UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MINNESOTA

L O C A L R U L E S

March 13, 2018

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2012 ADVISORY COMMITTEE'S PREFACE ON STYLISTIC AMENDMENTS

The amendments to the Local Rules adopted by the Court in 2011 and 2012 are primarily intended to be stylistic. Some of the amendments are substantive, however, and the Federal Practice Committee has attempted to identify those substantive amendments in the advisory committee notes. An amendment should be presumed to be stylistic unless the accompanying advisory committee note identifies it as substantive.

The stylistic amendments to the Local Rules were part of an initiative to respond to the restyling of the Federal Rules of Appellate Procedure (1998), Federal Rules of Criminal Procedure (2002), Federal Rules of Civil Procedure (2007), and Federal Rules of Evidence (2011). Because attorneys refer to both the Federal Rules and the Local Rules when practicing in federal court, the Committee attempted to minimize stylistic differences between the Federal Rules and the Local Rules to the extent practicable. In this stylistic initiative, the Committee also attempted to recommend to the Court rule language that would increase the accessibility and usability of the Local Rules.

2012 ADVISORY COMMITTEE'S PREFACE ON LR FORMS 3-6

Over the years, the Court has crafted LR Forms 3 through 6 to assist litigants to comply with the Local Rules. Form 3 (non-patent cases) and Form 4 (patent cases) were created to assist parties in conducting 26(f) meetings, preparing the 26(f) report, and preparing for the initial pretrial conference. Form 5 (patent cases) and Form 6 (non-patent cases) are template protective orders.

In 2012, the Court implemented several changes to Forms 3 and 4. Revised Forms 3 and 4 incorporate the amendments to LR 16.2 and LR 26.1 that require the parties to discuss at the 26(f) conference whether a protective order is necessary and the court to address any unresolved issues related to the protective order at the initial pretrial conference. Revised Forms 3 and 4 also require the parties to discuss the discovery of electronically stored information, a required element of the Fed. R. Civ. P. 26(f)(3)(C) discovery plan.

The Court adopted additional substantive amendments to Form 4 at the suggestion of a group of judges and patent practitioners who had studied ways to make patent litigation more efficient. The group's study included interviews with all of the judges in the District and a survey of patent practitioners. The changes to Form 4 clarify requirements for various exchanges between the parties and submissions to the court in patent cases, including that the parties may amend their claim charts and prior art statements only by leave of court. Form 4 requires the parties file a joint patent case status report to address claim construction, including whether a claim construction hearing should be held and whether the parties request a pre-claim construction conference with the court. The option to request a pre-claim construction conference is

new. The changes also provide alternative deadlines for expert discovery based on the issuance of the court's claim construction order.

Forms 5 and 6 were not amended but are expressly referenced for the first time in the text of the Local Rules, in LR 26.1.

2005 PATENT ADVISORY COMMITTEE'S PREFACE

Pursuant to 28 U.S.C. § 2077, the Court appointed an Advisory Committee to prepare a draft of the 2005 Amendments and to make recommendations to the Court with respect to local rules for patent cases in the District of Minnesota. The Advisory Committee consisted of the following members:

Mr. Jake M. Holdreith, Chair
Mr. Jeffer Ali
Ms. Alana T. Bergman
The Honorable Arthur J. Boylan
Ms. Sue Halverson
Mr. Peter M. Lancaster
Professor R. Carl Moy
Mr. James T. Nikolai
The Honorable James M. Rosenbaum
Mr. Richard D. Sletten
Ms. Becky R. Thorson

The Committee wishes to express its gratitude to all those who aided its efforts. Special thanks are due to a few individuals. Wendy S. Osterberg, the Chief Deputy Clerk, provided invaluable information and support, and she was ably assisted by Karen Mack and Mary McKay. Finally, we would like to recognize Rachel Clark Hughey and Annie Huang for their contributions to the formulation of these Rules.

These Rules are designed to ease, simplify, and reduce the cost of patent practice in the District of Minnesota. Patent cases are frequently complex. These Rules are designed to streamline the pre-trial and claim construction processes.

The bar bears the dual role as zealous advocates for its clients as well as its concomitant duties as officers of the Court. It is expected by the Court that counsel will emphasize and discuss both of these obligations with their clients.

The Court has the ability to use its traditional means of shifting costs or imposing sanctions for any practice which impedes the efforts under these amendments to further the goals established in Rule 1 of the Federal Rules of Civil Procedure.

The Committee prepared its draft and made its recommendations with the following objects in mind:

1. Reducing the cost and burden of patent litigation in Minnesota without sacrificing fairness.

2. Promoting consistency and certainty in how patent cases are handled in Minnesota.

3. Addressing issues that are recurring in most patent cases and that all litigants and the Courts have some common interests in managing by rule, in particular disclosure, discovery, and claim construction issues.

4. Promoting the greatest and most accessible understanding of patent issues and technical issues by litigants, Courts, and juries.

5. Minimizing the discovery procedural disputes that often lead to the same outcome and could be resolved at less cost and burden, at least presumptively, by rule rather than by motion.

6. Discouraging expensive and/or burdensome litigation procedures that do not substantially contribute to the resolution of patent cases.

With these objects and priorities in mind, the Committee considered a number of rules and procedures that have been used in the District of Minnesota and in other districts in patent cases, including in particular the case management orders for patent cases that have been entered in patent cases by individual judges in the District of Minnesota with patent-specific provisions, as well as the local rules in the District of Delaware and the Northern District of California. From a large number of proposals, the Committee focused its draft and recommendations on the areas that, in the opinion of the Committee, are likely to arise in a majority of patent cases and which lend themselves to management by rules that should not advantage or disadvantage any particular litigants or groups, but should reduce time, burden, and expense when governed by rule rather than motion practice or stipulation.

Each Local Rule is followed by an effective date. The Local Rules with an effective date of 2005 were adopted at the recommendation of the 2005 Patent Advisory Committee.

1996 ADVISORY COMMITTEE'S PREFACE

After the 1991 Amendments to the Local Rules of the District of Minnesota, two important procedural events occurred that required a new look at the Local Rules. First, the Federal District Court for the District of Minnesota promulgated a Civil Justice Reform Act Implementation Plan ("CJRA Plan"), as required by the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-82. The CJRA Plan, which was promulgated on August

23, 1993, supplemented and to some extent supplanted the then-existing Local Rules. Second, the Supreme Court promulgated a set of amendments to the Federal Rules of Civil Procedure ("National Rules"). These amendments to the National Rules became effective on December 1, 1993. They made important changes in discovery and pretrial procedure, while giving leeway to district courts to use Local Rules to "opt out" or modify many of the new procedures.

These 1995 amendments to the Local Rules are designed to provide a single authoritative compilation of the procedural rules of the District, so that practitioners will no longer need to refer both to the Local Rules and to the CJRA Plan. They also set forth the Court's decisions on whether to exercise local options permitted under the discovery and pretrial conference provisions of the 1993 amendments to the National Rules.

