing proceedings in this Court.

(c) The cases in which each magistrate judge is authorized to perform the duties enumerated in these rules are those cases assigned to the magistrate judge by rule or order of this Court, or by order or special designation of any district judge of this Court.

Committee Comments

2009 Amendment

This proposed revision marks a significant departure from the Local Rule 72.1 in effect in this District for more than twenty-five years. When magistrates (as they were then called) first came into existence, the extent of their jurisdiction was somewhat in question. Accordingly, this District, along with others (*e.g.*, Southern District of Indiana; Eastern District of Wisconsin) drafted Local Rules that were a comprehensive recitation of nearly all possible proceedings that could involve magistrates. The result, at least in this District, was a lengthy rule spanning more than nine pages.

The intervening years, however, have witnessed an evolutionary and expansive approach to magistrate judge duties, as well as additional statutory and procedural clarity. Indeed, the involvement of magistrate judges has become so common and accepted that it is exceedingly rare to have the scope of their authority challenged. Accordingly, many districts have jettisoned a "laundry list" approach to Magistrate Judge duties in favor of a simple local rule granting them authority co-extensive with the reach of the United States Code. The subcommittee reviewed a number of such local rules and settled on the rule currently in effect in the Eastern District of Virginia as the most suitable.

New paragraph (a) is drawn from the Eastern District of Virginia, but also largely tracks (except for the deletion of the needless phrase: "[u]nless otherwise provided in these Rules,") this District's Local Rule 72.1(a).

New paragraph (b) is lifted wholesale from the Eastern District of Virginia's Local Rule 72.1 and because of its comprehensive wording, essentially supplants nearly all of this District's existing Local Rule 72.1. The subcommittee, the District's Magistrate Judges, believe that the proposed change is consistent with current District practice.

New paragraph (c) not only follows the language from the Eastern District of Virginia, but also is word-for-word recitation of this District's Local Rule 72.1(j). The two versions of Local Rule 72.1 are otherwise too difficult to reconcile and accordingly the current version of Local Rule 72.1 should be stricken.

The Committee believes these changes will ultimately assist the practicing bar and the public in understanding the modern role of the magistrate judge in federal litigation.

L.R. 72.1 AUTHORITY OF U.S. MAGISTRATE JUDGES

(version deleted 2009)

~~**L.R. 72.1**~~

~~**Authority Of United States Magistrate Judges**~~

~~Unless otherwise provided in these Rules, the term "United States Magistrate Judge" shall include full-time magistrate judges, part-time magistrate judges and magistrate judges recalled pursuant to 28 U.S.C. § 636(h).~~

~~(a) **Duties under 28 U.S.C. §§ 636(a)(1) and (2).** Each United States magistrate judge of this court is authorized to perform the duties prescribed by 28 U.S.C. §§ 636(a)(1) and (2), and may exercise all the powers and duties conferred upon United States magistrate judges by statutes of the United States and the Federal Rules of Criminal Procedure which include, but are not limited to, the following:~~

~~(1) Acceptance of criminal complaints and issuance of arrest warrants or summonses. (Fed. R. Crim. P. 4.)~~

~~(2) Issuance of search warrants, including warrants based upon oral or telephonic testimony. (Fed. R. Crim. P. 41.)~~

~~(3) Conduct of initial appearance proceedings for defendants, informing them of the charges against them and of their rights, and imposing conditions of release. (Fed. R. Crim. P. 5.)~~

~~(4) Conduct of initial proceedings upon the appearance of an individual accused of an act of juvenile delinquency. (18 U.S.C. § 5034.)~~

(5) Appointment of attorneys for defendants who are unable to afford or obtain counsel and approval of attorneys' expense vouchers in appropriate cases. (18 U.S.C. § 3006A.)

(6) Appointment of counsel for persons subject to revocation of probation, parole or supervised release (in which case preference shall be given to previously appointed counsel if such attorney is still available and willing to serve); persons in custody as a material witness; persons seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 or 18 U.S.C. § 4245; or for any person for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which the person faces loss of liberty, any federal law requires the appointment of counsel.

(7) Appointment of interpreters in cases initiated by the United States. (28 U.S.C. §§ 1827 and 1828.)

(8) Direction of the payment of basic transportation and subsistence expenses for defendants financially unable to bear the costs of travel to required court appearances. (18 U.S.C. § 4285.)

(9) Setting of bail for material witnesses. (18 U.S.C. § 3149.)

(10) Conduct of preliminary examinations. (Fed. R. Crim. P. 5.1 and 18 U.S.C. § 3060.)

(11) Conduct of initial proceedings for defendants charged with criminal offenses in other districts. (Fed. R. Crim. P. 40.)

(12) Conduct of detention hearings. (18 U.S.C. § 3142(f).)

(13) Conduct of preliminary hearings for the purpose of determining whether there is probable cause to hold a probationer for a revocation hearing. (Fed.R.Crim.P. 32.1(a)(1).)

(14) Administration of oaths and taking of bail, acknowledgements, affidavits and depositions. (28 U.S.C. § 636(a)(2).)

(15) Conduct of extradition proceedings. (18 U.S.C. § 3184.)

(16) Holding of individuals for security of the peace and for good behavior. (50 U.S.C. § 23.)

(17) Discharge of indigent prisoners or persons imprisoned for debt under process of execution issued by a federal court. (28 U.S.C. § 2007.)

(18) Issuance of attachments or orders to enforce obedience of Internal Revenue Service summonses to produce records or give testimony. (26 U.S.C. § 7604(b).)

(19) Issuance of administrative inspection warrants. (*In the Matter of Establishment Inspection of Gilbert and Bennett Manufacturing Co.*, 589 F.2d 1335, 1340-41 [7th Cir. 1979].)

(20) Institution of proceedings against persons violating certain civil rights statutes. (42 U.S.C. § 1987.)

(21) Settling or certification of the non-payment of seamen's wages.

(22) Enforcement of awards of foreign consuls in differences between captains and crews of vessels of the consul's nation. (22 U.S.C. § 258.)

(23) Conduct of proceedings under the Federal Debt Collection Act to the extent not inconsistent with the Constitution and laws of the United States. (28 U.S.C. § 3008.)

(b) **Disposition of Misdemeanor Cases -- 18 U.S.C. § 3401.** A magistrate judge may:

(1) Conduct the trial of persons accused of, and sentence persons convicted of, misdemeanors, including petty offenses committed within this district. Pursuant to 18 U.S.C. § 3401(a), each magistrate judge is hereby specially designated to exercise the jurisdiction conferred by such section with the written consent of the defendant as provided in 18 U.S.C. § 3401(b); such trial shall be by jury in the case of all Class A misdemeanors unless waived in writing by the defendant;

(2) Direct the probation service of the court to conduct a pre-sentence investigation in any misdemeanor case.

Any appeal from the judgment of the magistrate judge shall be as provided in 18 U.S.C. § 3402.

(c) **Determination of Non-Dispositive Pre-trial Matters -- 28 U.S.C. § 636(b)(1)(A).** A magistrate judge may hear and determine any procedural or discovery motion or other motion or pre-trial matter in a civil or criminal case, other than the motions which are specified in Local Rule 72.1(d) of these rules, in accordance with Fed. R. Civ. P. 72(a).

(d) **Recommendation Regarding Case-Dispositive Motions -- 28 U.S.C. § 636(b)(1)(B).**

(1) A magistrate judge may submit to a district judge of the court a report containing proposed findings of fact and recommendations

for disposition by the judge of the following pre-trial motions in civil and criminal cases in accordance with Fed. R. Civ. P. 72(b):

(A) Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;

(B) Motions for judgment on the pleadings;

(C) Motions for summary judgment;

(D) Motions to dismiss or permit the maintenance of a class action;

(E) Motions under Fed. R. Civ. P. 72(a);

(F) Motions to involuntarily dismiss an action;

(G) Motions for review of default judgments;

(H) Motions to dismiss or quash an indictment or information made by a defendant;

(I) Motions to suppress evidence in a criminal case;

(J) Applications for post-trial relief made by individuals convicted of criminal offenses;

(K) Petitions for judicial review of administrative decisions regarding the granting of benefits to claimants under the Social Security Act, and related statutes;

(L) Petitions for judicial review of an administrative award or denial of licenses or similar privileges.

(M) Any matter that may dispose of a charge or defense in a criminal case.

(2) A magistrate judge may determine any preliminary matter and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

(e) **Prisoner Cases under 28 U.S.C. § 2254 and 2255.** A magistrate judge may perform any or all the duties imposed upon a judge by the rules governing proceedings in the United States District Court under §§ 2254 and 2255 of Title 28, United States Code. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a district judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition may only be made by a judge. In the event no hearing is held by the magistrate judge, the magistrate judge may, pursuant to 28 U.S.C. § 636(b)(3) acting as legal advisor to the district judge, submit to the judge a proposed entry ruling on the motion. If the district judge so directs, copies of such proposed ruling need not be served on the parties of counsel.

(f) **Prisoner Cases under 42 U.S.C. § 1983.** A magistrate judge may:

(1) Review prisoner suits for deprivation of civil rights arising out of conditions of confinement under § 1983 of Title 42, United States Code and issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for the disposition of the suits by the district judge. Any order disposing of prisoner suits challenging the conditions of their confinement may only be made by a district judge.

(2) Take on-site depositions, gather evidence, conduct pretrial conferences, or serve as a mediator at a holding facility in connection with civil rights suits filed by prisoners contesting conditions of confinement under § 1983 of Title 42, United States Code.

(3) Conduct periodic reviews of proceedings to ensure compliance with previous orders of the court regarding conditions of confinement.

(4) Review prisoner correspondence.

(g) **Special Master References -- 28 U.S.C. § 636(b)(2).** A magistrate judge may be designated by a district judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. Upon the consent of the parties, a magistrate judge may be designated by a judge to serve as a special master in any civil case, notwithstanding the limitations of Fed. R. Civ. P. 53(b) .

(h) **Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties -- 28 U.S.C. § 636(c).** Upon the consent of the parties, a full-time magistrate judge is hereby authorized and specially designated to conduct any or all proceedings in any civil case which is filed in this court, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. Pursuant to 28 U.S.C. § 636(c)(1), upon the consent of the parties, pursuant to their specific written request, and upon certification by the chief judge of this court that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit, any part-time magistrate judge who does not serve as a full-time judicial officer but who meets the bar requirements set forth in 28 U.S.C. § 631(b)(1), is hereby authorized and specifically designated by this court to conduct any or all proceedings in a civil case, whether jury or non-jury. In the course of conducting such proceedings, upon consent of the parties, a magistrate judge may hear and determine any and all pre-trial and post-trial motions which are filed by the parties, including case-dispositive motions.

(i) **Additional Duties -- 28 U.S.C. § 636(b)(3).** A magistrate judge of this court is also authorized to:

(1) Exercise general supervision of civil and criminal calendars, including the handling of calendar and status calls, and motions to expedite or postpone the trial of cases for the district judges;

(2) Conduct preliminary and final pre-trial conferences, status calls, settlement conferences, and related pre-trial proceedings in civil

cases, and prepare a pre-trial order following the conclusion of the final pre-trial conference;

(3) Conduct pre-trial conferences, omnibus hearings, and related pre-trial proceedings in criminal cases;

(4) Conduct arraignments, accept not guilty pleas, and order pre-sentence reports on defendants who signify the desire to plead guilty. (A magistrate judge, however, may not accept pleas of guilty or *nolo contendere* in cases outside the jurisdiction specified in 18 U.S.C. § 3401);

(5) Receive grand jury returns in accordance with Fed. R. Crim. P. 6(f);

(6) Accept waivers of indictment, pursuant to Fed. R. Crim. P. 7(b);

(7) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;

(8) Hear and determine motions by the government to dismiss an indictment, information, or complaint without prejudice to further proceedings;

(9) Conduct voir dire and select petit juries in civil cases for the court;

(10) Accept petit jury verdicts in civil cases in the absence or unavailability of a judge;

(11) Order the exoneration or forfeiture of bonds;

(12) Conduct proceedings for the collection of civil penalties of not more than $200.00 assessed under the Federal Boat Safety Act of 1971 in accordance with 46 U.S.C. §§ 4311(d), 12309;

(13) Conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;

(14) Serve as eminent domain commissioner as provided in Fed. R. Civ. P. 71.1;

(15) Perform the functions specified in 18 U.S.C. §§ 4107, 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;

(16) Serve as a member of this District's Speedy Trial Act Planning Group, including service as the reporter (18 U.S.C. § 3168);

(17) Supervise proceedings on requests for letters rogatory in civil and criminal cases upon special designation by the district court as required under 28 U.S.C. § 1782(a);

(18) Hear and determine applications for admission to practice before this District Court;

(19) Preside over naturalization ceremonies and administer the oath of renunciation and allegiance required by 8 U.S.C § 1448(a).

(20) Conduct proceedings supplemental; and

(21) Perform any additional duty as is not contrary to the law of this District and Circuit nor inconsistent with the Constitution and laws of the United States.

~~(j) **Assignment of Matters to Magistrate Judge.** The cases in which each magistrate judge is authorized to perform the duties enumerated in these rules are those cases assigned to the magistrate judge by rule or order of this court, or by order or special designation of any district judge of this court.~~

Committee Comments

1994 Amendment

This proposed rule is derived from present L.R. M-1 [which antedated the 1987 amendments]. The rule states the authority of the magistrate judge in various proceedings and the duties which the court might otherwise assign to the magistrate judge.

2000 Amendment

The Committee made no substantial changes to this rule but modified the citations to the Fed. R. Civ. P. to make them uniform throughout the Local Rules.

2002 Amendment

The Committee deleted paragraph (j) due to statutory changes that authorized contempt power for magistrate judges. All other amendments were technical. Former paragraph (k) was re-lettered as (j).

2004 Amendment

The Committee added section (c)(2) to this rule to establish a procedure and time limit for objecting to any non-dispositive rulings by a magistrate judge. The purpose of the amendment is to provide a criminal rule analog to the ten-day rule set out in Fed. R. Civ. P. 72(a). The sections have been renumbered to reflect the change.

2006 Amendment

The revisions to this local rule were inspired by newly adopted Fed. R. Crim. P.59 relating to appeals from dispositive and non-dispositive rulings by magistrate judges in criminal cases. The former version of L.R. 72.1 which referenced such appeals, see former 72.1(c)(2), added in 2004, and 72.1(d)(2), is now no longer necessary given Fed. R. Civ. P. 59 and thus, the Committee deleted these provisions. In addition, the Committee added 72.1(d)(1)(M) to clarify that magistrate judges may issue proposed findings of fact and a recommendation disposing of a charge or defense in a criminal case.

2007 Amendment

The provision in subsection (i)(19) requiring a report from a magistrate judge following a naturalization ceremony was deleted because it is not required by law and is not uniformly applied.

2008 Amendment

The changes in this rule remove citations to [statutes or] other local rules that either are no longer in existence or have been amended. No substantive changes to the rule are being proposed.

L.R. 72.2

Forfeiture of Collateral in Lieu of Appearance

(a) A person who is charged with an offense made criminal pursuant to 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. The offenses to which this rule applies, together with the amounts of collateral to be posted, where applicable, shall appear on a schedule to be filed in the office of the clerk of court in each division of this district and available for public inspection. Such schedule shall be in effect until rescinded, amended or superseded by general order of the court. The clerk shall make copies of such schedule available to those legal publishing houses that publish for commercial distribution the rules of this court for inclusion of such schedule in any publication of the rules of this court.