The provisions of the 1993 amendments to the National Rules that related to discovery and mandatory pretrial disclosure were controversial. A number of courts in other districts modified or opted out of those provisions. The Federal District Court for the District of Minnesota decided to give the new National Rules a trial before promulgating Local Rules in reaction to them. After reviewing this experience and considering arguments for and against the new discovery and disclosure process, the 1996 Advisory Committee recommended acceptance of the principal provisions of the 1993 amendments to the National Rules. The Committee's recommended 1996 amendments to the Local Rules do, however, exempt certain categories of cases from some of the provisions of the National Rules, and modify other provisions to meet concerns expressed during the Committee process. The Committee's recommended rules also opt out of certain provisions of the National Rules relating to disclosure or discovery of information about expert testimony and set forth a different procedure for expert discovery.

Each Local Rule is followed by an effective date. Those Local Rules with an effective date of 1996 were adopted at the recommendation of the 1996 Advisory Committee. The Local Rules with an effective date of 1991 were adopted at the recommendation of the 1991 Advisory Committee, whose Advisory Committee Preface follows this one. In a few instances, the 1995 Advisory Committee made minor technical changes in the 1991 Local Rules (such as substituting "Magistrate Judge" for "Magistrate") without changing the 1991 notation following the rule. Where one subsection of a Local Rule was promulgated in 1991 and one subsection was promulgated in 1996, a date notation follows each subsection.

When it promulgated the 1991 Local Rules, the Court, at the recommendation of the 1991 Advisory Committee, re-adopted a number of rules that pre-dated 1991, while re-numbering them to facilitate reference to related National Rules. The 1991 Advisory Committee's Preface describes this process and enumerates the rules that pre-dated 1991.

Pursuant to 28 U.S.C. § 2077(b), the Court appointed an Advisory Committee to prepare a draft of the 1996 Amendments and to make recommendations to the Court. The Advisory Committee consisted of the following members:

Mr. Clifford M. Greene, Chair

Mr. Sidney Abramson[1]

Ms. Barbara Berens

Mr. Tyrone Bujold

Ms. Laurie Davison

The Honorable David S. Doty

Mr. Francis E. Dosal (ex officio)

The Honorable Raymond L. Erickson

Mr. Mark Hallberg

Professor Eric Janus

Mr. Joshua J. Kanassatega

Mr. Jeffrey Keyes

Mr. George Koeck

The Honorable Richard H. Kyle

Mr. Larry Minton

The Honorable Franklin L. Noel

Mr. Thomas J. Radio

Mr. Robert Small

Ms. Janice M. Symchych

Mr. Frank E. Villaume, III

Professor Roger C. Park, Reporter

The Committee wishes to express its gratitude to all those who aided its efforts. Special thanks are due to a few individuals. Frank Dosal, the Clerk of Court, provided invaluable information and support in formulating both the 1991 and 1996 rules, and he was ably assisted by Sara Nielsen and Wendy Schreiber. Russell A. Blanck gave selflessly of his time and counsel. Finally, we would like to recognize Caron Pjanic for her exemplary care and effectiveness in processing and assembling the rules, without which the task of the Committee and its Reporter would have been much more difficult.

1991 ADVISORY COMMITTEE'S PREFACE

These Local Rules are promulgated pursuant to the enabling legislation in 28 U.S.C. § 2071 (1988), which gives district courts the authority to prescribe rules for the conduct of their business, providing such rules do not conflict with Acts of Congress or the rules of practice and procedure that the United States Supreme Court may promulgate for district courts under 28 U.S.C. § 2072 (1988). Federal Rule of Civil

[1]Sidney Abramson was a member of the Advisory Committee until his death on August 27, 1994.

Procedure 83 (Rule 83) also authorizes district courts, by majority vote, to make rules that are consistent with the Federal Rules of Civil Procedure. Both § 2071 and Rule 83 provide for public notice and an opportunity to comment before the district courts finally adopt such rules. Compare 28 U.S.C. § 2071(e) (1988) (permitting public notice and comment after a district court adopts a rule, if the district court determines that the rule is needed immediately).

The United States District Court for the District of Minnesota appointed the Advisory Committee (the Committee) pursuant to 28 U.S.C. § 2077(b) (1988) (requiring an advisory committee for rules promulgated under § 2071). The members of the 1989-90 Advisory Committee were:

Mr. Clifford M. Greene, Chair

Mr. Sidney Abramson

The Honorable Donald D. Alsop

Mr. Elam Baer

Mr. Glenn Baskfield

The Honorable David S. Doty

Mr. John B. Gordon

Mr. Mark Hallberg

Mr. Eric Janus

Mr. Jeffrey Keyes

Mr. George Koeck

Mr. Douglas R. Peterson

Ms. Denise Reilly

The Honorable Robert G. Renner

Mr. Daniel M. Scott

Ms. Janice M. Symchych

Mr. Mark P. Wine

Mr. Francis E. Dosal, the Clerk of the United States District Court for the District of Minnesota, also participated as an ex officio member of the committee.

Professor Roger C. Park of the University of Minnesota Law School was the Reporter for the Advisory Committee. Barbara Podlucky Berens, J.D. (1990) from the University of Minnesota Law School, served as Research Assistant to the Advisory Committee.

In revising the Local Rules for the District of Minnesota, the Advisory Committee considered the treatise and other materials provided by the Local Rules Project, a study of local district rules conducted under the auspices of the Committee on Rules of Practice and Procedure of the United States Judicial Conference (the Project). The Committee adopted the uniform numbering system recommended by the Project. Local Rules Project, Comm. on Rules of Practice and Procedure, Judicial Conference of the

U.S., Treatise, item 2 (1989). This uniform system follows the one already used for the Federal Rules of Civil Procedure. For example, the new local rule which requires a formal motion for extending a pretrial schedule is numbered Local Rule 16.3, corresponding to the federal rule concerning pretrial scheduling, Rule 16, Federal Rules of Civil Procedure. The Project emphasized that renumbering local rules performs a variety of valuable functions. Uniform numbering will help the bar to locate local rules and related case law more easily, thereby assisting attorneys with multi-district practices. The system also facilitates incorporation of local rules into legal publications and computer research data bases. Id.

Following the uniform system, the Committee renumbered and adopted the following rules without significant additional change from the 1987 Local Rules for the District of Minnesota: 4.1 (formerly 18), 4.2 (formerly 10), 6.1 (formerly 2(C)), 7.1 (formerly 4), 16.1 (formerly 3 (A)), 16.2 (formerly 3 (C)), 17.1 (formerly 13), 39.1 (formerly 7), 39.2 (formerly 8), 40.1 (formerly 2(A-B)), 67.1 (formerly 12), 79.1 (formerly 11 (B)), 80.1 (formerly 14, with an addendum from Model Local Rule 80.1), 83.2 (formerly 9), 83.5 (formerly 1 (A-E)), 83.6 (formerly 1 (F)), 83.7 (formerly 1 (G)), 83.8, (formerly 1 (H)), 83.9 (formerly 17), 83.10 (based on a 1989 revised order regarding sentencing procedures), and 83.11 (formerly the Preface). The Committee renumbered and substantially revised the following 1987 Local Rules for the District of Minnesota: 5.5 (formerly 11), 7.2 (formerly 5), 9.3 (formerly 15), 26.1 (formerly a portion of 3(B)), and 33.1 (formerly a portion on 3(B)).

The Committee also adopted several Model Local Rules proposed by the Local Rules Project. Id. item 3. The Project recommended these rules after analyzing various areas of procedure to determine which rules should remain subject to local variation and which areas, primarily technical, would benefit from increased consistency and simplicity resulting from the adoption of model rules. Id. item 1, at 9-14; see also Subrin, The Underlying Assumptions of the Federal Rules of Civil Procedure: Federal Rules, Local Rules, and State Rules: Uniformity, Divergence, and Emerging Procedural Patterns, 137 U. Pa. L. Rev. 1999, 2019-21 (1989) (consultant to the reporter of the Local Rules Project discussing its methodology and recommendations). Based on the Project's suggestions, the Committee adopted the following Model Local Rules without significant change: 3.1, 5.1, 5.2, 9.1, 15.1, 23.1, 24.1, 37.2, 38.1, 67.3, and 71A.1. The Committee also adopted with modifications Model Local Rules 1.1, 1.3, and 37.1.

The Local Rules Project also identified possible inconsistencies between existing local rules of the Federal District Courts and the Federal Rules of Civil Procedure. Treatise, supra item 1, at 9-14; item 4. In recommending the retention or promulgation of particular local rules in light of the Project's suggestions about inconsistencies, the Advisory Committee adopted the view that the district courts have authority to supplement the Federal Rules of Civil Procedure with local rules establishing procedures and procedural limits not provided for in the national rules, as long as the local rules do not directly contradict the national rules. In cases in which particular local rules, such as the limit on the number of interrogatories, have served well in local

practice, the Advisory Committee was reluctant to draw negative implications from the absence of specific limits in the national rules. Therefore, although the Advisory Committee took into account the views of the Local Rules Project that certain local rules were "possibly inconsistent" with the national rules, id. item 4, it often decided that no inconsistency existed and that the local rule should be retained. This view of the nature of local rule making is supported by the Supreme Court's decision in Colgrove v. Battin, 413 U.S. 149, 163-64 (1973). In Colgrove, the Court examined the validity of a local rule promulgated by the United States District Court for the District of Montana which permitted a six-member jury in civil trials. Id. at 149-50. The petitioner argued that the rule was invalid, relying in part upon implications the petitioner drew from Federal Rule of Civil Procedure 48, which provides that parties may stipulate to a jury of less than twelve. Id. at 151. The petitioner reasoned that because the federal rule specifically permitted parties to stipulate to a jury of less than twelve, by negative implication, the local district rule could not impose a mandatory number of less than twelve. The Supreme Court rejected this argument and upheld the local rule. Id. at 163-64; cf. Keeton, The Function of Local Rules and the Tension with Uniformity, 50 U. Pitt. L. Rev. 853 (1989).

The Committee further adopted various rules proposed by Minnesota Judges and attorneys. Several significant changes were made in the local rules on the basis of these suggestions. Local Rule 16.3 requires a formal motion for extending a pretrial schedule set under Federal Rule of Civil Procedure 16. Local Rule 47.2 prohibits contact with jurors during their term of service. Local Rule 48.1 allows Judges to empanel juries of more than six in civil cases and to permit all empaneled jurors to deliberate. Local Rule 54.3 permits Judges, in their discretion, to recognize a good-cause exception to the existing local rule (Local Rule 6) which requires attorneys to file applications for attorney's fees within thirty days after judgment. Finally, Local Rule 72.1 (formerly 16) establishes a briefing schedule for appeals from Magistrate Judges' orders.

The Committee believes that the revised Local Rules for the District of Minnesota incorporate various recommendations of Minnesota Judges and attorneys and remedy some of the concerns addressed by the Local Rules Project, while retaining existing rules which have served well in local practice.

LR 1.1 SCOPE OF THE RULES

(a) Title and Citation. These are the Local Rules of the United States District Court for the District of Minnesota. They may be cited as “LR __” or "D. Minn. LR __."

(b) Effective Date. These rules are effective as of May 1, 2000.

(c) Scope of Rules. These rules apply in all civil and criminal actions, but not actions in bankruptcy court.

(d) Relationship to Prior Rules; Actions Pending on Effective Date. These rules supersede all previous rules promulgated by the court or any of its judges. Ordinarily, these rules apply to actions pending as of their effective date. But if applying these rules to pending actions would be unjust or not feasible, the previously applicable rules govern.

(e) Rule of Construction. These rules must be construed in accordance with 1 U.S.C. §§ 1-5.

[Adopted effective February 1, 1991; amended November 1, 1996; amended December 1, 2009; amended January 31, 2011]

2011 Advisory Committee's Note to LR 1.1(f)

The language of LR 1.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee’s Preface on Stylistic Amendments.

Subsection (f) was deleted from the rule as redundant of Fed. R. Civ. P. 6.

2009 Advisory Committee's Note to LR 1.1(f)

In 2009, Fed. R. Civ. P. 6(a) was amended to eliminate the different methods of counting that depended on whether a period was more or less than 11 days. Similar changes were made to the Federal Rules of Criminal Procedure, Federal Rules of Appellate Procedure, and the Federal Bankruptcy Rules. A portion of Local Rule 1.1(f) (addressing how to compute a due date when "counting backward") has been eliminated because it was no longer needed in light of the new Federal Rule of Civil Procedure 6(a) that defines "next day" both in the context of counting forward and counting backward. Until these 2009 Amendments to the Federal Rules, Fed. R. Civ. P. 6(a) was silent with respect the meaning of "next day."

Under the amended rules, all days are counted regardless of whether any of them are Saturdays, Sundays, or legal holidays, and regardless of whether the period to be counted is more or less than 11 days. The Federal Rules by their express terms apply to computing due dates under the local rules of district courts as well as to computing due dates under the Federal Rules of procedure.

1991 Advisory Committee's Note to LR 1.1(f)

[The Committee has eliminated the text of the 1991 Advisory Committee’s Note to this Rule so as to avoid any confusion it might cause, as it was addressed to an entirely different way of computing due

dates. Similar changes were made in 2009 to other Local Rules and Forms that included a deadline computed by counting days from a given event.]

LR 1.3 SANCTIONS

If an attorney, law firm, or party violates these rules or is responsible for a rule violation, the court may impose appropriate sanctions as needed to protect the parties and the interests of justice. Potential sanctions include, among other things, excluding evidence, preventing a witness from testifying, striking pleadings or papers, refusing oral argument, or imposing attorney's fees.

[Adopted effective February 1, 1991; amended July 23, 2012]

2012 Advisory Committee's Note to LR 1.3

The language of LR 1.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments. For the sake of both clarity and consistency with Fed. R. Civ. P. 11(c)(1), LR 1.3 now specifies that it applies to "an attorney, law firm, or party." This is not a substantive change.

LR 3.1 CIVIL COVER SHEET

A completed civil cover sheet must accompany every document initiating a civil action. Parties must use blank cover sheets that are available from the clerk. Because the cover sheet is solely for administrative purposes, matters appearing only on the cover sheet have no legal effect.

If a party files a case-initiating document without a completed civil cover sheet, the clerk must indicate on the document when it was received and must promptly notify the party of the missing cover sheet. When the party completes the civil cover sheet and provides it to the clerk, the clerk must file the case-initiating document as of the date it was received.

[Adopted effective February 1, 1991; amended July 23, 2012]

2012 Advisory Committee's Note to LR 3.1

The language of LR 3.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface.

1991 Advisory Committee's Note to LR 3.1

On the use of the civil cover sheet for notification of a claim of unconstitutionality, see LR 24.1.