(b) Upon the failure of the person charged with an offense to which this rule applies to appear before the United States magistrate judge, the collateral posted shall be forfeited and the forfeiting of said collateral shall signify that the offender does not contest the charge or request a hearing before the United States magistrate judge. If collateral is forfeited, such action shall be tantamount to a finding of guilt.

(c) Forfeiture will not be permitted on violations contributing to an accident which results in personal injury. Arresting officers shall treat multiple and aggravated offenses as mandatory appearance offenses, and shall direct the accused to appear for a hearing. No forfeiture of collateral will be permitted in such cases.

(d) Nothing in this rule shall prohibit a law enforcement officer from arresting a person for the commission of any offense, including those for which collateral may be posted and forfeited, and requiring the person charged to appear before a United States magistrate judge, or, upon arrest, taking the person immediately before a United States magistrate judge.

Committee Comments

1994 Amendment

The proposed rule is in substance identical to present L.R. M-3 [which antedated the 1987 amendments]. The rule was made gender neutral.

2002 Amendment

The Committee only made a technical change.

L.R. 79.1

Custody of Files and Exhibits

(a) **Custody During Pendency of Action**. After being marked for identification, models, diagrams, exhibits and material offered or admitted in evidence in any cause pending or tried in this court shall be placed in the custody of the clerk, unless otherwise ordered by the court, and shall not be withdrawn until after the time for appeal has run or the case is disposed of otherwise. Such items shall not be withdrawn until the final mandate of the reviewing court is filed in the office of the clerk and until the case is disposed of as to all issues, unless otherwise ordered.

(b) **Removal After Disposition of Action**. Subject to the provisions of subsections (a) and (d) hereof, unless otherwise ordered, all models, diagrams, exhibits or material placed in the custody of the clerk shall be removed from the clerk's office by the party offering them in evidence within ninety (90) days after the case is decided. In all cases in which an appeal is taken these items shall be removed within twenty-eight (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. At the time of removal a detailed receipt shall be given to the clerk and filed in the cause. No motion or order is required as a prerequisite to the removal of an exhibit pursuant to this rule.

(c) **Neglect to Remove**. Unless otherwise ordered by the court, if the parties or their attorneys shall neglect to remove models, diagrams, exhibits or material within twenty-eight (28) days after notice from the clerk, the same shall be sold by the United States Marshal at public or private sale or otherwise disposed of as the court may direct. If sold, the proceeds, less the expense of sale, shall be paid into the registry of the court.

(d) **Contraband Exhibits.** Contraband exhibits, such as controlled substances, money, and weapons, shall be released to the investigative agency at the conclusion of the trial and not placed in the custody of the clerk. A receipt shall be issued when such contraband exhibits are released.

(e) **Withdrawal of Original Records and Papers.** Except as provided above with respect to the disposition of models and exhibits, no person shall withdraw any original pleading, paper, record, model or exhibit from the custody of the clerk or other officer of the court having custody thereof except upon order of a judge of this court.

Committee Comments

1994 Amendment

The proposed rule is nearly identical to present L.R. 18 [Rules 18 and 21 prior to 1987]. The only change was to eliminate the requirement that a person taking custody of trial exhibits give a receipt to the clerk. The reason for the change was consistency with the rule proposed by the Southern District's Rules Committee; that rule did not have a receipt requirement. The Committee anticipates that the clerk can still require the execution of a receipt in all appropriate circumstances.

2000 Amendment

The Committee entertained a proposal to have attorneys, rather than the clerk, retain custody of exhibits at the conclusion of a hearing or trial. The practice in other districts is to require the party tendering an exhibit to maintain custody of that exhibit until the final disposition of the case. Although requiring the clerk to maintain custody of exhibits creates storage problems, it eliminates any disputes over the authenticity of the record. For this reason, the Committee opted to keep the current rule without revision. The Northern and Southern District versions of these rules are identical.

2002 Amendment

The Committee only made a technical change.

2009 Amendment

The Committee recommended amending the Rule at paragraphs (b) and (c) to reflect the anticipated time calculation amendments effective December 1, 2009, and for consistency with the Southern District. In each instances, thirty (30) days was changed to twenty-eight (28) days.

L.R. 83.3

Courtroom and Courthouse
Broadcasting, Publicity, and Cell Phone Use

(a) **Photography and Broadcasting.** The following Resolution of the Judicial Conference adopted at its March 1979 meeting shall be effective in the courthouses of this district:

"RESOLVED, That the Judicial Conference of the United States condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not be permitted in any federal court. A judge may, however, permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings."

1. In the Northern District of Indiana the term "environs" means all areas upon the same floor of the building on which a courtroom, jury assembly room, grand jury room or clerk's office is located.

2. The taking of photographs, sound recording (except by the official court reporters in the performance of their duties), broadcasting by radio, television, telephone, or other means, in connection with any judicial proceeding in any environs as defined above are prohibited. Provided, however, that incidental to investiture, ceremonial or naturalization proceedings, a judge of this court may permit the taking of photographs, broadcasting, televising, or recording. Provided further, nothing in this Rule shall prohibit the U.S. Attorney from conducting a press conference or depositions within its office space.

3. Depositions recorded by whatever means may be taken in the environs of the court upon approval by a judge or the clerk of this court.

(b) **Cellular Telephones and PDA's**.

(1) Members of the Bar of this Court may bring into the courthouses in this district cellular telephones and personal digital assistants (PDA's).

(2) Building personnel and federal law enforcement officers may have cellular telephones in the district courthouses subject to the following:

(A) Building personnel shall not be allowed to bring cellular telephones into any courtroom in this district.

(B) The United States Marshal and all Deputy Marshals shall be allowed to bring cellular telephones into the courtrooms, provided the cellular telephones are switched to a vibrate (rather than an audible) mode prior to entry.

(C) Visiting federal law enforcement personnel who have been approved by the United States Marshal's Service to carry cellular telephones are authorized to carry them directly to and from the agency office they are visiting, but must deposit them there for the duration of their visit.

(3) All persons authorized by this Rule to bring cellular telephones or PDA's into the courthouse are strictly prohibited from using such devices for any improper purpose, including but not limited to the taking of any photographs or moving pictures. Furthermore, all such persons shall be subject to a fine of up to $1,500 and/or confiscation of the cellular telephone or PDA if that device creates an audible noise in the courtroom of this district while the court is in session, which penalty is at the discretion of the judicial officer before whom the device creates the audible noise.

Committee Comments

2009 Amendment

This rule, new Local Rule 83.3, best combines Local Rule 83.3, 83.4, and the General Order 2008-7, without changing their content. In the interest of clarity, the present version of Local Rules 83.3 and 83.4 are shown deleted.

In addition, the Committee amended the rule further to clarify that the U.S. Attorney can conduct depositions in its office (even if technically within the environs of the Court) and that any deposition can be taken within the environs of the Court if approved by a judicial officer or the Clerk.

L.R. 83.3 COURTROOM AND COURTHOUSE DECORUM

(deleted 2009)

~~**L.R. 83.3**~~

~~**Courtroom and Courthouse Decorum**~~

~~At its March 1979 meeting the Judicial Conference of the United States amended its March 1962 resolution pertaining to courtroom photographs to read as follows:~~

~~"RESOLVED, That the Judicial Conference of the United States condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not be permitted in any federal court. A judge may, however, permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings."~~

~~In the Northern District of Indiana the term "environs" means all areas upon the same floor of the building on which a courtroom, jury assembly room, grand jury room or clerk's office is located.~~

~~Consistent with the Resolution of the Judicial Conference of the United States, and this court's interpretation of the term "environs," the taking of photographs, sound recording (except by the official court reporters in the performance of their duties), broadcasting by radio, television, telephone, or other means, in connection with any judicial proceeding on or from the same floor of the building on which a courtroom is located are prohibited. Provided, however, that incidental to investiture, ceremonial or naturalization proceedings, a judge of this court may, in his or her discretion, permit the taking of photographs, broadcasting, televising, or recording. *And provided further*, that video depositions may be taken in the environs of the court upon written approval by a judge of this court.~~

~~Cellular telephones, any device containing a cellular telephone, including Personal Digital Assistants (PDAs), and pagers are permitted in the federal courthouses in the Northern District of Indiana, but must be desposited, and only used at, the Court Security station at the front entrance of each building. Building personnel and federal~~

~~law enforcement officers may have cellular telephones in the district courthouses subject to the following:~~

~~(a) Building personnel shall not be allowed to bring cellular telephones into any courtroom in this district.~~

~~(b) The United States Marshal and all Deputy Marshals shall be allowed to bring cellular telephones into the courtrooms, provided the cellular telephones are switched to a vibrate (rather than an audible) mode prior to entry.~~

~~(c) Visiting federal law enforcement personnel who have been approved by the United States Marshal's Service to carry cellular telephones are authorized to carry them directly to and from the agency office they are visiting, but must deposit them there for the duration of their visit.~~

Committee Comments

1994 Amendment

The proposed rule is based upon present L.R. 31 [before 1987, it was Local Criminal Rule 6]. The final sentence of present L.R. 31, which gave judges the discretion to permit electronic recording of proceedings by counsel or a party, was deleted. The reasons were that the court's power to make particular exceptions to L.R. 83.3 is already provided through proposed L.R. 1.1(e) and that the rule should be uniform with the rule in the Southern District of Indiana. The Southern District's rules did not include the final sentence of L.R. 31.

2003 Amendment

This rule was substantially amended to more accurately define "environs" since the opening of the new courthouse in Hammond. See 2003 Committee Comments to L.R. 83.4. This rule was also amended to clarify the court's position concerning cellular telephones in the district's federal courthouses.

2006 Amendment

The Committee amended the rule to permit cameras and ancillary equipment within the "environs" of the court for video depositions. The term "environs" has not been altered; rather, the amendment seeks to clarify that video equipment for the taking of video depositions is not prohibited under this rule so long as its use has been authorized in writing.

2009 Amendment

This rule is shown as deleted in favor of a new combined Local Rule 83.3.

L.R 83.4 BROADCASTING AND PUBLICITY

(deleted 2009)

~~**L.R. 83.4**~~

~~**Broadcasting and Publicity**~~

~~At its March 1979 meeting the Judicial Conference of the United States amended its March 1962 resolution pertaining to courtroom photographs to read as follows:~~

~~"RESOLVED, That the Judicial Conference of the United States condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not be permitted in any federal court. A judge may, however, permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings."~~

~~In the Northern District of Indiana the term "environs" means a courtroom, jury assembly room, grand jury room or clerk's office and all common areas on the same floor. The taking of photographs, sound recording (except by the official court reporters in the performance of their duties), and broadcasting by radio, television, or other means within these areas, are prohibited. *Provided*, however, that incidental to investitive, ceremonial or naturalization proceedings, a judge of this court may permit the taking of photographs, broadcasting, televising, or recording.~~

Committee Comments

2003 Amendment

This rule has a new number and title. The rule broadly defines the term "environs" to include common areas on the same floor as a grand jury room, jury assembly room and clerk's office. The revision was necessary to encompass the first floor of the Hammond building where no courtroom is located. The rule largely duplicates L.R. 83.3, but, unlike that rule, extends the prohibition against photographs and sound recording to beyond those "in connection with any judicial proceeding."

2009 Amendment

This rule is shown as deleted in favor of a new combined Local Rule 83.3.

L.R. 83.5

Bar Admission

(a) **Bar Membership.** In all cases filed in, removed to, or transferred to this court, all parties, except as provided in subsection (c), must be represented of record by a member of the bar of this court. The bar of this court shall consist of persons admitted to practice by this court and who have signed the roll of attorneys, who have not been disbarred or suspended, or who have not resigned.

(b) **Admission.** Any attorney admitted to practice by the Supreme Court of the United States or the highest court of any state may become a member of the bar of this court upon motion by a member of the bar of this court, if the court is satisfied that the applicant is a member in good standing of the bar of every jurisdiction to which the applicant is admitted to practice and that the applicant is of good private and professional character from the assurance of the movant or upon report of a committee appointed by the court. Upon being admitted, the applicant shall take a prescribed oath or affirmation, certify that the applicant has read and will abide by the Seventh Circuit's Standards for Professional Conduct, certify that the applicant has read and will abide by the local rules of this court, pay the required fees (except law clerks to judges of this court shall not be required to pay such fees), sign the roll of attorneys, register for electronic case filing, give a current address, and agree to notify the clerk promptly of any change thereof, whereupon the attorney's admission will be entered upon the records of this court with certificate to issue accordingly.

(c) **Pro Se, Pro Hac Vice, and United States Government Appearances.** A person not a member of the bar of this court shall not be permitted to practice in this court or before any officer thereof as an attorney, unless:

(1) such person appears on his or her own behalf as a party, or

(2) such person is admitted to practice in any other United States Court or the highest court of any state, is a member in good standing of the bar of every jurisdiction to which the applicant is

admitted to practice, is not currently under suspension, has certified that he or she will abide by the local rules of this court and the Seventh Circuit Standards of Professional Conduct, has made application to this court, has made payment of the required fee, and has been granted leave by this court to appear in a specific action, or

(3) such person appears as attorney for the United States, or any agency thereof or any officer of the United States or of an agency thereof.

(d) **Foreign Legal Counsel.** There is no admission to this bar for Foreign Legal Consultants, as provided for in Rule 5 of the Indiana Rules for the Admission to the Bar and the Discipline of Attorneys.

(e) **Local Counsel.** Whenever necessary to facilitate the conduct of litigation, this court may require any attorney appearing in any action in this court who resides outside this district to retain as local counsel a member of the bar of this court who is resident of this district.

(f) **Standards.** The Rules of Professional Conduct, as adopted by the Indiana Supreme Court, and the Standards for Professional Conduct, as adopted by the Seventh Circuit, shall provide standards of conduct for those practicing in this court. The Seventh Circuit's Standards for Professional Conduct are set out in an Appendix to these Rules.

Committee Comments

1994 Amendment

The proposed rule is based upon present L.R. 1(a)-(g) [prior to 1987, also Rule 1]. As with the present rule, membership in the bar of the court is open to any attorney admitted to practice before the Supreme Court of the United States or the highest court of any state. Sub-paragraph (b) of the proposed rule states the general requirements for membership, and eliminates the confusing and unnecessary distinction between bar membership and the privilege of practicing generally before the court. In sub-paragraph (a) the proposed rule retains the present rule's requirement that all parties generally be represented by a member of the bar of the court, but clarifies in sub-paragraph (c) the three situations in which a party may be represented by a person not a member of the bar of the court (*pro se*, *pro hac vice*, and United States

government appearances). Sub-paragraph (d) [now (e)] clarifies the court's power to appoint local counsel by providing a standard – the facilitation of the conduct of litigation – against which to measure such an appointment. Sub-paragraphs (e) and (f) restate present requirements of L.R. 1. Sub-paragraph (e) of present L.R. 1, which provides that service upon one counsel for a party is deemed to be service upon all, was deleted because it was beyond the scope of the present rule.

Finally, a new sub-paragraph (g) [deleted in 2007] was created. Together with changes in sub-paragraphs (b) and (f), this section implements the Seventh Circuit's recommendations that all persons appearing before the court certify that they have read and will abide by the Seventh Circuit's Standards for Professional Conduct.

1996 Amendment

Subpart (c) was amended to require that attorneys appearing in a specific action pay a required fee (one-half of the fee for admission to the bar of the court).

2000 Amendment

Local Rule 83.5 dealing with the admission to practice in the district is substantially the same in both districts. The N. D. L.R. 83.5(c)(2) was amended to include a *pro hac vice* fee. The Southern District does not have this provision. Also the Northern District has a subsection (g) requiring every attorney who enters an appearance to not only certify familiarity with the Standards for Professional Conduct within the Seventh Federal Judicial Circuit but also as now amended, the local rules of this court. The Southern District does not require attorneys to certify that they have read their local rules. The Committee added [similar] language in paragraph (b)

The Committee also changed paragraph (c) to clarify that the U.S. Attorney's office represents Government agencies without the title United States of America.

2007 Amendment

The changes to this rule [including deletion of subsection (g)] comport with recent changes made by the Southern District of Indiana. The substance of the rule remains unchanged except for a requirement in subsection (b) that attorneys register for electronic case filing as a prerequisite to admission to practice in this court. In addition, the rule adds a provision [subsection (d)] clarifying that foreign legal consultants are not admitted to the bar of this court. Former Rule 83.5(f), dealing with sanctions, was deleted in light of the court's adoption of Local Rule 83.6, which establishes a system for attorney discipline and sanctions. [Former subsection (d) regarding local counsel was re-lettered (e).]

2009 Amendment

The Committee's proposed changes correspond to changes recommended by the Committee to the attorney admission forms currently utilized by the court. Specifically, the Committee added language to both subsections (b) and (c) which requires the applicant to be a member in good standing of the bar of every jurisdiction to which the applicant is admitted to practice. This responds to a new Judicial Conference Policy requiring courts to gather sufficient information of bar membership and verify that information. In addition, the Committee recommends that a General Order be adopted by the District Judges adopting the revised forms. [See General Order 2009-2, entered May 29, 2009.]

L.R. 83.6

Disciplinary Action Against Attorneys

(a) **Effect of an Appearance in this Court**. Any attorney authorized to appear on behalf of a client in this court is deemed admitted to practice before this court and is subject to discipline in this court.

(b) **Violations of Standards for Professional Conduct**

(1) Acts or omissions by an attorney admitted to practice before this court, individually or in concert with any other person or persons, which violate the standards of professional conduct identified in L.R. 83.5(f) constitute misconduct, whether or not the act or omission occurred in the course of an attorney-client relationship.

(2) When an attorney admitted to practice before this court engages in misconduct, the attorney may be disbarred or, suspended from practice before this court, reprimanded, or subjected to other disciplinary action in accordance with the grievance process established under L.R. 83.6(c).

(c) **Grievance Process.**

(1) **Establishment of the Grievance Committee**

(A) The judges of the district court shall appoint a five member panel to serve as a Grievance Committee ("Committee") for the Northern District of Indiana. The Chief Judge shall designate one member as the chairperson to convene the Committee.

(B) The Committee shall consist of members of the bar of this court, including at least one member from each of the divisions of the court.

(C) Committee members shall serve for a period of five years and may be reappointed by the judges of the district court. Upon receiving notification that a Committee member is unable or unwilling to serve the entirety of the member's appointed term, the judges of the district court shall promptly select a replacement Committee member. The terms of the Committee members will be staggered, with one member replaced or the term renewed annually by the district court. The initial Committee members will serve terms from one to five years so as to establish this rotation. The Committee will determine at its initial meeting which members will serve these initial terms of service.

(D) The clerk shall either serve or designate a deputy clerk to serve as secretary to the Committee, responsible for maintaining all Committee records. The designee shall be a non-voting member of the Committee.

(E) Committee members shall serve without compensation, but insofar as possible, their necessary expenses shall be paid by the clerk from the Library Fund.

(F) By January 31 of each year, the Committee shall provide the district court with a written report of its actions during the previous calendar year. The report shall include information concerning the complaints filed, the number of pending investigations, and the disposition of complaints.

(G) The members of the Committee, with respect to their actions in such capacity, shall be considered as representatives of, and acting under the powers and immunities of, the district court;

and they shall enjoy all such immunities while acting in good faith in their official capacities.

(H) Any three or more members shall constitute a quorum and may act on behalf of the Committee.

(2) **Filing a Grievance**

(A) The clerk shall maintain a form complaint that may be utilized to initiate a grievance proceeding against an attorney admitted to practice before this court. A complaint shall identify the attorney and provide a short and plain statement of the claim of misconduct. The complaint shall be verified and filed under seal with the clerk. Once filed, the clerk shall present the filing to the Committee. The complaint shall remain under seal until such time as the Committee determines that there is probable cause to investigate the complaint.

(B) A judge of this court may initiate a grievance proceeding with the entry of an order in a pending case.

(C) The secretary of the Committee shall promptly provide a copy of the complaint or order to all members of the Committee.

(3) **Procedures Before the Grievance Committee**

(A) Upon receiving a complaint or order, the Committee shall do one or more of the following:

(i) Determine that the complaint or order raises a substantial question of misconduct justifying further inquiry that should be pursued by the Committee; or

(ii) Determine that the complaint or order raises a substantial question of misconduct that should be referred to the appropriate grievance committee of the Indiana Bar or other disciplinary agency with jurisdiction over the attorney; or

(iii) Determine that the complaint or order raises no substantial question of misconduct and take no further action against the attorney. If the Committee decides to take no further action, it shall advise the clerk and complaining person or judge that no further action or investigation is warranted. It shall also notify the attorney that a claim of misconduct was filed and that the Committee determined to take no further action. The Committee shall supply the attorney with a copy of the complaint or order.

(B) If the Committee determines to conduct a further investigation, the Committee shall decide how and to what extent to conduct the investigation. It shall also notify the attorney of the investigation, provide the attorney with a copy of the complaint or order, and direct the attorney to file with the clerk a written response to the complaint or order within (30) days. The response shall be under seal unless the attorney files a written request with the Committee to have it unsealed.

(C) The Committee shall be vested with such powers as are necessary to the proper and expeditious investigation of any claim of misconduct, including the power to interview witnesses, to compel the attendance of witnesses by subpoena, to take or cause to be taken the deposition of any witness, to secure the production of documentary evidence, and to administer oaths.

(D) After completing its investigation, the Committee shall either:

(i) Determine to hold a formal hearing; or

(ii) Determine that no substantial question of misconduct exists and take no further action against the attorney. If the Committee decides to take no further action, it shall advise the clerk and complaining person or judge that no further action is warranted, and it shall also notify the attorney that no further action will be taken by the Committee.

(E) If the Committee determines to hold a formal hearing, it shall schedule the hearing as promptly as possible, provided, however, that delays in the hearing shall not affect the jurisdiction of the Committee. The attorney shall have the right to be present, to be represented by counsel, to present evidence, and to confront and cross-examine witnesses. In conducting the hearing, the Federal Rules of Evidence shall guide the Committee. A record shall be made of the hearing.

(F) After the hearing, the Committee shall either:

(i) Determine that no substantial question of misconduct exists and take no further action against the attorney. If the Committee decides to take no further action, it shall advise the clerk and complaining person or judge that no further action is warranted, and it shall also notify the attorney that no further action will be taken by the Committee; or

(ii) Determine that the attorney's misconduct merits disciplinary action. Among the actions which the Committee can recommend are one or more of the following:

(aa) A private reprimand;

(bb) A public reprimand;

(cc) Suspension of the attorney from the bar of the district court;

(dd) Disbarment of the attorney from the district court; and

(ee) A referral of the matter to another appropriate disciplinary board for disciplinary action.

(G) At any point during the investigation or during or after the hearing, the attorney can propose a disciplinary action for the claim of misconduct. If the Committee believes that the proposed disciplinary action is appropriate, it can recommend the imposition of that action in lieu of further proceedings before the Committee.

(H) All investigations, deliberations, hearings, and other proceedings of the Committee, as well as all documents presented to the Committee, shall remain confidential. All meetings and hearings of the Committee shall be held in camera and the business conducted by the Committee shall remain confidential. In its judgment, however, the Committee may disclose some or all aspects of its proceedings to the district court judges, to complainants, and to other disciplinary committees.

(4) Proceedings Before the District Court

(A) If the Committee recommends that disciplinary action be taken against an attorney, it shall forward its recommendation, along with a written report of its findings and conclusions, to the Chief Judge of this court, and, if the matter involves conduct before the United States Bankruptcy Court, to the Chief Judge of that Court. The written report shall be a public record, provided, however, any recommendation of a private reprimand shall remain under seal.

(B) Upon receiving a written report by the Committee finding that misconduct occurred, setting forth specific facts in support of its conclusion and recommending disciplinary action, the Chief Judge shall issue an order requiring the attorney to show cause in writing why the Committee's findings and recommendations should not be adopted by the court. Within 30 days after service of the show cause order, the attorney may file a written response with the clerk. After considering the attorney's response, if any, the Chief Judge, upon a majority vote of the district judges of the court – or if the matter involves conduct before the United States Bankruptcy Court, upon a majority vote of the district court and bankruptcy judges – may adopt, modify, or reject the Committee's findings and recommendations without a hearing, or, if deemed appropriate, the Chief Judge may set the matter for a hearing before a judicial officer.

(C) The designated judge shall conduct a hearing promptly and issue a report to the district court which includes proposed findings of fact and a recommended disposition of the case. In conducting the hearing, the Federal Rules of Evidence shall guide the designated judge.

(D) The Chief Judge, upon the majority vote of the district judges of the court, – or if the matter involves conduct before the United States Bankruptcy Court, upon a majority vote of the district court and bankruptcy judges – may adopt, modify, or

reject the findings and recommendations or take such other action as deemed appropriate. Notice of the disposition shall be provided to the attorney, the clerk, the complaining person or judge, and the Committee chairperson.

(d) **Attorneys Convicted of Crimes.**

(1) Upon the filing with this court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the court shall enter an order immediately suspending that attorney, (whether the conviction resulted from a plea of guilty, nolo contendere, or from a verdict after trial or otherwise), and regardless of the pendency of any appeal or other pleading attacking the determination of guilt, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the court may set aside such order when it appears in the interest of justice to do so.

(2) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

(3) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

(4) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Chief Judge shall in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to the Grievance Committee for the institution of a disciplinary proceeding in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

(5) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the Chief Judge may refer the matter to the Grievance Committee for whatever action the Committee deems warranted, including the institution of a disciplinary proceeding; provided, however, that the Chief Judge may, in his or her discretion, make no reference with respect to convictions for minor offenses.

(6) An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

(7) An attorney admitted to practice before this court shall, upon being convicted of a serious crime in any court of the United States, or the District of Columbia, or any state, territory, commonwealth, or possession of the United States, promptly inform the clerk of such action.

(e) **Discipline Imposed by Other Courts**

(1) Any attorney admitted to practice before this court shall, upon being subjected to public discipline by any other court of the United States

or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the clerk of such action.

(2) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been disciplined by another court, the Chief Judge shall forthwith issue a notice directed to the attorney containing:

(A) a copy of the judgment or order from the other court; and

(B) an order to show cause directing that the attorney inform this court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (4) hereof that the imposition of the identical discipline (other than payment of a fine) by the court would be unwarranted and the reasons therefor.

(3) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court shall be deferred until such stay expires.

(4) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (e)(2) above, the court shall impose the identical discipline (other than payment of a fine) unless the respondent-attorney demonstrates, or the court finds that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

(a) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(b) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on that subject; or

(c) that the imposition of the same discipline by this court would result in grave injustice; or

(d) that the misconduct established is deemed by this court to warrant substantially different discipline.

Where the court determines that any of said elements exist, the court shall enter such other order as it deems appropriate.

(5) In all other respects, a final adjudication in another court that an attorney has engaged in an act or pattern of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this court.

(6) The Chief Judge may at any stage refer the matter to the Grievance Committee to conduct disciplinary proceedings or to make recommendations to the court for appropriate action in light of the discipline imposed by another court or disciplinary authority.

(f) Disbarment on Consent or Resignation in Other Courts

(1) Any attorney admitted to practice before this court who shall be disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending shall, upon the filing with the clerk a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this court.

(2) Any attorney admitted to practice before this court shall, upon being disbarred on consent or resigning from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending,

promptly inform the clerk of such disbarment on consent or resignation.

(g) **Disbarment on Consent While Under Disciplinary Investigation or Prosecution in this Court**

(1) Any attorney admitted to practice before this court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment from practice before this court, but only by delivering to the clerk an affidavit stating that the attorney desires to consent to disbarment and that:

(A) The attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

(B) The attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;

(C) The attorney acknowledges that the material facts so alleged are true; and

(D) The attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.

(2) Upon receipt of the required affidavit, the clerk shall submit the affidavit to the Chief Judge for entry of an order disbarring the attorney from practice before this court.

(3) The order disbarring the attorney on consent from practice before this court shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

(h) **Reinstatement.**

(1) **Automatic Reinstatement**. An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred from practice before this court may not resume practice until reinstated by order of this court.

(2) **Time of Application for Reinstatement Following Disbarment**. A person who has been disbarred from practice before this court after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

(3) **Reinstatement Following Reciprocal Discipline**. An attorney, who has previously been the subject of reciprocal discipline and subsequent termination by another court and also disbarred or suspended from practice in this court, may petition for reinstatement by filing a petition together with a certified copy of the judgment or order of the other court granting reinstatement. Upon receipt of the petition and certified reinstatement judgment or order, the Chief Judge shall promptly review the petition as well as any findings and conclusions of another court, and recommend to the other judges of this court whether or not in his/her opinion the petition and/or findings of another court sufficiently establish the fitness of petitioner to practice law so that he should be reinstated to the roll of attorneys without further hearing. If, after receiving the recommendations of the Chief Judge, a majority of the active district judges of the court – or if the matter involves conduct before the United States Bankruptcy Court, upon a majority of the district court and

bankruptcy judges – agree to reinstatement without further evidence or hearing, the court shall enter a judgment accordingly and the petitioner shall be reinstated. If, on the other hand, after receiving and considering the recommendation of the Chief Judge a majority of the active district judges of the court – or if the matter involves conduct before the United States Bankruptcy Court, upon a majority of the district court and bankruptcy judges – request additional evidence or hearing prior to making a decision on the petition, a hearing shall be scheduled in accordance with Section (h)(4) of this rule.

(4) **Hearing on Application for Reinstatement**. If a hearing is required to rule on a petition for reinstatement, the Chief Judge shall promptly refer the petition to the Grievance Committee for a hearing at which the petitioner shall have the burden of establishing by clear and convincing evidence that he/she has the moral qualifications, competency and learning in the law required for admission to practice law before this court and that his/her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive to the public interest. Upon completion of the hearing the Committee shall make a full report to the court. The Committee shall include its findings of fact as to the petitioner's fitness to resume the practice of law and its recommendations as to whether or not the petitioner should be reinstated.

(5) **Order**. If, after consideration of the Committee's report and recommendation, and after such a hearing as the court may direct, a majority of the district judges – or if the matter involves conduct before the United States Bankruptcy Court, upon a majority of the district court and bankruptcy judges – finds that the petitioner is unfit to resume the practice of law, the petition shall be denied. If, after consideration of the Committee's report and recommendation and after such a hearing as the court may direct, the majority of the active district judges – or if the matter involves conduct before the United States Bankruptcy Court, upon a majority of the district court and bankruptcy judges – finds that the petitioner is fit to resume the practice of law, the court shall reinstate the petitioner, provided that the reinstatement may be made conditional:

(A) Upon the payment of all or part of the costs of the proceedings, and the making of partial or complete restitution to all parties harmed by the conduct of the petitioner which led to the suspension or disbarment;

(B) If the petitioner was suspended or disbarred from practice before this court for five years or more, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment from practice before this court; and

(C) Upon any other terms which the court in its discretion deems appropriate.

(6) **Successive Petitions**. No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

(7) **Deposit for Costs of Proceeding**. Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the court to cover anticipated costs of the reinstatement proceeding.