The Committee considered the question whether the rule that "matters appearing only on the civil cover sheet have no legal effect" might be too harsh in a situation in which a pro se litigant claims jury trial only on the civil cover sheet. It decided that the discretion of the trial Judge to grant a jury trial under Fed. R. Civ. P. 39 was sufficient to protect against unfairness.

LR 4.1 SERVICE

The United States Marshals Service is not required to serve civil process for litigants, except as required by the Federal Rules of Civil Procedure or by federal law, or as ordered by the court for good cause. A consenting sheriff or deputy sheriff of any Minnesota county acting within his or her jurisdiction is hereby specially appointed to serve, execute, or enforce civil process that is subject to Fed. R. Civ. P. 4.1.

[Adopted effective November 1, 1996; amended May 1, 2000; amended July 23, 2012]

2012 Advisory Committee's Note to LR 4.1

The language of LR 4.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

1996 Advisory Committee's Note to LR 4.1

LR 4.1 has been amended to conform to the Federal Rules of Civil Procedure and to eliminate portions that merely repeated those National Rules. LR 4.1 does not modify the National Rules, except to emphasize that a party must show good cause to obtain a Court order requiring that the United States Marshal's Service serve process.

Federal Rule of Civil Procedure 4(c) allows a summons and complaint to be served by any nonparty who is at least 18 years of age, and relieves the United States Marshal's Service of any duty to serve the summons and complaint. The Court is required, however, to appoint a Marshal, Deputy Marshal, or other person to serve a summons and complaint when the plaintiff is "authorized to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 or is authorized to proceed as a seaman under 28 U.S.C. § 1916."

Fed. R. Civ. P. 4(c) also provides that the Court has discretion to appoint a Deputy Marshal or other person to effect service of process. An example of a situation in which a litigant could reasonably seek special appointment of a Deputy Marshal to make service is one in which an enforcement presence is required, such as a temporary restraining order, injunction, attachment, arrest, or order relating to a judicial sale.

For procedure on execution, see Fed. R. Civ. P. 69, which requires that state procedures on execution be followed unless a statute of the United States provides otherwise. Nothing in this rule is intended to modify the obligation of the U.S. Marshals Service to execute process issued under the authority of the District Court.

LR 4.2 FEES

(a) Collection in Advance.

(1) General Rule. Ordinarily, the clerk must collect in advance statutory fees associated with the institution or prosecution of any action. The clerk must deposit and account for those fees in accordance with directives of the Administrative Office of the United States Courts. The clerk is not

required to collect fees in advance when a party seeks to proceed in forma pauperis in accordance with LR 4.2(a)(2).

(2) Proceedings in Forma Pauperis. If a party seeks to proceed in forma pauperis, the party must present to the clerk the complaint or other case-initiating document and an application to proceed in district court without prepaying fees or costs. The clerk must file the case-initiating document as if the filing fee had been paid and must submit the application to the court.

(b) Nonpayment. If a party has failed to pay costs or fees owed to and demanded by the clerk or the United States marshal, the clerk or marshal must inform the court of the party's failure to pay. The court may order the party to show cause why the court should not require immediate payment of the unpaid costs or fees.

(c) Refusal to File by Clerk. The clerk may refuse to file anything submitted by a party until the party has paid all fees owed to the clerk, unless:

(1) the party's application for in forma pauperis status — that is, to proceed in district court without prepaying fees or costs — either is pending or has been granted;

(2) the party is an inmate in state custody and is filing a petition for habeas corpus under 28 U.S.C. § 2254; or

(3) the clerk is otherwise prohibited by federal law from doing so.

(d) Retaining Possession until Fees Are Paid. When the marshal or any other officer of the court possesses, or may possess, any document relating to a service on a party's behalf, the officer may retain possession of the document until the party has paid all required service-related fees.

[Adopted effective February 1, 1991; amended July 23, 2012]

2012 Advisory Committee's Note to LR 4.2

The language of LR 4.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

In subsection (a)(2), the phrase "motion for permission to proceed in forma pauperis" has been replaced with the phrase "application to proceed in district court without prepaying fees or costs," as this is the actual title of the form available from the clerk's office. The phrase "in forma pauperis" is simply Latin for "as a poor person." For historical reasons, the phrase "in forma pauperis" has been retained in portions of rule's text, but in practice, a party who is permitted to proceed "in forma pauperis" is simply permitted to proceed without prepaying certain fees or costs.

Also in subsection (a)(2), the following sentence was deleted: "If permission to proceed in forma pauperis is later denied, the complaint shall be stricken." This sentence did not reflect the court's actual

practice. In fact, if the court denies a party's application to proceed without prepaying fees or costs, the court gives the party an opportunity to pay those fees or costs before the court strikes the party's complaint.

Subsection (c) has been expanded to itemize the situations in which the clerk must file documents submitted by a party even when that party owes fees to the clerk.

LR 5.1 ELECTRONIC CASE FILING

(a) Electronic case filing is authorized in accordance with Fed. R. Civ. P. 5(d)(3). The standards and procedures governing electronic case filing are set forth in the civil and criminal Electronic Case Filing Procedures Guides (collectively, "ECF Guides") adopted most recently by the court. The ECF Guides govern all civil and criminal actions, but not actions in bankruptcy court. The most recent ECF Guides are available from the clerk.

(b) All documents must be filed electronically, except as otherwise provided by these rules, by court order, or by the ECF Guides.

(c) The ECF Guides do not alter the rules about computing deadlines set forth in Fed. R. Civ. P. 6(a).

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000; amended May 17, 2004 - formerly titled GENERAL FORMAT OF PAPERS PRESENTED FOR FILING; amended January 31, 2011]

2011 Advisory Committee's Note to LR 5.1

The language of LR 5.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The most recent ECF Guides are available on the court's website.

LR 5.2 GENERAL FORMAT OF DOCUMENTS TO BE FILED

(a) Except as provided in LR 5.2(b), all documents filed must be typewritten, printed, or prepared by a clearly legible duplication process. Document text must be double-spaced, except for quoted material and footnotes, and pages must be numbered consecutively at the bottom. Documents filed after the case-initiating document must contain—on the front page and above the document's title—the case number and the name or initials of the assigned district judge and magistrate judge.

(b) LR 5.2(a) does not apply: (1) to exhibits; and (2) in removed actions, to documents filed in state court before removal.

(c) Documents filed by an attorney must include the attorney's registration number.

[Adopted effective January 3, 2000; amended May 17, 2004; amended January 31, 2011]

2011 Advisory Committee's Note to LR 5.2

The language of LR 5.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (c). Attorneys who are licensed in Minnesota must provide their Minnesota license number as their attorney-registration number. Attorneys who are admitted pro hac vice and licensed in a state other than Minnesota must provide the state of licensure and the license number as their attorney-registration number.

LR 5.3 TIME FOR FILING AFTER SERVICE

Any paper required by Fed. R. Civ. P. 5(d)(1) to be filed must be filed within 14 days after service. This 14-day period is a "reasonable time" under Fed. R. Civ. P. 5(d)(1).

[Adopted effective February 1, 1991; amended numbering May 17, 2004; amended December 1, 2009; amended July 23, 2012]

2012 Advisory Committee's Note to LR 5.3

The language of LR 5.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments. A cross-reference to LR 1.3 was eliminated as superfluous, and not for any substantive reason.