(i) **Service of Papers and Other Notices**. Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at his or her last known address.

(j) **Duties of the Clerk.**

(1) Upon being informed that an attorney admitted to practice before this court has been convicted of any crime, the clerk shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this court. If a certificate has not been so forwarded, the clerk shall promptly obtain a certificate and file it with this court.

(2) Upon being informed that an attorney admitted to practice before this court has been subjected to discipline by another court, the clerk shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this court, and, if not, the clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this court.

(3) The clerk shall promptly notify the appropriate disciplinary agency with jurisdiction over the attorney of any criminal conviction in this court or any discipline imposed pursuant to this rule.

(4) The clerk shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this court.

(5) The clerk shall serve as the official custodian of all records and shall distribute to the appropriate person or entity communications filed in these actions.

(k) **Other Disciplinary Powers.** These provisions do not apply to or limit the imposition of sanctions or other disciplinary or remedial action as may be authorized by the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure, or through exercise of the inherent or statutory powers of the court in maintaining control over proceedings conducted before it, such as proceedings for contempt under Title 18 United States Code or under Fed. R. Crim. P. 42.

Committee Comments

[Compiler's Note: Beginning in 1978 the Court adopted the Model Rules of Disciplinary Enforcement as formulated by the Judicial Conference. In 1987 the rules were largely re-adopted and styled DE-I to DE-XIV. From 1994 to 2000 the court's disciplinary rules were numbered 83.6.1 to 83.6.14, as part of the civil section. Starting in 2000 the rules were segregated and styled as "Local Rules of Disciplinary Enforcement," recast as Rules I through XIII. In 2006, the entire body of the Rules of Disciplinary Enforcement was recast again into a new and much longer, Local Rule 83.6. The following are the Advisory Committee Comments from 1994 for all the disciplinary rules, that is, for rules 83.6.1 to 83.3.14 as they were then styled].

1994 Amendment

This rule [former 83.6] is new, and is designed to act as a bridge which brings the existing Rules of Disciplinary Enforcement [that is, Rules DE-I through DE-XIV, which apparently had been in force since 1978] into the main body of the Local Rules themselves. The rule is designed simply to state the obvious: that attorneys admitted to practice before the court (whether generally admitted or admitted *pro hac vice*) can be subject to discipline for their misconduct, and that the court also retains the power to sanction attorneys for specific misconduct occurring in the context of specific litigation.

L.R. 83.6.1(g) [now 83.6(d)(7)] is new. It corresponds to reporting requirements imposed under L.R. 83.6.2(a) [now 83.6(e)(1)] and L.R. 83.6.3(b) [now 83.6(f)(1)]. In all other respects, the rule [formerly 83.6.1 and now 83.6(d)] is identical to present DE-1.

The proposed rule [formerly 83.6.3 and now 83.6(e)] is nearly identical to present DE-II. The revision changes the language in subsection (e) [now 83.6(e)(5)] from "been guilty of misconduct" to "engaged in an act or pattern of misconduct" in order to avoid any implication that only criminal misconduct is conclusively established in the court's disciplinary proceeding. For instance, the court might wish to impose disciplinary sanctions as a result of another court's imposition of disciplinary sanctions against an attorney. Under the present rule, it could be argued that, because a disciplinary sanction does not involve a finding of "guilt," the court would need to conduct de novo proceedings to determine whether a violation existed. The amendment is designed to avoid this unnecessary use of resources.

The rule [formerly 83.6.3 and now 83.6(f)] is identical to present DE-III.

L.R. 83.6.4 [now 83.6(b)] derives from present DE-IV. The text is considerably shortened because present DE-IV specifies the standards of conduct to which it applies. Since those standards have already been adopted in proposed L.R. 83.5(f), it was believed unnecessary to repeat the language here. Practitioners should be aware that the proposed rule is broader than DE-IV in one significant way: misconduct can occur as the result of a violation of either the Indiana Supreme Court's Rules of Professional Responsibility *or* the Seventh Circuit's Standards for Professional Conduct. Under present DE-IV, misconduct occurs only upon violation of the Indiana Supreme Court's Rules of Professional Responsibility.

Furthermore, the final clause of present DE-IV(b), which permitted the court to make exceptions by rule only "after consideration of comments by representatives of bar associations within the state," was deleted. Since L.R. 1.2 now provides a notice-and-comment period for all local rules the specific provision here seemed superfluous and was therefore deleted.

This rule [formerly 83.6.5] derives from present DE-V, with one insignificant change at the end of subsection (c). No substantive changes are intended. [Compiler's Note: The rule was effectively abandoned in 2006 when the court went to a Grievance Committee model. See now L.R. 83.6(c).]

This rule [formerly 83.6.6 and now 83.6(g)] is identical to present DE-VI.

This rule [formerly 83.6.7, now 83.6(h)] is nearly identical to present DE-VII. In order to avoid confusion in terminology, the term "respondent-attorney" in subsection (d) [a section since deleted] was changed to "petitioner." No substantive change was intended.

This rule [formerly 83.6.8, later subsumed by 83.6(a)] is identical to present DE-VIII.

This rule [formerly 83.6.9, now 83.6(i)] is identical to present DE-IX.

This rule [formerly 83.6.10] is identical to present DE-X. [Compiler's Note: This rule which provided or the appointment of counsel "to investigate allegations of misconduct or [to] prosecute disciplinary proceedings" or to serve during the reinstatement process was deleted when to court adopted the "board of inquiry" model of a Grievance Committee.]

This rule [formerly 83.6.11] is identical to present DE-XI. [Compiler's Note: This rule which provided for the reimbursement of fees and costs incurred by counsel appointed under old rule 83.6.10 was abandoned when the court went to the Grievance Committee process and deleted both rules.]

This rule [formerly 83.6.12, now 83.6(i)] is identical to present DE-XII.

This rule [formerly 83.6.13, now 83.6(k)] is identical to present DE-XIII.

This rule [83.6.14] is derived from present DE-XIV. Because the effective date of all Local Rules is set out in L.R. 1.1(b), the specific reference to an effective date for the Disciplinary Rules was deemed unnecessary. Some changes in syntax were made in the remaining portion of DE-XIV, but no substantive changes were intended. [Compiler's Note: The rule, which declared that any disciplinary proceedings pending before the effective date of the disciplinary rules would be conducted under the pre-existing procedure was deleted in 2006.]

2000 Amendment

Northern District Rule 83.6 deals with attorney discipline. This rule is further sub-divided into 14 sub-sections. The Southern District has removed the disciplinary rules from the civil section and has established a separate section for attorney discipline. The Committee adopted a separate section, like the Southern District, in which Local Rules 83.6 through 83.6.14 would be segregated. [The rules were thereafter styled as "Local Rules of Disciplinary Enforcement" and as Rule I to XIII, inclusive.]

2006 Amendment

In 1978, this court, along with the Southern District of Indiana, adopted a proposed set of uniform rules that eventually became this Court's Rules of Disciplinary Enforcement. Thereafter, the rules remained generally unchanged, but recently it was observed by members of this court and the bankruptcy judges that in some instances they proved difficult to apply. Given these practical concerns, the Committee was asked to review the rules for possible modification. The task of initial review was assigned to a subcommittee, and after canvassing all the local rules governing attorney discipline in the nation, the subcommittee recommended jettisoning the current rules in favor of what appears to be a favored disciplinary regime centered on a Grievance Committee model. The Advisory Committee adopted the Grievance Committee concept and drafted this rule, generally modeling it on those rules in other districts that employ the Grievance Committee as a "board of inquiry" to investigate claims of attorney misconduct and present findings and recommendations to the court. The Committee made substantial revisions in the drafting process, however, to meet due process concerns and to ensure the proper level of court oversight and review. As to the latter point, the Committee was sensitive to the administrative burden that these proceedings may place upon the Chief Judge, and accordingly, put most of those responsibilities upon the Grievance Committee and the clerk. The Rule also guarantees that the final decision concerning attorney discipline remains at all times with the judges of the court or, if the matter involves conduct before the United States Bankruptcy Court, upon a majority vote of the district court and bankruptcy judges .

The rule [now 83.6 with lettered sub-sections] should be viewed as an entirely new disciplinary process that replaces the former Rules of Disciplinary Enforcement. A section by section commentary, incorporating various clarifying amendments made in 2007 are recited in the 2007 comments as if fully set out here.

2007 Amendment

The Committee made clarifying amendments in 2007 as reflected in the section by section commentary that follows:

Section (a) is intended to clarify that the filing of an appearance on behalf of a client in this court subjects an attorney to discipline in this court. The section simplifies language in the first paragraph of the former rule 83.6.

Section (b) is a simplified version of former Disciplinary Rule of Enforcement IV and has been moved to the beginning of the disciplinary rule to place attorneys admitted to practice in this court on notice that there is potential for discipline in this court regardless of whether misconduct occurs during the course of an attorney-client relationship.

Section (c) sets out the general procedure for the grievance process.

•Subsection (1) establishes the Grievance Committee as the disciplinary body of the court and provides general guidelines for the initial members' selection, term of office, member replacement upon resignation or expiration of term, and voting. This section also provides immunity to Grievance Committee members for their official duties under the rules and requires the Grievance Committee to provide an annual written report of its activities.

• Subsection (2) sets out the procedure for the filing of a grievance against an attorney and provides that grievances shall remain under seal until the Grievance Committee determines to investigate further.

•Subsection (3) provides the protocol upon the Grievance Committee's receipt of a complaint. Part (A) permits the Grievance Committee to undertake an initial screening of the grievance to determine whether, on its face, the complaint presents a question that merits either further investigation, referral to another disciplinary body, or dismissal. In formulating this provision, the Advisory Committee intended for the Grievance Committee to have flexibility in utilizing its discretion once a complaint is filed. Although referral to a state disciplinary agency may often be preferable, the rule leaves this determination to the discretion of the Grievance Committee members for resolution on a case by case basis.

•The remainder of this section details the investigative and hearing powers of the Grievance Committee. Generally, if after an investigation there is no substantial question of misconduct, the Grievance Committee is to notify the clerk, the complainant, and the attorney. If, however, there is a substantial question of misconduct, the attorney will be directed to file with the clerk a written response after which the Grievance Committee may either dismiss the complaint or hold a formal hearing. If following the hearing, the Grievance Committee believes that the conduct merits discipline they shall send their findings and recommendation to the Chief Judge.

•Subsection (4) sets out the procedure of the court once the Grievance Committee has delivered its findings and recommendation to the Chief Judge, principally, a show cause order to the attorney. If, following the attorney's response, a hearing is required, the court shall designate a judge to conduct a hearing and submit findings and recommendation to the court. The findings and recommendations are then voted upon by the district judges and, in the case of conduct before the Bankruptcy Court, both the district and bankruptcy judges.

Section (d) sets out the procedure for attorneys convicted of crimes. The procedure remains unchanged from the prior Rule I of the Disciplinary Rules of Enforcement except that the matter is referred to the Grievance Committee for hearing.

Section (e) discusses the procedure for dealing with discipline imposed by other courts. The procedure remains unchanged from the prior Rule II of the Disciplinary Rules of Enforcement except that the matter can be referred to the Grievance Committee rather than having the court appoint a prosecutor.

Sections (f) and (g) retain the language of prior Rules III and VI of the Disciplinary Rules of Enforcement with only minor editorial changes.

Section (h) provides for reinstatement of an attorney and requires the attorney to submit a petition to the Chief Judge who then reviews it and recommends a disposition to the other district judges. If it is deemed that a hearing must be held, the matter is referred to the Grievance Committee and they are to make a full report to the court. Upon consideration of the report, and after such further hearing as the court may require, reinstatement may or may not be ordered.

Sections (i) and (j) are miscellaneous provisions clarifying the manner of service to be utilized in attorney disciplinary proceedings and the obligations of the clerk. Section (k) makes

clear that attorneys may also be subject to discipline under the Federal Rules, various statutory provisions, or through the court's own inherent powers.

2009 Amendment

Upon the recommendation of the Grievance Committee, the Local Rules Advisory Committee recommended that the rule be amended to allow an attorney to "unseal" his or her response to the complaint given that the complaint itself is to be unsealed if it moves forward in the process. The proposed change appears at paragraph (c)(3)(B).

The Grievance Committee also suggested a "clear and convincing" standard of proof be imposed as the current rule is silent on the point. The Grievance Committee has been requested to offer a specific set of amendments as it would appear that the burden will likely shift; for example, an attorney would not have the burden during an initial grievance, but would probably be required to bear it while pursuing a petition for reinstatement. Accordingly, since it may take some fairly careful drafting to achieve the Grievance Committee's desired intent, they have been invited to offer an initial draft for the Advisory Committee's consideration.

L.R. 83.7

Duty of Counsel to Accept Appointments in Certain Civil Actions

Every member of the bar of this court shall be available to represent or assist in the representation of indigent parties whenever reasonably possible.

(a) **Appointment Procedure.** If the district judge or magistrate judge to whom a case has been assigned determines that representation by counsel of a party proceeding *in forma pauperis* is warranted under 28 U.S.C. § 1915(e)(1) or 42 U.S.C. § 2000e-5(f), the district judge or magistrate judge shall direct the clerk to request an attorney who is a member of the bar of this court to represent the indigent party.

(b) **Entry of Appearance**. An attorney agreeing to accept such appointment shall enter an appearance on behalf of the indigent party within fourteen (14) days of the entry of the court's notice or order of appointment.

(c) **Representation, Relief from Appointment, and Discharge.** Continued representation of an indigent party by appointed counsel, relief from appointment, and discharge of counsel, shall be at the discretion of the district judge or magistrate judge.

(d) **Payment of Expenses.** An attorney appointed pursuant to the court's rules to represent an indigent party may petition the court for payment, from the District Court Library and Court Administration Fund, of appropriate and reasonable expenses that may be or were incurred in the preparation and presentation of the proceeding, subject to the following restrictions:

(1) Such petition shall be made by motion filed with the court either prior to incurring expenses or within ninety (90) days of the date the expenses were incurred. The motion may be made *ex parte*. The motion shall be accompanied by sufficient

documentation to permit the court to determine that the request for payment is appropriate and reasonable.

(2) Only those expenses associated with preparation and presentation of a civil action in the United States District Court for the Northern District of Indiana will be approved for payment. No expenses associated with the preparation of any appeal shall be payable.

(3) Any costs or fees taxed as part of a judgment obtained by an adverse party against a party for whom counsel was appointed pursuant to the rules of this court are not payable.

(4) In any case in which an appointed attorney receives any fee award, any amounts the attorney has received from the Fund as payment for expenses shall be promptly repaid to the Fund.

Committee Comments

1994 Amendment

This rule replaces present L.R. 1(h) and (i)[also Rule 1 before 1987]. The proposed rule makes several changes to the present rule. First, the rule clarifies the procedure by which the court requests appointments, and also makes clear that the court cannot require an attorney to serve as appointed counsel in a given case as a condition of bar membership. See *Mallard v U.S. District Court*, 490 U.S. 296 (1989), and *DiAngelo v. Illinois Dept. of Public Aid*, 891 F.2d 1260 (7th Cir. 1989). Second, the rule specifies the time within which an appointed attorney must enter an appearance, and specifically provides for relief from appointment and discharge in the court's discretion. Finally, the rule eliminates specific reference to the lack of reimbursement for general office expenses (such as rent and telephone service) found in the present rule. The Committee does not intend any change in the present rule that such general office expenses are not reimbursable, but believes that the proposed rule's limitation of reimbursable expenses only to those "incurred in the preparation and presentation of the proceeding" already precludes recovery of such expenses.