LR 5.4 SERVICE OF DOCUMENTS THROUGH THE COURT'S ELECTRONIC TRANSMISSION FACILITIES

A party may serve a paper under Fed. R. Civ. P. 5(b)(2)(E) by using the court's electronic transmission facilities in accordance with the court's most recent ECF Guides. If a document is served electronically, the notice of electronic filing generated by the court's electronic transmission facilities constitutes a certificate of service with respect to those persons to whom electronic notice of the filing is sent, and no separate certificate of service need be filed with respect to those persons.

[Adopted effective May 17, 2004; amended January 31, 2011]

2011 Advisory Committee's Note to LR 5.4

The language of LR 1.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Local Rule 5.4 is amended to no longer require the filing of a separate certificate of service if service was conducted electronically through the court's electronic transmission facilities (ECF). When service is conducted electronically, the notice of electronic filing (NEF) may serve as the certificate of service to comply with Fed. R. Civ. P. 5(d)(1).

2004 Advisory Committee Note to LR 5.4

The 2001 Amendments to the Federal Rules of Civil Procedure permitted district courts to authorize service by electronic means "through the court's transmission facilities." Fed.R.Civ.P. 5(b)(2)(D). Accordingly, new Local Rule 5.4 explicitly authorizes service by electronic means via the court's electronic filing facilities.

The 2001 Amendments also provided that the additional three days established in Rule 6(e) for service by mail applies to service by electronic means. Fed.R.Civ.P. 6(e).

Counsel are encouraged to consult the electronic service provisions of the Federal Rules of Civil Procedures, as amended in 2001. LR 5.4 does not modify the Federal Rules in any way.

Counsel are encouraged, further, to consult the most recently adopted version of the Electronic Filing Procedures for the District of Minnesota for further clarification on administrative procedures for filing and serving by electronic means.

LR 5.5 REDACTION OF TRANSCRIPTS

(a) Review of Transcript for Personal Identifiers. After a transcript of any court proceeding has been filed under LR 80.1(a), a party's attorney — including an attorney serving as "standby" counsel for a pro se defendant in a criminal case — and an unrepresented party must each determine whether any personal identifiers in the transcript must be redacted to comply with Fed. R. Crim. P. 49.1 or Fed. R. Civ. P. 5.2. Unless otherwise ordered by the court, a party's attorney and an unrepresented party must each request redaction of personal identifiers in the following transcript portions:

(1) Statements by the party or made on the party's behalf;

(2) The testimony of any witness called by the party; and

(3) Sentencing proceedings.

(b) Notice of Intent to Request Redaction. If any portion of a transcript must be redacted to comply with Fed. R. Crim. P. 49.1 or Fed. R. Civ. P. 5.2, the attorney or unrepresented party who reviewed the transcript must file a Notice of Intent to Request Redaction within 7 days after the transcript was filed.

(c) Statement of Redaction. After filing a Notice of Intent to Request Redaction, an attorney or unrepresented party must file a Statement of Redaction within 21 days after the transcript was filed. The Statement of Redaction must not disclose the personal identifier to be redacted. Rather, the Statement of Redaction must specify:

(1) The type of personal identifier to be redacted — for example, "social security number";

(2) The transcript page and line number where the personal identifier to be redacted appears; and

(3) How the transcript should read after redaction — for example, "social security number should read XXX-XX-1234."

(d) Redacted Transcript. After the Statement of Redaction is filed, the court reporter must file the redacted transcript within 31 days after the original transcript was filed. The court reporter must not charge any fees for redaction.

(e) Extensions of Transcript Redaction Deadlines. The deadlines in LR 5.5 may be extended only by court order. If an attorney or unrepresented party files a timely Notice of Intent to Request Redaction but then fails to file a timely Statement of Redaction, the attorney or party must either withdraw the notice or file a motion to request redaction. The court may order an attorney or unrepresented party to show cause why he or she has not complied with LR 5.5.

(f) Roles of the Court and the Parties. The court does not review transcripts to assess whether personal identifiers should be redacted. Attorneys and unrepresented parties must do so themselves.

[Adopted effective May 12, 2008; amended August 11, 2008; amended December 1, 2009; amended July 23, 2012]

2012 Advisory Committee's Note to LR 5.5

The language of LR 5.5 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

New subsection (f), "Roles of the Court and the Parties," reflects — in more direct language — the substance of the last sentence of former subsection (b). Subsection (f) does not reflect a substantive change.

LR 5.6 FILING DOCUMENTS UNDER SEAL IN CIVIL CASES

(a) Application of Rule.

(1) A document may be filed under seal in a civil case only as provided by statute or rule, or with leave of court.

(2) This rule does not require a party to file any document under seal, but sets forth the procedures used when a party seeks to file a document under seal.

(3) This rule does not affect a party's obligation to redact personal identifiers under Federal Rule of Civil Procedure 5.2 or LR 5.5, nor any statutory, contractual, or other obligation to keep information confidential.

(b) Electronic Filing Required. All documents filed in a civil case — whether sealed or not — must be filed in compliance with the CIVIL ECF PROCEDURES GUIDE.

(c) What May Be Sealed.

(1) A party may seek to file a document under seal only if the document contains confidential information.

(2) "Confidential information" is information that:

(A) the filing party contends is confidential or proprietary;

(B) has been designated as confidential or proprietary by another party, by a nonparty, or under a non-disclosure agreement or protective order; or

(C) is otherwise entitled to protection from disclosure under a statute, rule, order, or other legal authority.

(d) Procedure for Filing Under Seal In Connection With Motions Governed By LR 7.1.

(1) *Filing Under Temporary Seal.* A party seeking to file a document under seal in connection with a motion under LR 7.1 must first file the document under temporary seal. That party must file the temporarily sealed document separately so that the document is assigned its own docket number.

(A) Redacted Public Version. A party filing a document under temporary seal must contemporaneously and publicly file:

(i) a version of that document with the confidential information redacted; or

(ii) a statement that the entire document is confidential or that redaction is impracticable.

(B) Expiration of Temporary Seal. A document filed under temporary seal remains under seal until the latest of the following:

(i) 28 days after entry of the magistrate judge's order disposing of the joint motion regarding continued sealing under LR 5.6(d)(2);

(ii) 21 days after entry of the magistrate judge's order disposing of a motion for further consideration under LR 5.6(d)(3); or

(iii) entry of the district judge's order disposing of an objection under LR 5.6(d)(4).

(2) *Joint Motion Regarding Continued Sealing.* Within 21 days after the filing of the final memorandum authorized by LR 7.1 in connection with the underlying motion, the parties must file a completed Joint Motion Regarding Continued Sealing Form.

(A) Joint Motion's Contents. The joint motion must list by docket number each document filed under temporary seal in connection with the underlying motion and, for each such document:

(i) briefly describe the document;

(ii) explain why the parties agree that the document or information in the document should remain sealed or be unsealed or, if the parties disagree, briefly explain each party's position; and

(iii) identify any nonparty who has designated the document or information in the document as confidential or proprietary.

(B) Party to File Joint Motion. Unless the parties agree or the magistrate judge orders otherwise, the party who filed the first document under temporary seal in connection with the underlying motion must file the joint motion.

(C) Order on Joint Motion. The magistrate judge will ordinarily rule on the joint motion without oral argument. A party or nonparty who objects to the order must file a motion for further consideration under LR 5.6(d)(3).

(D) Notice to Nonparties. If the magistrate judge orders the unsealing of information that a nonparty has designated as confidential or proprietary, the party who filed that information under temporary seal must, within 7 days after entry of the order, serve on the nonparty a copy of the document containing that information and the order.

(3) *Motion for Further Consideration of Sealing.* Within 28 days after entry of the magistrate judge's order disposing of a joint motion regarding continued sealing under LR 5.6(d)(2), a party or nonparty may file a motion for further consideration by the magistrate judge. If the motion for further consideration relates to information that a nonparty has designated as confidential or proprietary, the movant must serve on that nonparty a copy of the motion and all documents filed in support of the motion. The motion for further consideration is a nondispositive motion governed by LR 7.1(b).

(4) *Objection to Order Disposing of Motion for Further Consideration of Sealing.* A party or nonparty may object to a magistrate judge's order disposing of a motion for further consideration of sealing, but only if that party or nonparty filed or opposed the motion. The objection is governed by LR 72.2(a).

(e) Procedure for Filing Other Documents Under Seal. A party who seeks leave of court to file a document under seal other than in connection with a motion under LR 7.1 must obtain direction from the court on the procedure to be followed.

[Adopted effective February 27, 2017]

2017 Advisory Committee Note to LR 5.6

LR 5.6 is a new rule regarding the filing of information under seal in civil cases. The new rule addresses two problems with current practice:

First, the court has never established a uniform process for filing information under seal in civil cases. As a result, current practice is haphazard, varying from judge to judge and case to case. In fact, parties sometimes file information under seal in civil cases without seeking or receiving the permission of a judge.

Second, parties have been filing too much information under seal in civil cases, in part because of confusion over the difference between protective orders and sealing orders. As a general matter, the public does not have a right of access to information exchanged in discovery; thus, protective orders are often quite broad, covering entire documents or sets of documents produced during discovery, even when most or all of the contents are not particularly sensitive. But the public does have a qualified right of access to information that is filed with the court. Even if such information is covered by a protective order, that information should not be kept under seal unless a judge determines that a party or nonparty's need for confidentiality outweighs the public's right of access.

This rule is intended to reduce the amount of information that is sealed in civil cases and to ensure that no information is sealed without the permission of a judge.

Subdivision (a). LR 5.6(a) provides that a document may be filed under seal only as provided by statute or rule, or with leave of court. This rule does not *require* any party to file any information under seal. Rather, this rule simply provides the procedures that a party must follow when the party seeks to file information under seal to protect its own interests or to comply with a statutory, contractual, or other obligation to keep information confidential. The procedures set forth in this rule need not be followed by a party who is merely redacting personal identifiers in compliance with Fed. R. Civ. P. 5.2 or LR 5.5.

Subdivision (b). LR 5.6(b) provides that every document filed in a civil case—whether under seal or not—must be filed electronically and in compliance with the Civil ECF Procedures Guide. A document may not be filed in paper form unless such filing is authorized by the Guide.

Subdivision (c). LR 5.6(c)(1) provides that a party may not seek to file information under seal unless that information is "confidential." LR 5.6(c)(2) defines "confidential information."

Subdivision (d). LR 5.6(d) establishes a four-step procedure to determine whether information filed in connection with a motion under LR 7.1 will be sealed.

Step One (LR 5.6(d)(1)). A party who seeks to file a document under seal must first file the document under temporary seal. The document must be filed separately, so that parties, nonparties, and the court can refer to the document by its own docket number.

When a party files a document under temporary seal, the party must at the same time publicly file either (1) a version of that document with the confidential information redacted or (2) a statement that the entire document is confidential or that redaction is impracticable.

The redaction requirement should not pose an onerous burden in connection with most discovery disputes. LR 5.6(d)(1)(A) does not require redaction when "the entire document is confidential." LR 5.6(c)(2) defines "confidential information" to include information that "has been designated as confidential or proprietary . . . under a . . . protective order." Thus, if an entire document has been designated as confidential under a protective order (as is often the case), that document need not be redacted. A large share of discovery disputes involve such documents.

Outside of the context of discovery disputes, parties should only rarely file a statement that a document cannot be redacted. If a document reasonably can be redacted, the document must be redacted.

After a document is filed under temporary seal, LR 5.6(d)(1)(B) ensures that the document will remain under temporary seal until the court makes a final decision about whether the document should remain sealed.

Step Two (LR 5.6(d)(2)). After all memoranda and other documents pertaining to the underlying motion have been filed, all parties must together file a single Joint Motion Regarding Continued Sealing. The joint motion must be filed within 21 days after the filing of the final memorandum authorized by LR 7.1. The joint motion must be filed using the Joint Motion Regarding Continued Sealing Form, which is available on the court's website. That form is the only document that may be filed; no other filings, including the filings contemplated by LR 7.1, are required or permitted in connection with the joint motion. The party who first filed a document under temporary seal in connection with the LR 7.1 motion bears the responsibility for filing the joint motion.

The joint motion must address every document that has been filed under temporary seal, even if all parties agree that a document may be unsealed. The parties must do three things with respect to each temporarily sealed document: First, the parties must briefly describe the document (e.g., "09/23/2016 email from A. Jones to B. Smith"). Second, the parties must *briefly* explain why they agree that the document should remain sealed or be unsealed—or, if the parties disagree, the parties should *briefly* explain each party's position. (The parties should bear in mind that, before a final decision is made to seal or unseal a document, every party and affected nonparty will have an opportunity to fully brief the issue.) Third, the parties must identify any nonparty who has designated the document or information in the document as confidential or proprietary.

The magistrate judge will rule on the joint motion in an order that will specify whether and to what extent each document will remain sealed. The magistrate judge will almost always rule without oral argument, so the parties need not contact the magistrate judge to schedule a hearing. If the magistrate judge orders the unsealing of information that a nonparty has designated as confidential or proprietary, the party who filed that information under temporary seal must, within seven days after entry of the order, serve on the nonparty a copy of the document containing that information and the order. This will give the nonparty a chance to challenge the decision to unseal its information.

No party or nonparty may ask the district judge to review the magistrate judge's order. Instead, a party or nonparty who objects to the order must first file a motion for further consideration under LR 5.6(d)(3). An order disposing of a motion for further consideration is reviewable by the district judge.

Step Three (LR 5.6(d)(3)). After the magistrate judge rules on the joint motion, any party or any nonparty whose information has been ordered unsealed or who otherwise objects to the magistrate judge's ruling may file a motion for further consideration by the magistrate judge. The nonparty may file such a motion without intervening in the case under Fed. R. Civ. P. 24. If the motion for further consideration relates to information that a nonparty has designated as confidential or proprietary, the movant must serve on that nonparty a copy of the motion and all documents filed in support of the motion (unless, of course, the movant is the nonparty that designated the information as confidential or proprietary).

A motion for further consideration by the magistrate judge is a nondispositive motion governed by LR 7.1(b); it is not a motion for reconsideration under LR 7.1(j). At this point, any party or nonparty who objects to the unsealing (or sealing) of information will have a full opportunity to brief the issue.