2000 Amendment

Northern District Rule 83.7 deals with the appointment of counsel in civil actions. Southern District Rule 83.7 deals with the appearances and withdrawals of attorneys. Southern District Rule 83.7 is identical to N.D. Ind. L.R. 83.8. The Southern District has renumbered its rule on the appointment of counsel as L.R. 4.6. The issue is not an exact match with either Fed. R. Civ. P. 4 or Fed. R. Civ. P. 83 and thus, the Committee opted to retain the current numbering system.

There are extensive differences between N.D. Ind. L.R. 83.7 and Southern District Rule 4.6. The primary difference deals with the referral of cases to legal clinics. The Committee made no changes to the current rule, believing the rule in its present form to be more consistent with the prevailing practice.

2002 Amendment

Amendments to paragraph (a) and (c) were made to clearly distinguish between district and magistrate judges.

2004 Amendment

The rule was amended to emphasize that members of the Bar have a duty to accept court appointments to represent indigent civil litigants. However, the Committee is cognizant that attorneys, for reasons of lack of expertise or conflicts of interest, may not always be available to accept appointment. The language "whenever reasonably possible" in the first paragraph clarifies this issue. A grammatical change in (a) was also made.

2008 Amendment

The change corrects an erroneous statutory reference. No substantive changes are proposed.

2009 Amendment

The proposed changes to subsection (d) and (d) (1) are intended by the Committee to permit attorneys appointed to represent indigent clients to request reimbursement of appropriate and reasonable expenses incurred in the course of their representation. The proposed amendments enable attorneys to petition the Court for pre-approval of expenses as well as reimbursement for expenses incurred without preapproval provided that the expenses are "appropriate and reasonable." The Committee has also suggested amendments to the District Court Library Fund to eliminate the thresholds that are currently in place for the reimbursement of expenses.

At paragraph (b) "(15) days" has been amended to "(14) days" to comply with the time amendments coming effective on December 1, 2009.

L.R. 83.8

Appearance and Withdrawal of Appearance

(a) **General.** Except for attorneys representing the United States or an agency thereof, each attorney representing, whether in person or by filing any document, must file a separate Notice of Appearance for such party.

(b). **Removal and Transferred Cases.** Any attorney of record whose name does not appear on this court's docket following the removal of a case from state court must file a Notice of Appearance or a copy of his/her appearance previously filed in state court.

Within twenty-one (21) days of removal or transfer of a case to this court, any attorney of record who is not admitted to practice before this court must comply with this court's admission policy, as set forth in Local Rule 83.5.

(c) **Withdrawal of Counsel.** Counsel desiring to withdraw an appearance in any action shall file a motion requesting leave to do so. Counsel shall file with the court satisfactory evidence of written notice to the client at least seven (7)days in advance of the filing of such motion, unless other counsel has entered an appearance.

Committee Comments

1994 Amendment

This proposed rule derives from L.R. 2 [and the previous Rule 2 prior to 1987]. The first sentence of present L.R. 2, requiring the name, address, and telephone number of attorneys on all pleadings, has been moved to proposed L.R. 5.1(b), and expanded to require the information of all filings with the court. The final sentence of (a), which required the clerk to advise non-resident counsel of requirements of present L.R. 1(c) and (d), was deleted because of the changes to those provisions effected by proposed L.R. 83.5. Otherwise, the proposed rule is identical to present L.R. 2.

2007 Amendments

These amendments were endorsed by the clerk's office to facilitate CM/ECF appearances and withdrawals and are consistent with recent changes made by the Southern District of Indiana.

2009 Amendment

With respect to paragraph (a) the Committee intends to except attorneys representing the United States from filing a notice of appearance so that those attorneys have greater flexibility in appearing for the government.

In addition, paragraph (b) is amended from 20 days to 21 days, and paragraph (c) is amended from 5 days to 7 days. Identical changes are contemplated in the Southern District.

L.R. 83.9

Student Practice Rule

(a) Purpose. Effective legal service for each person in the Northern District of Indiana, regardless of that person's ability to pay, is important to the directly affected person, to our court system, and to our whole citizenry. Law students, under supervision by a member of the bar of the District Court for the Northern District of Indiana, may staff legal aid clinics organized under city or county bar associations or accredited law schools, or which are funded pursuant to the Legal Services Corporation Act. Law students and graduates may participate in legal training programs organized in the offices of the United States Attorney or Federal Community Defender.

(b) Procedure. A member of the legal aid clinic, in representation of clients of such clinic, shall be authorized to advise such persons and to negotiate and appear in all courts of this District in criminal and civil matters on their behalf. These activities shall be conducted under the supervision of a member of the bar of the District Court for the Northern District of Indiana. Supervision by a member of this bar shall include the duty to examine and sign all pleadings filed on behalf of a client. Supervision shall not require that any such member of the bar be present in the room while a student or law graduate is advising a client or negotiating on his or her behalf nor that the supervisor be present in the courtroom during a student's or graduate's appearance except in criminal or juvenile cases carrying a penalty in excess of six (6) months. In no case shall any such student or graduate appear in any court of this District without first having received the approval of the judge of that court for the student's appearance. Where such permission has been granted, the judge of any court may suspend the trial proceedings at any stage where the judge in his or her sole discretion determines that such student's or graduate's representation is professionally inadequate and substantial justice so required. Law students or graduates serving in a United States Attorney's program may be authorized to perform comparable functions and duties as assigned by the United States Attorney subject to all the conditions and restrictions in this rule and the further restriction that they may not be appointed as Assistant United States Attorneys. Law students or graduates serving in a Federal Community Defender program may be authorized to perform comparable functions and duties as

assigned by the Executive Director subject to all the conditions and restrictions in this rule.

(c) Eligible Students. Any student in good standing in an accredited law school who has completed the first year shall be eligible to participate pursuant to this rule if (1) the student meets the academic and moral standards established by the dean of that school, and (2) the school certifies to the court that the student has met the eligibility requirements of this rule.

Committee Comments

1994 Amendment

The proposed rule derives from present L.R. 39 [Rule 29 before 1987]. There is only one change: a requirement that the dean of a student's law school actually certify that the student meets the eligibility requirements of sub-paragraph (c).

2003 Amendment

The Committee amended this rule to add the Federal Community Defender's office to the student practice rule. The Committee is advised that the practice is recognized by the Judicial Conference and will provide the Federal Community Defenders resources as well as provide law students with practical experience.

2009 Amendment

No substantive changes have been made. However, the Committee recommended that paragraph (c) be amended to clarify that any student who wishes to participate must have at least completed the first year of law school and be in good standing.

L.R. 200.1

Bankruptcy Cases and Proceedings

(a) **Matters Determined by the Bankruptcy Judges.**

(1) Subject to paragraph (a)(3)(B), all cases under Title 11 of the United States Code, and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the bankruptcy judges. It is the intention of this court that the bankruptcy judges be given the broadest possible authority to administer cases properly within their jurisdiction, and this rule shall be interpreted to achieve this end.

(2) Pursuant to 28 U.S.C. § 157(b)(1), the bankruptcy judges shall hear and determine all cases under Title 11 and all core proceedings (including those delineated in 28 U.S.C. § 157(b)(2)) arising under Title 11, or arising in a case under Title 11, and shall enter appropriate orders and judgments, subject to review under 28 U.S.C. § 158.

(3) The bankruptcy judges shall hear all non-core proceedings related to a case under Title 11.

(A) By Consent: With the consent of the parties, a bankruptcy judge shall conduct hearings and enter appropriate orders or judgments in the proceeding, subject only to review under 28 U.S.C. § 158.

(B) Absent Consent: Absent consent of the parties, a bankruptcy judge shall conduct hearings and file proposed findings of fact and conclusions of law and a proposed order or judgment with the bankruptcy clerk.

The bankruptcy judge may also file recommendations concerning whether the review of the proceedings should be expedited, and whether or not the basic bankruptcy case should be stayed pending district court termination of the non-core proceedings. The bankruptcy clerk shall serve copies of these documents upon the parties. Within fourteen (14) days of service, any party to the proceedings may file objections with the bankruptcy clerk. Any final order or judgment shall be issued by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected. (Review of interlocutory orders shall be had following the procedure specified in paragraph (d) of this rule.)

(C) Signifying Consent: At time of pre-trial, or earlier, upon motion of a party in interest, the parties shall:

(1) Stipulate in writing that the proceeding is a core proceeding:

(2) Stipulate in writing that the proceeding is a non-core proceeding, but that the bankruptcy judge can determine the matter and enter a final order subject to review pursuant to 28 U.S.C. § 158;

(3) Stipulate that the proceeding is a non-core proceeding, the bankruptcy judge finds the matter is a non-core proceeding and at least one party refuses to have the bankruptcy judge determine the matter; or

(4) State that there is no agreement between the parties as to whether the proceeding is a core or non-core

proceeding and at least one party refuses to have the bankruptcy judge determine the matter if it is determined to be a non-core proceeding;

Attached as an Appendix to this rule is an example of a stipulated order which may be used at the pretrial conference.

(b) **Matters to be Determined or Tried by District Judges.**

(1) Motions to withdraw cases and proceedings to the District Court.

(A) The district judge shall hear and determine any motion to withdraw any case, contested matter, or adversary proceeding pursuant to 28 U.S.C. § 157(d).

(B) All such motions shall be accompanied by a separate supporting brief and any appropriate affidavits. The motion shall be filed with the bankruptcy court and served upon all appropriate parties in interest. Unless the bankruptcy court directs otherwise, any response and opposing affidavits shall be served and filed within the time required by L.R. 7.1 and the movant may serve and file any reply thereto within the time provided in that rule.

(C) Upon the expiration of the time for filing briefs concerning the motion, the motion and all materials submitted in support thereof and in opposition thereto will be transmitted to the district court for a determination. The bankruptcy judge may submit a written recommendation concerning the motion, the effect of withdrawal upon the disposition of the underlying bankruptcy case, and whether the disposition

of the motion should be expedited. Any such recommendation shall be served upon the parties in accordance with the procedures set forth in subparagraph (a)(3)(B) of this rule.

(D) Should the district judge grant the motion to withdraw, the case, contested matter or adversary proceeding may be referred back to the bankruptcy judge for proposed findings of fact and conclusions of law and a proposed order or judgment in accordance with the procedures set forth in subparagraph (a)(3)(B) of this rule.

(2) Personal Injury or Wrongful Death Tort Claims.

(A) Trials and Pre-Trial Proceedings: In proceedings in which a personal injury or wrongful death tort claim is required under 28 U.S.C. § 157(b) to be tried in a district court, the proceeding shall be administered by the bankruptcy judge until it is ready for a final pre-trial conference before a district judge. The district judge shall conduct the trial of the proceeding.

The bankruptcy judge may submit a written recommendation concerning the effect of the proceeding upon the disposition of the underlying bankruptcy petition and whether the trial of the proceeding should be expedited, copies of which shall be served upon the parties in accordance with the procedures set forth in subparagraph (a)(3)(B) of this rule.

(B) Motions to Transfer Venue: The bankruptcy judges shall make a recommendation concerning a motion by a party under 28 U.S.C. § 157(b)(5) for a transfer of venue of personal injury or wrongful death tort claims. All such motions shall be filed with the bankruptcy court and shall

first be heard by a bankruptcy judge, in accordance with such procedures as the bankruptcy court may, by rule, adopt. The bankruptcy judge shall make a recommendation concerning the disposition of the motion, copies of which shall be served upon the parties in accordance with the procedures set forth in subparagraph (a)(3)(B) of this rule. The district judge may accept, reject or modify, in whole or in part, the recommendation of the bankruptcy judge and shall determine the disposition of the motion.

(c) **Jury Trial.**

(1) Jury Trial Before a Bankruptcy Judge: Jury trials before a bankruptcy judge are not permitted. Issues arising under section 303 of Title 11 shall be tried by the bankruptcy judge without a jury.

(2) Jury Trials Before a District Judge:

(A) Where jury trials are not permitted before a bankruptcy judge, the party demanding a jury trial shall file a motion to withdraw the proceeding to the district court, in accordance with paragraph (b)(1) of this rule. The motion shall be filed at the same time as the demand for a jury trial. Unless excused by the district judge, the failure to file a timely motion to withdraw the proceeding shall constitute a waiver of any right to a trial by jury.

(B) In a personal injury or wrongful death tort claim, parties have the right to trial by jury. The demand for a jury trial must be properly made to preserve the right to a trial by jury.

(d) **Appeals to the District Court.** All appeals in core cases, in non-core cases heard by consent, and appeals of interlocutory orders entered by the bankruptcy judges in non-core cases heard by the bankruptcy court under subparagraph (a)(3)(B) of this rule shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by the Bankruptcy Rules.

(e) **Mandate Following a Decision on Appeal.** The court's mandate following a decision on appeal from the bankruptcy court consists of a certified copy of the court's judgment and the court's written opinion, if any. Unless the court orders otherwise, the clerk will issue the mandate to the clerk of the bankruptcy court:

(1) immediately, when an appeal is dismissed voluntarily;

(2) seven days after the expiration of the deadline for filing any notice of appeal from this court's decision, unless a notice of appeal is filed; or

(3) if a notice of appeal is filed, seven days after the conclusion of any proceedings undertaken as a result of the Seventh Circuit's mandate to this court, unless those proceedings result in the entry of an order that could be the subject of a further appeal.

The mandate is effective when issued.

(f) **Filing of Papers.** While a case or proceeding is pending before a bankruptcy judge, or prior to the docketing of an appeal in the district court as set forth in the Bankruptcy Rules, all pleadings and other papers shall be filed with the bankruptcy clerk. After the case or non-core proceeding is assigned to a district judge, or after the district clerk has given notice to all parties of the date on which the appeal was docketed, all pleadings shall bear a civil case number in addition to the bankruptcy case number(s) and shall be filed only with the district court clerk.

(g) **Submission of Files to the District Court; Assignment to District Judges.** After the expiration of the time for filing objections under subparagraph (a)(3)(B), upon receipt of any order by a district judge pursuant to 28 U.S.C. § 157(d) or upon the docketing of an appeal in the district court as specified in paragraph (d), the bankruptcy clerk shall submit the file for the case or proceeding to the district court clerk. The district court clerk shall affix a civil number to each submission, and shall make the assignment to a district judge in accordance with the usual system for assigning civil cases.

(h) **Local Bankruptcy Rules.** The bankruptcy judges are authorized to make and amend rules governing the practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction, in accordance with the requirements of Bankruptcy Rule 9029. Unless the district court orders otherwise, such rules shall also apply to any bankruptcy case or proceeding in which the order of reference has been withdrawn.

Committee Comments

1994 Amendment

The proposed rule derives from present L.R. 45 [Rule 31 prior to 1987]. The text of sections (a), (d), (e), and (f) are identical to the text of present L.R. 45. Section (b) is modified to account for amendments to 28 U.S.C. §§ 1334 (c) and 1452(b), which now permit appeal of abstention and remand decisions by bankruptcy judges to the district court. The proposed rule reflects that only withdrawals of reference, transfer of venue in personal injury cases, and trials of personal injury cases are now heard by the district court in the first instance, and it further provides the procedures by which these motions and trials are to be raised and determined. In addition, a new section (g), which gives the bankruptcy judges the power to make and amend rules, is added. This authorization is permitted by Bankruptcy Rule 9029.