Step Four (LR 5.6(d)(4)). After the magistrate judge disposes of the motion for further consideration, any party or nonparty who filed or opposed that motion may file an objection to the magistrate judge's order. Such an objection is governed by LR 72.2(a).

Subdivision (e). The procedure provided by LR 5.6(d) applies only when a party seeks leave to file under seal a document in connection with a motion under LR 7.1. That procedure does not apply when a party seeks leave to file a document under seal in another context, such as when a party seeks leave to file a trial exhibit under seal. In such circumstances, the party should seek direction from the judge about how the party should request the judge's permission to file the document under seal.

LR 6.1 CONTINUANCE

(a) General Rule. Ordinarily, a party who seeks a continuance must show good cause. But a party who seeks a continuance because of the absence of an expert witness must show extreme good cause. Parties must anticipate the possibility that an expert witness may be unavailable and must be prepared to present expert-witness testimony either by deposition or by stipulation among the parties that the expert witness's written report may be received in evidence.

(b) Trial Dates. A party who seeks continuance of a trial date must move for a continuance in writing.

[Adopted effective February 1, 1991; amended July 23, 2012]

2012 Advisory Committee's Note to LR 6.1

The language of LR 6.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

LR 7.1 CIVIL MOTION PRACTICE

(a) Meet-and-Confer Requirement. Before filing a motion other than a motion for a temporary restraining order or a motion under Fed. R. Civ. P. 56, the moving party must, if possible, meet and confer with the opposing party in a good-faith effort to resolve the issues raised by the motion. The moving and opposing parties need not meet in person.

(1) Meet-and-Confer Statement.

(A) Filing. Ordinarily, the moving party must file a meet-and-confer statement together with the motion that it relates to. But if the opposing party was unavailable to meet and confer before the moving party files its motion, the moving party must promptly meet and confer with the opposing party after filing the motion and must supplement the motion with a meet-and-confer-statement.

(B) Contents. The meet-and-confer statement must:

(i) certify that the moving party met and conferred with the opposing party; and

(ii) state whether the parties agree on the resolution of all or part of the motion and, if so, whether the agreed-upon resolution should be included in a court order.

(2) Subsequent Agreement of the Parties. After the moving party has filed a meet-and-confer statement, if the moving and opposing parties agree on the resolution of all or part of the motion that the statement relates to, the parties must promptly notify the court of their agreement by filing a joint stipulation.

(b) Nondispositive Motions. Unless the court orders otherwise, all nondispositive motions must be heard by the magistrate judge. Before filing a nondispositive motion, a party must contact the magistrate judge's courtroom deputy to schedule a hearing. After a party obtains a hearing date, the parties may jointly request that the hearing be canceled. If the court cancels the hearing — whether at the parties' joint request or on its own —the parties must nonetheless file and serve their motion papers by the deadlines that would have applied if the hearing had not been canceled.

(1) Moving Party; Supporting Documents; Time Limits. At least 14 days before the date of a hearing on a nondispositive motion, the moving party must file and serve the following documents simultaneously:

(A) motion;

(B) notice of hearing;

(C) memorandum of law;

(D) any affidavits and exhibits;

(E) meet-and-confer statement (unless later filing is permitted under LR 7.1(a)(1)(A)); and

(F) proposed order (an editable copy of which must be emailed to chambers).

(2) Responding Party; Supporting Documents; Time Limits. Within 7 days after filing of a nondispositive motion and its supporting documents under LR 7.1(b)(1), the responding party must file and serve the following documents:

(A) memorandum of law; and

(B) any affidavits and exhibits.

(3) Reply Memorandum. Except with the court's prior permission, a party must not file a reply memorandum in support of a nondispositive motion.

(4) Applicability of this Subsection.

(A) Nondispositive motions covered by this subsection include, for example:

(i) motions to amend pleadings;

(ii) motions with respect to third-party practice;

(iii) discovery-related motions;

(iv) motions related to joinder and intervention of parties; and

(v) motions to conditionally certify a case as a collective action.

(B) This subsection does not apply to:

(i) nondispositive motions that are treated as dispositive motions under LR 7.1(c)(6); or

(ii) post-trial and post-judgment motions.

(c) Dispositive Motions. Unless the court orders otherwise, all dispositive motions must be heard by the district judge. Before filing a dispositive motion, a party must contact the district judge's courtroom deputy. The courtroom deputy will either schedule a hearing or instruct the party when to file its motion and supporting documents. If a hearing is scheduled, the parties may jointly request that the hearing be canceled. If the court cancels the hearing — whether at the parties' joint request or

on its own — the parties must nonetheless file and serve their motion papers by the deadlines that would have applied if the hearing had not been canceled.

(1) Moving Party; Supporting Documents; Time Limits. At least 42 days before the date of a hearing on a dispositive motion — or, if no hearing has been scheduled, as instructed by the courtroom deputy — the moving party must file and serve the following documents simultaneously:

(A) motion;

(B) notice of hearing;

(C) memorandum of law;

(D) any affidavits and exhibits;

(E) meet-and-confer statement, if required under LR 7.1(a) (unless later filing is permitted under LR 7.1(a)(1)(A)); and

(F) proposed order (an editable copy of which must be emailed to chambers).

(2) Responding Party; Supporting Documents; Time Limits. Within 21 days after filing of a dispositive motion and its supporting documents under LR 7.1(c)(1), the responding party must file and serve the following documents:

(A) memorandum of law; and

(B) any affidavits and exhibits.

(3) Reply Memorandum.

(A) Within 14 days after filing of a response to a dispositive motion, the moving party must either:

(i) file and serve a reply memorandum; or

(ii) file and serve a notice stating that no reply will be filed.

(B) A reply memorandum must not raise new grounds for relief or present matters that do not relate to the opposing party's response.

(4) Multiple Summary Judgment Motions. For purposes of the word and line limits in LR 7.1(f), multiple motions for full or partial summary judgment filed by a party at or about the same time will be considered a single motion.

(5) Motion Hearing or Other Resolution.

(A) On Court's Initiative. At any time after a party files a dispositive motion and the motion's supporting documents, the court may:

(i) schedule a hearing (if no hearing was initially scheduled)

(ii) reschedule a hearing;

(iii) refer the motion to a magistrate judge; or

(iv) cancel a hearing and notify the parties that the motion will be otherwise resolved.

(B) At a Party's Request. If a district judge has not scheduled a hearing on a dispositive motion, the moving or opposing party may file a letter of no more than two pages requesting that a hearing be scheduled. Such a request must be made no sooner than 14 days after the moving party has filed its reply or its notice that a reply will not be filed. This rule authorizes the parties to file those letters by ECF.

(6) Applicability of this Subsection. The following motions are considered dispositive motions under LR 7.1:

(A) motions for injunctive relief;

(B) motions for judgment on the pleadings, to dismiss, or for summary judgment;

(C) motions to certify a class action;

(D) motions to exclude experts under Fed. R. Evid. 702 and *Daubert*.

(d) Motions for Emergency Injunctive Relief.

(1) The following motions are considered motions for emergency injunctive relief:

(A) motions for a temporary restraining order; and

(B) preliminary-injunction motions that require expedited handling.

(2) Before filing a motion for emergency injunctive relief, the moving party must contact the judge's courtroom deputy to obtain a hearing date and briefing schedule.