There was also a significant change to section (c). The Seventh Circuit's decision in *Matter of Grabill Corp.*, 967 F.2d. 1152 (7th Cir. 1992) has had a significant impact on the proper interpretation of subsection (c)(1). According to *Grabill Corp.*, bankruptcy judges may no longer preside over jury trials. Because section (c)(1) permits bankruptcy judges to conduct jury trials only when "permitted by law," the Committee chose to retain the present language because of the possibility that the Seventh Circuit, the Supreme Court, or the Congress might ultimately overturn the import of *Grabill Corp.* and authorize bankruptcy judges to conduct jury trials. Nonetheless, the Committee recognizes that, until *Grabill Corp.* is overturned, jury trials

before bankruptcy judges are not "permitted by law," and (c)(1) should not be understood as an attempt to "overrule" *Grabill Corp.*

The decision in *Grabill Corp.* also requires the establishment of a procedural device by which jury-triable matters in a bankruptcy case are transferred to the district judge. Consequently, new subsection (c)(2)(A) requires that a motion to withdraw the reference to the bankruptcy judge be filed at the same time as the demand for a jury trial. The Committee intends that only the jury-triable matters would be automatically removed from the reference once the motion is granted, but the Committee also recognizes that the district judge should retain the flexibility to revoke other aspects of the reference in appropriate cases.

2002 Amendment

This proposed addition to L.R. 200.1 comes from the bankruptcy judges following unanimous approval by that court's local practice and procedures Committee. The purpose of the rule is to standardize and clarify the operative effect of a district court mandate following a decision on appeal. The proposal was circulated among the members of the Committee and no suggestions or objections were proffered. It is suggested that the proposal become subparagraph (e) with all subsequent paragraphs re-lettered accordingly.

2008 Amendment

The sole substantive proposed change to this rule is set out in subsection (e) and relates to issuance of expedited mandates. The purpose of this change, proposed by the Bankruptcy Local Rules Committee, is to provide a vehicle by which the mandate could be issued sooner than the time otherwise stated in the rule. This may be appropriate in situations where there would be no possibility of a further appeal -- such as when the parties agree that a remand is required–and would help to expedite further proceedings in the court below. Several options were considered by the Bankruptcy Local Rules Committee and the proposal in (e) is the prevailing view of that Committee.

In addition to the substantive change noted above, the rule has been amended to remove references to "mailing" of documents to the parties. With the advent of electronic filing, the bankruptcy clerk no longer mails documents except in the rare instance where counsel is not an electronic filer or where one of the parties is *pro se.* The Committee amended the references to "mailing" and substituted the word "service" or "serve" so as to accommodate both the electronic filings and the occasional situation where the clerk would be required to mail a document.

2009 Amendment

In those rare instances where the bankruptcy court makes proposed findings of fact and conclusions of law and submits a proposed judgment, the current rule at paragraph (a)(3)(B) requires any objection be filed within 10 days of service. The Committee recommended that this deadline be changed to 14 days to make it consistent with the upcoming change to rule 8002 and the deadline for filing a notice of appeal from bankruptcy court final orders and judgments.

Paragraph (c)(1) addresses jury trials in the bankruptcy court. The first sentence suggests jury trials might be a possibility, and they were when the rule was originally written. Since that time, however, things have become more restrictive. Although the opportunity for a jury trial in a bankruptcy proceeding is limited, even if it is a possibility, it can only take place before a bankruptcy judge if it is specifically authorized and directed to do so by the district court and all parties consent. The consent of all parties is the complicating factor. No one, at least no one in the collective experience of the Districts' Bankruptcy Judges, demands a jury trial in bankruptcy court and consents. To the contrary, they make the demand, refuse to consent, and use those circumstances as the basis to seek withdrawal of the reference so that the matter can go to the district judge. Indeed, the right to a jury trial is the most common basis for seeking and granting withdrawal of the reference. As a result, even if the Bankruptcy Judges had the ability to preside over jury trials, the parties do not want that to occur and so nothing would be gained by formally giving bankruptcy judges the authority. Furthermore, the Bankruptcy Judges have expressed that they do not want or need such authority. As a result, the Committee recommended that the first sentence of the rule be revised to clarify that jury trials are not permitted before bankruptcy judges. The second sentence of (c)(1) concerning involuntary petitions remained unchanged.

L.Cr.R. 6.1

The Grand Jury

(a) No person shall be present in the hall adjacent to the area or rooms utilized by a grand jury in the process of performing its function. In addition, while a grand jury is in the process of performing its function, no person shall remain in an area in which persons who are appearing before the grand jury can be monitored or observed. This rule shall not apply to grand jurors; witnesses; government attorneys, agents, and employees; court personnel concerned with grand jury proceedings; private attorneys whose clients have been called to appear as a witness at a session of the grand jury then in progress or about to commence; and others specifically authorized to be present.

(b) 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.

(c) 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.

(d) All magistrate judges in this district are authorized, pursuant to 28 U.S.C. §636 (b)(3), to hear and determine motions to quash or limit grand jury subpoenas.

(e) Motions to quash or limit a grand jury subpoena shall be filed and served upon the United States no later than seven (7) days prior to the appearance or production date unless good cause exists for a later filing.

(f) Upon the filing of any motion to quash or limit a grand jury subpoena, the court will endeavor to rule upon the motion on or prior to the return date of the subpoena.

Committee Comments

1994 Amendment

The proposed rule [originally assigned L.R. 108.1 in 1994] is derived from present CR-5(d) [a rule that was new in 1987, but largely drawn from a recommendation of the Judicial Conference of the United States Courts.] Due to the location of the grand jury room in the Hammond courthouse, persons not associated with the grand jury are able to sit or stand in the hallway immediately adjacent to the grand jury room. Their presence poses a potential threat to grand jury secrecy and might intimidate witnesses before the grand jury. While the Southern District of Indiana deleted its version of CR-5(d) because of changes in the security of the grand jury area, the reason for the rule continues to exist in this district. Thus, the Committee recommends retention of this rule.

The rule has been slightly amended for clarity. In addition, the rule was expanded to preclude persons from remaining in the areas from which witnesses could be observed.

2000 Amendment

The Committee proposes renumbering all of the Criminal Local Rules to comply with the uniform numbering system recommended by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States in its April 17, 1996 memorandum. The intent of the uniform system is to aid attorneys in multi-district practice in finding applicable local rules. This new numbering system corresponds to the numbering system utilized in the Criminal Rules of Procedure. [Accordingly, L.R. 108.1 became L.Cr.R. 6.1].

With respect to this particular rule, the Southern District of Indiana has a completely different rule. The Committee recommends retaining current L.R. 108.1 and making it paragraph (a). For uniformity, the Committee proposes adopting paragraphs (c) through (f) of the Southern District of Indiana's rule with some minor changes to the text. These paragraphs appear as paragraphs (b), (c), (e), and (f) in the proposed rule. The Committee removed the Southern District of Indiana's reference to a motions judges and did not specify which judge was entitled to rule on pre-indictment motions.

The Committee also proposes adding paragraph (d) which expressly authorizes magistrate judges to rule on motions to quash a subpoena. The Committee reviewed the Inventory of United States Magistrate Judge Duties (3rd ed. 1999) which indicates that at least one court has recognized that magistrate judges may rule on a motion to quash subject to *de novo* review. Accordingly, the Committee opted to include a new provision (d) authorizing magistrate judges to hear and determine motions to quash grand jury subpoenas in the event that the impaneling judge is unavailable.

Finally, the Committee recommends changing the Southern District's provision that motions to quash must be filed and served upon the Government no later than 48 hours prior to the appearance or production date [to no later than seven (7) days]. The Committee retains the portion of the Southern District of Indiana rule that permits filing if good cause is shown.

L.Cr.R. 12.1

Authentication and Foundation for Exhibits

(a) A party seeking authentication of an exhibit pursuant to Fed. R. Evid. 901 and/or seeking to establish the foundation for admissibility of records of regularly conducted activity pursuant to Fed. R. Evid. 803(6) may serve a copy of all such exhibits, along with a statement of intent to proceed under this local rule, on the opposing party at least thirty (30) days prior to the trial date. The opposing party shall file any objections at least fourteen (14) days prior to trial. Failure to file an objection within this time frame shall operate as a waiver of any objection under Fed. R. Evid. 901 and/or any objection to the foundational requirements required under Fed. R. Evid. 803(6).

(b) A party is not required, but is nevertheless strongly encouraged, to avail itself of this rule.

Committee Comments

2000 Amendment

This is a new rule proposed by the Committee and is not intended in any way to waive objections as to relevancy, prejudice or any other valid objection except for the specific objections stated within the rule. This rule is intended to cover the typical custodian of records or other similar witness who testify briefly as to authentication requirements or business records foundation. The testimony of these witnesses is rarely in issue. It is hoped that use of this rule will expedite court proceedings and reduce costs to all parties.

L.Cr.R. 13.1

Assignment of Related Cases

When a pending indictment or information is superseded by an indictment or information charging one or more of the defendants charged in the pending indictment or information and charging one or more of the offenses charged in the original indictment or information growing out of one or more occurrences which gave rise to the original charge, the superseding indictment or information shall be assigned to the same judge to whom the first case is assigned. When two or more indictments or criminal informations are filed against the same person or persons, corporation or corporations, charging like offenses or violations of the same statute, each of such cases shall be assigned to the judge to whom the first of such cases is assigned. Further, when an indictment of information is pending against a defendant, all subsequent indictments or informations against the same defendant which may be returned or filed shall be assigned to the same judge.

Committee Comments

1994 Amendment

This proposed rule is new in the Northern District of Indiana. The Southern District of Indiana had previously adopted this rule as an administrative rule, and voted to place the rule in the local rules during its revision. Since the requirement of assigning related criminal cases to a single judge is sensible and efficient, the Committee recommends the adoption of this rule.

L.Cr.R. 16.1

Standard Orders in Criminal Cases

The court may issue a standard order at the arraignment in a criminal case which contains provisions for a trial date, pretrial discovery, and deadlines for the filing of and responses to pretrial motions, and any other matters.

Committee Comments

2009 Amendment

The Southern District has a Local Rule 2.1 which provides for the issuance of a standard order in criminal cases containing provisions for pleas, trial dates, attorney appearances, pretrial discovery, and other matters. The Committee recommended modifying our rule to make it as close as possible to the Southern District's rule but still allowing for the differences between divisions. Since the current arraignment procedure encompasses the specifics of the existing rule (concerning discovery at (a) and motion filing at (b)) the Committee recommended deletion of both paragraphs in favor of this provision.

L.Cr.R. 16.1 REQUESTS FOR DISCOVERY; OTHER MOTIONS

(version deleted 2009)

~~**L.Cr.R. 16.1**~~

~~**Requests for Discovery; Other Motions**~~

~~(a) A request for discovery or inspection pursuant to Fed. R. Crim. P. 16 shall be made at the arraignment or within ten (10) days thereafter.~~

~~(b) At the arraignment or as soon thereafter as practicable, the court shall enter an appropriate order fixing the dates for the filing of and responses to, any other pretrial motions.~~

Committee Comments

1994 Amendment

This rule [originally assigned L.R. 109.1 in 1994] is new. The Committee believed that a time limit on requests for discovery or inspection would clarify the appropriate timing of these requests. Subsection (b) covers cases where the court does not issue the standard order provided for by L.R. 101.1 [a rule subsequently deleted in 2000].

2000 Amendment

The Southern District of Indiana does not have a comparable rule. The Committee observed that this rule was added in 1994 by the prior local rules committee. Subparagraph (a) was intended to prevent a situation where a defendant fails to request discovery on the eve of trial. The Committee believes that this remains a valid concern, and thus proposes retaining the present rule with only a minor typographical change in paragraph (a) for uniformity with the other rules. [The rule was re-styled and re-numbered from L.R. 109.1 to L.Cr. R. 16.1].

L.Cr.R. 30.1

Instructions in Criminal Cases

In all criminal cases to be tried to a jury, all requests for instructions shall be filed with the clerk, in accordance with Fed.R.Crim.P. 30, or at such other time during the trial as the court may direct. Parties shall utilize the Seventh Circuit Pattern Jury Instructions whenever possible, and shall submit to the court a request for those instructions by number only. Parties are encouraged to submit an additional copy of the non-pattern instructions in a format compatible with the word processing program of the court.

Committee Comments

1994 Amendment

The proposed rule [originally assigned L.R. 110.1 in 1994] revises present CR-7 [and styled as Criminal Rule 11 before 1987]. A new introductory clause is added to clarify that the rule applies only to criminal cases – a change necessitated by the merger of the civil and criminal rules into a single set of local rules. In addition, the rule expressly allows and requires parties to submit Seventh Circuit Pattern Jury Instructions by number only, and encourages submission of other pattern jury instructions in a WordPerfect format. Finally, instructions must now be submitted three business days prior to trial, rather than on the first day of trial.

2000 Amendment

There is no comparable Southern District of Indiana rule. The Committee proposes a change in the opening sentence to make clear that although parties are required to file requests for instructions three business days before trial, the parties may in accordance with Fed. R. Crim. P. 30 supplement their requests during the trial.

In addition, the Committee proposes changing the format of jury instruction filings, now requiring them to be "on a disk compatible with the word processing program of the court." This is consistent with the requirement in L.R. 51.1 relating to the format for civil jury instructions. [The rule was re-styled and re-numbered from L.R. 110.1 to L.Cr.R. 30.1].

2009 Amendment

The Southern District has no comparable rule. Magistrate Judges Rodovich, Cherry, and Cosbey all require the filing of a set of proposed final jury instructions agreed upon by the

parties prior to the pretrial conference. All three also require the parties to file separate instructions for those that the parties cannot agree. Magistrate Judge Nuechterlein only requires the filing of instructions at least three days prior to trial and makes no reference to a joint filing.

The Committee also recommended deleting the triplicate filing requirement since it is neither needed nor currently observed. Similarly, the submission of a disk by the parties is somewhat antiquated with the increased usage of e-mail. Judges Springmann, Van Bokkelen, and Lozano all direct that the parties submit via email courtesy copies in WordPerfect or Word format to their chambers.

Finally, the Committee recommended deletion of the last sentence so as to avoid instances where there would be protracted argument over whether an instruction could have been reasonably anticipated, opting instead for the simple application of judicial discretion.

L.Cr.R. 46.1

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 Fed. R. Crim. P. 46.

(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.

Committee Comments

1994 Amendment

This proposed rule [originally assigned L.R. 100.1 in 1994] replaces present CR-1[which was new in 1987]. The rule eliminates the present distinction between sureties offering personal

property and those offering real property. A single rule is now adopted. In effect, the rule no longer allows a surety other than a corporate surety to post personal property as security. The rules for posting real estate as security are also changed by eliminating the need to file a Title Search Report letter, an appraisal, and a deed of trust, and by now requiring that the property be owned in fee simple and that it have a fair market value of double the bond penalty. In establishing fair market value and lack of encumbrance, the surety may need to provide some of the same information presently required under CR-1, but the rule leaves to the clerk's discretion the exact information sought.

2000 Amendment

This rule is identical to the Southern District of Indiana rule. The sole change proposed to this rule is in the abbreviation of the Criminal Rules of Procedure which was changed to be consistent throughout the local rules. [The rule was re-styled and re-numbered from L.R. 100.1 to L.Cr.R. 46.1].

L.Cr.R. 47.1

Continuances 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)(7), 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 the ends of justice, or such other reason why the continuance will not violate the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*

Committee Comments

1994 Amendment

The proposed rule [originally assigned L.R. 105.1 in 1994] is identical to present L.R. 20(b) [which was essentially new in 1987]. Because of the different standards for continuances in civil and criminal cases, the Committee decided to place the rule for criminal continuances with the criminal rules. The rule for continuances in civil cases is now located in L.R. 16.3. No substantive change is effected in L.R. 20(b).

2000 Amendment

[The Committee re-styled and re-numbered the rule from L.R. 105.1 to L.Cr.R. 45.1 but otherwise made no other changes].

2009 Amendment

The proposed amendment to this rule reflects the statutory recodification of the Speedy Trial Act, 18 U.S.C. § 3161. Subsection (h)(8) was recodified to (h)(7). Southern District Rule 7.1 is identical to our rule before the most recent amendment identifying subsection (h)(8) as (h)(7).

The Committee recommended relating this rule to Federal Rule of Criminal Procedure 47 rather than 45. This Local Rule was formerly 45.1, but has now been re-numbered to 47.1.

L.Cr.R. 47.2

Petitions for Habeas Corpus and Motions Pursuant to 28 U.S.C. §§ 2254 and 2255 by Persons in Custody

Petitions for writs of habeas corpus and motions filed pursuant to 28 U.S.C. §§ 2254 and 2255 by persons in custody shall be in writing and signed under penalty of perjury. Such petitions and motions shall be on the form contained in the Rules following 28 U.S.C. § 2254, in the case of a person in state custody, or 28 U.S.C. § 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.

Committee Comments

1994 Amendment

The proposed rule [assigned L.R. 104.1 in 1994], based upon present L.R. 35(a), was technically amended to clarify that petitions for habeas corpus are filed under 28 U.S.C. § 2254, not under 28 U.S.C. § 2255. No substantive change was intended. The remainder of L.R. 35 was deleted.

2000 Amendment

[The Committee re-styled and re-numbered the rule from L.R. 104.1 to L.Cr.R. 47.1 but otherwise made no other changes].

2009 Amendment

The Committee recommends renumbering this rule in light of its other recommendation to renumber L.Cr.R.45 to L.Cr.R. 47.1. This Local Rule was formerly 47.1, but has now been re-numbered to 47.2.

L.Cr.R. 47.3

Disposition of Post Conviction Petitions and Motions Brought Pursuant to 28 U.S.C. § 2254 and § 2255 in Cases Involving Persons Under a Sentence of Capital Punishment

(a) **Operation and Scope**.

(1) These rules shall apply to habeas corpus petitions brought pursuant to 28 U.S.C. § 2254 and § 2255 by petitioners under a sentence of capital punishment.

(2) To the extent that these rules are inconsistent with any other local rules of this court, these rules shall apply.

(3) The district judge to whom a case is assigned shall handle all matters pertaining to the case, including application for certificate of appealability, motion for stay of execution, consideration of the merits, second or successive petitions, remands from the Supreme Court of the United States or the United States Court of Appeals, and all incidental or collateral matters. This rule does not limit a district judge's discretion to designate a magistrate judge, pursuant to 28 U.S.C. § 636, to perform such duties as the district judge deems appropriate or for an emergency judge to act in the absence of the assigned district judge.

(4) If a second or successive petition is filed in this court, the judge of this district to whom the second or successive petition is assigned ("second judge") shall communicate with the judge to whom earlier petitions were assigned ("first judge") and, if the first judge is not a judge of this court, also with the chief judge of the circuit.

(5) Pursuant to the Criminal Justice Act (18 U.S.C. § 3006A) and 21 U.S.C. § 848(q), counsel shall be appointed for all prisoners in cases within the scope of these rules if the prisoner is not already represented by counsel, is financially unable to obtain representation, and requests that counsel be appointed.

(6) If the district court grants or denies a stay of execution, it shall set forth the reasons for the decision.

(7) The district judge to whom a case is assigned under these rules may make changes in procedures in any case when justice so required.

(b) **Filing of a Petition.**

(1) Upon the filing of a petition within the scope of these rules, it shall be immediately assigned to a district judge under the usual practices of the court. The clerk shall immediately notify the judge of his or her assignment and shall thereafter promptly notify, by telephone, the designated representatives of the Attorney General of the state in which the petition is filed. The Attorney General of Indiana has the obligation to keep the court informed as to the office and home telephone numbers of their designated representatives.

(2) In all petitions within the scope of this rule, the petitioner or movant shall file, within fourteen (14) days of the day of filing of the petition or motion, a legible copy of the documents listed below. If a required document is not filed, the petitioner or movant shall state the reason for the omission. The required documents are:

(A) prior petitions, with docket numbers, filed by petitioner in any state or federal court challenging the conviction and sentence challenged in the current petition;

(B) a copy of, or a citation to, each state or federal court opinion, memorandum decision, order, transcript of oral statement of reasons, or judgment involving an issue presented in the petition; and

(C) such other documents as the district court may request.

(3) A petitioner shall include in his or her petition all possible grounds for relief and the scheduled execution date. If an issue is raised in a second or successive petition that was not raised in a prior petition, the petitioner shall state the reasons why the issue was not raised and why relief should nonetheless be granted.

(4) If an issue is raised that has not been exhausted in state court, was never raised in state court or was not raised on direct appeal in state court, the petitioner shall state the reasons why the issue was not raised and why relief should nonetheless be granted.

(5) Upon the filing of a petition within the scope of these rules, the district court clerk shall immediately provide the petitioner with a copy of this rule and a copy of Circuit Rule 22 adopted by the United State Court of Appeals for the Seventh Circuit.

(6) The clerk shall notify the clerk of the Court of Appeals of the filing of a petition within the scope of these rules, of significant events and the progress of the case, and of any subsequent appeal of such case. The clerk of this court shall send a copy of

the final decision and any notice of appeal to the clerk of the state supreme court.

(c) **Preliminary Consideration of Judge.**

(1) The district judge shall promptly examine a petition within the scope of these rules and, if appropriate, order the respondent to file an answer or other pleading or take such other action as the judge deems appropriate.

(2) If the district judge determines, after examination of the petition, that the petition is a second or successive petition raising issues previously decided by a federal court, the district judge shall enter an appropriate order with a written finding so stating.

(d) **Priority.** The district judge shall give priority on his or her calendar to scheduling and deciding cases within the scope of these rules.

(e) **Motions for Immediate Stay of Execution.**

(1) No motion for a stay of execution shall be filed unless accompanied by a petition for relief under 28 U.S.C. § 2254 or § 2255 which comports with these rules. The movant shall immediately notify opposing counsel by telephone of the filing.

(2) The movant shall attach to the motion for stay a legible copy of the documents listed in section (b)(2) of this rule, unless the documents have already been filed with the court. If the movant asserts that time does not permit the filing of a written motion, he or she shall deliver to the clerk a legible copy of the listed

documents as soon as possible. If a required document is not filed, the movant shall state the reason for the omission.

(3) If the state has no objection to the motion for stay, the district court shall enter an order staying the execution.

(4) If the district court determines that the petition or motion is not frivolous and a stay is requested, it shall enter an order staying the execution.

(5) Following a decision on the merits, if the district court issues a certificate of probable cause, it shall enter an order staying the execution pending appeal. If the district court denies a certificate of probable cause, it shall not enter an order staying the execution pending appeal and it shall dissolve any stay of execution previously granted to petitioner by the district court.

(6) Except in the case of emergency motions, parties shall file motions with the district court clerk during the normal business hours of the clerk's office. The motion shall contain a brief account of the prior actions of any court or judge to which the motion or a substantially similar or related petition for relief has been submitted.

(f) **Clerk's List of Cases.** The district court clerk shall maintain a separate list of all cases within the scope of these rules.

Committee Comments

1994 Amendment

This rule is derived from the Circuit Rule governing the disposition of death penalty cases. The rule, which is inserted into the local rules for ease of reference, is expanded to include federal prisoners due to the recent passage of federal death penalty legislation. Some renumbering of the Circuit Rule's paragraphs and some changes in language were adopted in

order to conform the rule to the format of the other local rules. One sentence, dealing with the obligations of the Circuit's Chief Judge, was deleted because it was beyond the scope or power of these local rules.

2000 Amendment

[The rule was re-styled and re-numbered to L.Cr.R. 47.2 from L.R. 104.2 but no other changes were made].

2003 Amendment

The Committee made a minor change in the wording of subsection (a)(3) and (e)(5) so that it reads "Certificate of Appealability" rather than "Certificate of Probable Cause." The change was made at the request of the *pro se* law clerks so that the rule conforms with the current terminology. In addition, two statutory references were modified and minor typographical changes were made as suggested by the *pro se* law clerks.

2009 Amendment

Southern District Local Rule 6.1 addresses this process. Our rule and the Southern District's rule are substantially different. The rules between the districts are too difficult to reconcile. However, the Committee recommended extending the deadline in (b)(2) from 10 to 14 days, so as to be consistent with the time amendments becoming effective December 1, 2009. In addition, this Local Rule was formerly 47.2, but has now been renumbered to 47.3.

L.Cr.R. 53.1

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 extrajudicial 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 extrajudicial 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.

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.

Committee Comments

1994 Amendment

The proposed rule amends present CR-2 [essentially a verbatim version of pre-1987 Criminal Rule 5] in several ways. First, it eliminates the application of the rule only to "a widely publicized or sensational case," and makes it exceptional terms effective in any appropriate case. Second, it extends the rule's protection to ensure that all parties' rights to a fair trial will be considered, rather than only the rights of the accused. Third, the provision of the rule concerning extrajudicial statements are extended to the staff of attorneys, and orders regarding seating may now include parties, attorneys and their staffs.

Fourth, sub-paragraph (b), which governs closure orders, is amended. At present, the only ground for closure of trial is the least restrictive means of protecting an accused's right to a

fair and impartial trial. The amended language would permit the court to order closure when other compelling interests (such as the protection of victim or witness identity) are at stake. At present, the power of a court to order closure for these purposes is open to debate. Thus, the introductory clause to the sub-paragraph is amended to ensure that closure would be allowed only when permitted by law. This draft provides flexibility to the court to address particular circumstances in which interests other than fair trial might be implicated by an open proceeding without specifically requiring closure when certain circumstances present themselves.

2000 Amendment

[The rule was re-styled and re-numbered to L.Cr.R. 53.1 from L.R. 102.1 but otherwise no other changes were made.]

L.Cr.R. 53.2

Release of Information in Criminal Cases

It is the duty of the attorneys for the government and the defense, including the law firm, and of any law enforcement agency or investigator associated with the prosecution or defense, 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 they are 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 or law enforcement agent participating in or associated with the investigation, of any extrajudicial 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 authorization to release by a lawyer, law firm, law enforcement agent or investigator associated with the prosecution or defense, of any extrajudicial 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 the accused 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;

(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, law firm, or law enforcement agent during this period, in the proper discharge of 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 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 authorization to release by a lawyer or law enforcement agent or investigator associated with the prosecution or defense, of any extrajudicial 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 or law enforcement agent from replying to charges of misconduct that are publicly made against him or her.

Committee Comments

1994 Amendment

This proposed rule amends present CR-4 [which followed a pre-1987 version of Criminal Rule 4 nearly verbatim]. The changes are based upon Rule 3.6 (Trial Publicity) of the Rules of Professional Conduct, and are intended to harmonize the local rules with profession obligations. The first change is a technical one which clarifies the application of the rule to both government and private attorneys. The second change, in paragraph (1) [now, (a)], limits the non-disclosure of information obtained during investigation to government attorneys. See *Chicago Council of Lawyers v Bauer,* 522 F.2d 242, 253 (7th Cir. 1978). Third, the rule authorizes defense counsel to state the general nature of the defense; at present, counsel can only state that the accused denies the charges. Next, the restriction of paragraph (3)[now, (c)], which prevents public communications during a trial, are extended to non-jury criminal trials and to non-criminal proceedings which could result in incarceration. See *Bauer,* 522 F.2d at 257. Finally, the rule is expanded to encompass law enforcement agents.

2000 Amendment

The Southern District of Indiana has a similar rule with the exception of the internal numbering system used in their rule. After discussion, the Committee recommends changing the internal numbering system to match the Southern District of Indiana and to conform with the civil local rule changes which the Southern District of Indiana has adopted. [The rule was also re-styled and re-numbered from L.R. 103.1 to L.Cr.R. 53.2].

A key difference between the Southern District of Indiana rule and our current local rule is the inclusion of "law enforcement agent" and "law enforcement agency" in the opening paragraph. The Committee reviewed minutes from the prior criminal local rules Committee and noted that the intent of that Committee was to specifically encompass "law enforcement agents" and "law enforcement agencies" in the rule. This rule, as written, encompasses all law enforcement agencies and agents whether they be local, state, or federal agencies/agents. The Southern District of Indiana does not include law enforcement agencies or agents in their comparable local rule.

The Committee proposes retaining the above language in the opening paragraph and recommends adding the same phrase in paragraph (a). In addition, the Committee proposes adding investigators to the opening paragraph, paragraph (b), and in paragraph (c) so that any law enforcement agency, agent or any investigator for either the prosecution or defense would be included in the rule. Because of this addition, the Committee recommends changing the title of the rule to reflect that the rule encompasses the release of information by those who are not attorneys (*i.e*., law enforcement agents and investigators).

Although there is some question over whether the court may regulate the conduct of non-lawyers, the Committee concluded that this rule is intended to prohibit the dissemination of information which poses a serious and imminent threat of interference with the fair administration of justice and, to the extent a law enforcement agent or investigator associated with either side violates this rule, any sanctions would be imposed against the party with whom that individual is associated. The Committee believes the rule is prophylactic in that it encourages attorneys to counsel their agents/investigators or other associates against disseminating improper information which may jeopardize a case.

The Committee also recommends several grammatical changes to paragraphs (b) and paragraphs (c) for clarity.

L.R. 101.1 STANDARD ORDERS IN CRIMINAL CASES

(deleted 2000)

~~**L.R. 101.1**~~

~~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 standards 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.~~

Committee Comments

1994 Amendment

This proposed rule is new. The Southern District of Indiana has used standard orders with some apparent success. The Committee believed that the issuance of standard orders in criminal cases would facilitate their resolution.

2000 Amendment

The Southern District of Indiana has a similar version of this rule. However, in this district the Committee observed that while all judges enter an order in criminal cases, not all of the judges utilize the same standard order for criminal cases. The Committee reviewed minutes from the last rules revision which indicated that the intent of the Committee in adding this rule was to standardize the orders given in criminal cases. However, to date this has not been done, and as a result, there is no standard order that is available from the clerk. Because there is no standard order, the Committee believes the rule is superfluous and proposes that it be stricken.

L.R. 107.1 Processing of Cases Without a Resident Judge

(deleted 2000)

~~L.R. 107.1~~

~~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 or 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 ease may be, shall retain control of such case for disposition and sentencing.~~

Committee Comments

1994 Amendment

This proposed rule is new in the Northern District of Indiana. The Southern District of Indiana has previously adopted a somewhat different version of this rule as an administrative rule. During the rules revision process, their Committee modified the rule slightly, and voted to place the rule in the local rules. While the Northern District of Indiana does not presently face a situation of having any division without a resident judge, the rule appeared to the Committee to be a sensible and efficient resolution of the problem should the matter arise in the future.

2000 Amendment

In proposing that this rule be stricken, the Committee reviewed the minutes of the prior criminal local rules Committee and noted that this rule was added in 1994. At that time there was no district without a resident judge; however, the prior Committee adopted the rule in the event that the issue arose in the future. Upon review of the rule, the Committee does not believe that the rule is necessary and concludes that the better course is to leave the assignment of cases to the discretion of the Chief Judge.

[Compiler's Note: APPENDIX A was re-drafted in 2000 to update a much earlier version (*circa* 1974) that had been incorporated into the 1994 Amendments. The new sample Pre-Trial Order added references to comparative fault, updated citations to the Indiana Code, and recognized the advent of computer technology.]

APPENDIX A. SAMPLE PRE-TRIAL ORDER

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

CLAUDE JONES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL NO. 2:99-CV-798-RL
	)	
WILBUR SMITH,	)	
	)	
Defendant.	)	

PRE-TRIAL ORDER

Pursuant to the order of the Court, the attorneys for the parties to this action appeared before the United States District Judge at Hammond, Indiana, at 2:00 P.M. on September 30, 2000 for a conference under Rule 16 of the Federal Rules of Civil Procedure.

Plaintiff was represented by Richard Roe of the firm of Roe and Roe. Defendant was represented by John Doe of the firm of Diamond & Doe.

Thereupon, the following proceedings were had and the following engagements and undertakings arrived at:

A. Jurisdiction was conceded by counsel and found by the Court to be present. (If otherwise, so state).

B. The case is at issue on plaintiff's complaint and the defendant's answer. The First Defense denies defendant's negligence. The Second Defense alleges comparative fault on the part of the driver of plaintiff's car. The plaintiff and driver were engaged in a joint enterprise, and the driver's negligence is imputed to the plaintiff.

C. There are no pending motions.

D. The plaintiff contends that on June 1, 1998, he was riding in the front seat of a 1997 Ford automobile which was being driven in a northerly direction on U.S. Highway No. 31 approaching the intersection of Pierce Road, a county road in St. Joseph County, Indiana. The defendant was driving a Chevrolet convertible west on Pierce Road. The defendant negligently operated his automobile in the following manner: (1) He failed to stop for a stop sign before entering the intersection, (2) he failed to keep a proper lookout for vehicles traveling on U.S. Highway No. 31, and (3) he failed to yield the right-of-way to the vehicle in which plaintiff was riding. The plaintiff further contends that as a result of defendant's negligence, his car collided with the car in which plaintiff was riding, causing plaintiff to be injured permanently. Plaintiff lost wages and income as a result of his injuries in the amount of $32,000 and will suffer loss of income in the future. He was required to expend $39,455 for medical and hospital care and will be required to expend further sums in the future. Plaintiff sustained property damage of $8,500 to his automobile.

E. The defendant contends that he was not negligent in the operation of his automobile as contended by the plaintiff and further contends that the driver of the car in which

the plaintiff was riding was negligent in that (1) he drove at a fast and unreasonable rate of speed, to-wit: 80 miles per hour, and (2) he failed to yield the right-of-way to the defendant, who was in the intersection and almost clear of the northbound lanes when struck in the left rear by the plaintiff's driver. Defendant also contends that the plaintiff and the driver of the car in which he was riding were engaged in a joint enterprise in that they had jointly rented the car in which plaintiff was riding to go on a business trip for the mutual benefit of both and had shared the driving and expense incident to the trip.

F. The following facts are established by admissions in the pleadings or by stipulation of counsel:

1. A collision occurred between the car of the defendant and the car driven by William Jones, with whom plaintiff was riding, at the intersection of U.S. 31 and Pierce Road in St. Joseph County, Indiana, on June 1, 1998 , at approximately 4:00 P.M.

2. U.S. 31 is a paved, four-lane, north-to-south highway divided by a median curb approximately four inches high and three feet wide. Pierce Road is a two-land, paved, east-and-west highway, paved with black top. A stop sign, legally erected, was located at the northwest corner of the intersection facing westbound traffic on Pierce Road. Both roads are level for at least 500 feet in both directions, and there are no obstructions to view within 500 feet of the intersection.

3. The pavement was dry and the weather was clear and warm.

4. Plaintiff was traveling north in the northbound lanes of U.S. 31. Defendant was traveling west in the westbound lane of Pierce Road.

5. The defendant was alone in his Chevrolet automobile. The plaintiff was riding in a rented car being driven by his brother, William Jones, who died as a result of injuries received in the collision. The plaintiff and his brother William had gone from South Bend to Plymouth to negotiate for the joint purchase of a grocery store. The plaintiff had driven from South Bend to Plymouth, and William was driving on the return trip. They were sharing the cost of renting the car and any other expenses of the trip.

G. The contested issues of fact are:

1. The negligence of the defendant which was a proximate cause of the collision.

2. The negligence of William Jones which was a proximate cause of the collision.

3. Whether plaintiff and his brother were engaged in a joint enterprise, and, if so, is the negligence, if any, of the driver William imputed to the plaintiff.

4. Extent of plaintiff's damages.

H. A contested issues of law not implicit in the foregoing issue of fact will be:

1. Whether the common-law doctrine of imputed negligence between members of a joint enterprise survived the adoption of Indiana's Comparative Fault Act, I.C. §§ 34-51-2-1 et seq.

2. The admissibility of expert testimony attempting to reconstruct the manner in which the accident occurred. In that regard, it is represented that the plaintiff has a complete loss of memory concerning the manner in which the accident occurred and the only living eyewitness is the defendant.

I. There were received in evidence:

1. Plaintiff's exhibits 1, 2, 3, 4, and 5, the same being pictures of the scene taken by State Policeman John Williams; 7 and 8, being pictures of the intersection taken by Commercial Photographer Sam Bigley; 9, Memorial Hospital bill; 10, Dr. Willard Raymond's bill; 11, bill from Medical Appliance Company for back brace; 12, plaintiff's hospital record compiled by Memorial Hospital; 13, Dr. Max Small's bill.

2. Defendant's exhibits A, an engineer's drawing of the intersection; and B, photograph of defendant's car.

3. Except as otherwise indicated, the authenticity of received exhibits has been stipulated, but they have been received subject to objections, if any, by the opposing part at the trial as to their relevance and materiality. If other exhibits are to be offered, they may be done so only with leave of court.

Exhibits which can be obtained only by a subpoena duces tecum shall not be covered by this requirement, but counsel for party offering such exhibits shall advise opposing counsel of the nature of such exhibits at the pretrial conference or at least ten (10) days prior to trial.

J. Witnesses:

1. Plaintiff's witnesses may include any or all of the following:

a. The plaintiff.

b. Dr. Willard Raymond, Room 304 Medical Arts Building, South Bend, Indiana, attending physician.

c. Dr. Max Small, 923 Sherland Building, South Bend, Indiana, consultant.

d. John Williams, state policeman who investigated the accident.

e. Dr. George Bundage, 1069 High Street, Evanston, Illinois, expert who will reconstruct the accident.

f. Mrs. Claude Jones, wife of plaintiff, who will testify as to plaintiff's condition before and following the accident.

2. Defendant's witnesses may include any or all of the following persons:

a. The defendant.

b. John Williams, state policeman.

c. Alex Nagy, 124 West Indiana Avenue, South Bend, Indiana, deputy sheriff, St. Joseph County, who investigated the accident.

d. Bill Hill, 29694 U.S. 31 South, South Bend, Indiana, a neighbor who came to the scene of the accident.

e. Bert McClellan, engineer who made the drawing of the intersection.

f. Dr. James Hyde, examining physician.

3. In the event there are other witnesses to be called at the trial, their names and addresses and the general subject matter of their testimony will be reported to opposing counsel, with copy to the Court, at least ten (10) days prior to trial. Such witnesses may be called at trial only upon leave of Court. This restriction shall not apply to rebuttal or impeachment witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial.

K. It is directed that requests for special instructions must be submitted to the Court, in writing and on a computer disk (or in another electronic format), with supporting authorities, at or prior to the commencement of the trial, subject to the right of counsel to supplement such requests during the course of the trial on matters that cannot reasonably be anticipated.

L. No amendments to the pleadings are anticipated.

M. Trial briefs shall be filed with the Court and exchanged among counsel at least seven (7) days before trial, covering specifically:

1. Questions raised under Section H of this order.

2. Whether under the facts the negligence, if any, of William Jones should be imputed to the plaintiff.

N. The following additional matters pertinent to the trial will be considered.

1. Plaintiff will request the Court to instruct the jury that a violation of I.C. § 9-21-8-32 constitutes negligence per se.

2. Defendant will request the Court to instruct the jury that a violation of I.C. § 9-21-8-31 constitutes negligence per se.

3. Plaintiff contends that as a result of the accident, he suffered a skull fracture and concussion resulting in partial loss of memory, headaches, and occasional blackouts; that he suffered a broken left leg about the knee resulting in a shortening of the leg, causing plaintiff to limp; injury to the lumbar spine, with a probable ruptured intervertebral disc which will require an operation; permanent pain in the spine radiating down the right leg; that he has suffered permanent impairment of 15% of the whole man; that he is 36 years of age and has a life expectancy of 34.76 years.

4. Plaintiff claims the following special damages:

a.	Dr. Willard Raymond	$ 7,500
b.	Dr. Max Small	$ 1,500

c.	Memorial Hospital	$17,680
d.	Medical Appliance Co. (back brace)	$ 275
e.	Cost of future back operation:	
	Surgeon's	$ 5,000
	Hospital bill	$ 7,500

5. Plaintiff claims he lost income as follows:

Fifteen months as manager of the A.B.C. Supermarket located at 1764 Portage Street, South Bend, at $2,000 per month. Time lost began June 1, 1998 , with the plaintiff returning for light work August 1, 1999 . Plaintiff has lost four weeks since returning to work on August 1, 1999 (one week in September 1999 and three weeks in November 1999) due to his back condition. It is expected that he will lose three or four more weeks due to his future operation to repair back injury. Plaintiff's supervisor is Paul Dill, District Manager, A.B.C. Grocery Co., 1764 Portage Street, South Bend, Indiana.

O. This pre-trial order has been formulated after conference at which counsel for the respective parties have appeared. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing by the Court. Hereafter, this order will control the course of the trial and may not be amended except by consent of the parties and the Court or by order of the Court to prevent manifest injustice. The pleadings will be deemed merged herein.

P. The parties have discussed settlement, but have been unable to reach agreement. They will continue to negotiate and will advise the Court immediately if settlement is reached.

Q. The probable length of trial is two days. The case is set down for trial before a jury on November 5, 2000 at 9:30 A.M.

Entered this 15th day of October, 2000 .

Judge, United States District Court

APPROVED:

Richard Roe,
Attorney for Plaintiff

APPROVED:

John Doe,
Attorney for Defendant

APPENDIX B.

STANDARDS FOR PROFESSIONAL CONDUCT WITHIN

THE SEVENTH FEDERAL JUDICIAL CIRCUIT

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality, and protection against unjust and improper criticism or attack.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

The following standards are designed to encourage us, judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

We expect judges and lawyers will make a mutual and firm commitment to these standards. Voluntary adherence is expected as part of a commitment by all participants to improve the administration of justice throughout this Circuit.

These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards supersedes or detracts from exiting disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined.

These standards should be reviewed and followed by all judges and lawyers participating in any proceeding in this Circuit. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards.

Lawyers' Duties to Other Counsel

1. We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.

2. We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties, or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.

3. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

4. We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.

5. We will not seek court sanctions without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.

6. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

7. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the opportunity for review of the writing to other counsel. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

8. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

9. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

10. We will not use any form of discovery or discovery scheduling as a means of harassment.

11. We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings and discovery requests and objections.

12. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

13. We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.

14. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

15. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.

16. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.

17. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.

18. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity.

19. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.

20. We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

21. We will not obstruct questioning during a deposition or object to deposition questions unless necessary under the applicable rules to preserve an objection or privilege for resolution by the court.

22. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.

23. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of any action. We will not design production requests to place an undue burden or expense on a party.

24. We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

25. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party.

26. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.

27. We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information.

28. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

29. We will not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

30. Unless specifically permitted or invited by the court, we will not send copies of correspondence between counsel to the court.

Lawyers' Duties to the Court

1. We will speak and write civilly and respectfully in all communications with the court.

2. We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.

3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication to the court.

6. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.

7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

8. We will act and speak civilly to court marshals, clerks, court reporters, secretaries, and law clerks with an awareness that they, too, are in integral part of the judicial system.

Courts' Duties to Lawyers

1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.

2. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

3. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will notify counsel, if possible.

4. In scheduling all hearings, meetings and conferences we will be considerate of time schedules of lawyers, parties, and witnesses.

5. We will make all reasonable efforts to decide promptly all matters presented to us for decision.

6. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.

7. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

8. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

9. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

10. We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

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

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

APPENDIX C. NOTICE TO *PRO SE* LITIGANT

(This form may be downloaded from the Northern District of Indiana's internet website at www.innd.uscourts.gov)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
_____ DIVISION

_____,

v. Civil No. _____

_____,

NOTICE

You are hereby notified that we have filed a motion for summary judgment in your case.

Because you are not represented by counsel, you are hereby advised of your obligation to respond to the summary judgment motion.

By the motion for summary judgment, we are asking to have this suit decided in our favor without a full scale trial, based on the evidence presented in the affidavits and documents attached to the motion. Any factual assertion in the affidavits will be accepted by the court as being true unless you submit your own affidavits or other admissible documentary evidence contradicting the assertion. Your failure to respond in that way would be the equivalent of failing to present any evidence in your favor at a trial.

Rule 56 of the Federal Rules of Civil Procedure governs motions for summary judgment, and that rule must be complied with by you in submitting any further response to our motion. Rule 56 provides in part:

> **(c)(2)** . . . The judgment sought should be rendered if the pleadings, discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law . . .
>
> **(e)(1)** A supporting or opposing affidavit must be made on personal knowledge, set out such facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The court may permit an affidavit to be supplemented or opposed by depositions, answers to interrogatories, or additional affidavits.
>
> **(e)(2)** When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must--by affidavits or as otherwise provided in this rule--set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

Fed. R. Civ. P. 56 (emphasis added).

Under Rule 56 of the Federal Rules of Civil Procedure, you have a right to respond to our motion and accompanying sworn material by filing your own affidavit or other sworn responses. Although the mere filing of affidavits or other responsive materials will not guarantee the denial of our motion, your response will enable the court to consider more meaningfully all relevant factors. If you do not respond to the motion with your own affidavits or other admissible evidence to dispute the facts established by us, a summary judgment may be entered against you if, on the basis of the facts established by us, we are entitled to judgment as a matter of law.

Unless you respond to this motion with sworn statements or other admissible evidence which contradicts important facts claimed by us in our sworn materials, the court will accept our uncontested facts as true. More importantly, you will lose this lawsuit, in whole or in part, if the court determines that, under those unchallenged facts, we are entitled to judgment under the law.

In the event you elect to respond to our motion, your response must include or be supported by sworn statements or other responsive materials. You cannot merely rely upon any conflict or inconsistency between the contents of the complaint and the affidavit(s) or other sworn materials filed in support of our motion. If you submit an affidavit or affidavits in support of your response, the facts in the affidavits must be personally known to the person making the affidavit and not be hearsay; the facts must be specific and not general. Merely denying the facts in the sworn material filed by us in support of our motion or giving opinions or beliefs is not enough.

If you oppose this motion for summary judgment, Northern District of Indiana Local Rule 56.1, states that you must file any response to the motion along with any supporting materials within twenty-eight (28) days from the date the motion is served. "Upon your written request, the Court may, but is not required to, enlarge the time within which to respond; that is, give you more time to respond. Any request for additional time to respond to this motion should be filed before the time to act expires."

[Compiler's Note: Appendix C was added in 2002. See Comment to Local Rule 56.1. The Appendix was amended in 2008 to conform with the stylistic changes made to Federal Rule Civil Procedure 56 in 2007. The Appendix was amended again in 2009 to provide *pro se* litigants with the same response deadline, twenty-eight (28) days, as any other litigant and was also modified to extensively quote the new language of rule 56.]