(3) A motion for a temporary restraining order must be filed in accordance with LR 7.1(c)(1)(A), but the moving party is not required to file a meet-and-confer statement with the motion..

(4) A preliminary-injunction motion that requires expedited handling must:

(A) make the request for expedited handling in the motion; and

(B) be filed in accordance with LR 7.1(c)(1)(A).

(e) Post-trial and Post-judgment Motions. A post-trial or post-judgment motion that is filed within the applicable time period set forth in the Federal Rules of Civil Procedure may be made to the judge before whom the case was heard. After filing the motion, the moving party must contact the judge's courtroom deputy to obtain a briefing schedule.

(f) Word or Line Limits; Certificate of Compliance.

(1) Word or Line Limits.

(A) Except with the court's prior permission, a party's memorandum of law must not exceed 12,000 words if set in a proportional font, or 1,100 lines of text if set in a monospaced font.

(B) If a party files both a supporting memorandum and a reply memorandum, then, except with the court's prior permission, the two memoranda together must not exceed 12,000 words if set in a proportional font, or 1,100 lines of text if set in a monospaced font.

(C) All text — including headings, footnotes, and quotations — counts toward these limits, except for:

(i) the caption designation required by LR 5.2;

(ii) the signature-block text; and

(iii) certificates of compliance.

(D) A party who seeks to exceed these limits must first obtain permission to do so by filing and serving a letter of no more than two pages requesting such permission. A party who opposes such a request may file and serve a letter of no more than two pages in response. This rule authorizes the parties to file those letters by ECF.

(2) Certificate of Compliance. A memorandum of law must be accompanied by a certificate executed by the party's attorney, or by an unrepresented party, affirming that the memorandum complies with the limits in LR 7.1(f) and with the type-size limit of LR 7.1(h). The certificate must further state how many words (if set in a proportional font) or how many lines (if set in a monospaced font) the memorandum contains. A reply memorandum must be accompanied by a certificate that says how many words or lines are contained, cumulatively, in the supporting memorandum and the reply memorandum. The person preparing the certificate may rely on the word-count or line-count function of his or her word-processing software only if he or she certifies that the function was applied specifically to include all text, including headings, footnotes, and quotations. The certificate must include the name and version of the word-processing software that was used to generate the word count or line count.

(g) Failure to Comply. If a party fails to timely file and serve a memorandum of law, the court may:

(1) cancel the hearing and consider the matter submitted without oral argument;

(2) reschedule the hearing;

(3) hold a hearing, but refuse to permit oral argument by the party who failed to file;

(4) award reasonable attorney's fees to the opposing party;

(5) take some combination of these actions; or

(6) take any other action that the court considers appropriate.

(h) Type Size.

(1) Represented Parties. A memorandum of law filed by a represented party must be typewritten. All text in the memorandum, including footnotes, must be set in at least font size 13 (i.e., a 13-point font) as font sizes are designated in the word-processing software used to prepare the memorandum. Text must be double-spaced, with these exceptions: headings and footnotes may be single-spaced, and quotations more than two lines long may be indented and single-spaced. Pages must be 8 ½ by 11 inches in size, and no text — except for page numbers — may appear outside an area measuring 6 ½ by 9 inches.

(2) Unrepresented Parties. A memorandum of law filed by an unrepresented party must be either typewritten and double-spaced or, if handwritten, printed legibly.

(i) Unsolicited Memoranda of Law. Except with the court's prior permission, a party must not file a memorandum of law except as expressly allowed under LR 7.1.

(j) Motion to Reconsider. Except with the court's prior permission, a party must not file a motion to reconsider. A party must show compelling circumstances to obtain such permission. A party who seeks permission to file a motion to reconsider must first file and serve a letter of no more than two pages requesting such permission. A party who opposes such a request may file and serve a letter of no more than two pages in response. This rule authorizes the parties to file those letters by ECF.

(k) Citing Judicial Dispositions. If a judicial opinion, order, judgment, or other written disposition cited by a party is available in a publicly accessible electronic database, the party is not required to file and serve a copy of that document. But if a judicial opinion, order, judgment, or other written disposition cited by a party is not available in a publicly accessible electronic database, the party must file and serve a copy of that document as an exhibit to the memorandum in which the party cites it.

(l) Affidavits and Exhibits. Parties must not file affidavits or exhibits as attachments to a memorandum that they support. Instead, such affidavits and exhibits must be filed separately. Exhibits must be accompanied by an index — either in the form of a supporting affidavit or of a separate title page — that identifies the exhibits.

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000; amended January 1, 2004; amended May 17, 2004; amended May 16, 2005;

amended September 24, 2009; amended December 1, 2009; amended July 23, 2012; amended April 1, 2017]

2017 Advisory Committee's Note to LR 7.1

Local Rule 7.1 has been amended to instruct parties to file proposed orders on ECF. That allows parties to use ECF to serve proposed orders and makes unnecessary the filing of certificates of service. Parties must continue to submit copies of proposed orders to chambers via email in Microsoft Word or a similar editable format.

2012 Advisory Committee's Note to LR 7.1

The language of LR 7.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Local Rule 7.1 has been reorganized to add subsections (a) Meet-and-Confer Requirement and (d) Motions for Emergency Injunctive Relief.

Under new LR 7.1(a), parties must meet and confer with the opposing party before filing any civil motion, except a motion for a temporary restraining order or a motion under Fed. R. Civ. P. 56, and file a meet-and-confer statement with the motion. Parties must file a joint stipulation if the parties agree on the resolution of all or part of the motion after the meet-and-confer statement is filed.

Rule 7.1(b) and (c), former LR 7.1(a)-(b), have been amended to clarify that parties should file motions and supporting documents simultaneously, rather than filing a motion first and its supporting documents later. In addition, the method of calculating deadlines for response briefs and (for dispositive motions) reply briefs has been changed. Deadlines for such briefs are now based on the filing date of the moving party's motion and supporting documents, rather than on the hearing date. Parties now have 14 days to prepare a reply brief for a dispositive motion, rather than the 7 days previously provided.

Rule 7.1(b)(4) was added to identify the types of motions that are considered nondispositive under LR 7.1.

Rule 7.1(c) has also been amended to better reflect the practices of different district judges with respect to scheduling hearings on dispositive motions. These amendments are not intended to change the long-established practice in this district of holding hearings for important civil motions, such as motions for summary judgment.

Rule 7.1(d) was added to provide guidance on filing motions for emergency injunctive relief.

Rule 7.1(e), former LR 7.1(c), was amended to clarify that after filing a timely post-trial or post-judgment motion, the moving party must contact the judge's courtroom deputy to obtain a briefing schedule.

2009 Advisory Committee's Note to LR 7.1

A number of noteworthy changes have been made to Local Rule 7.1. Generally, the changes were intended to clarify uncertainties or gaps in the rules. The most significant changes and clarifications include the following:

1. Parties are required to secure a hearing date **before** filing any motion papers. LR 7.1(a) and (b).

2. A mechanism is provided to compute the briefing and submission schedules if the motion ultimately is submitted without a hearing. LR 7.1(a) and (b).

3. The rule makes explicit that motions to exclude expert testimony under *Daubert* and Fed. R. Evid. 702 are treated as dispositive motions. LR 7.1(b).

4. A reply brief generally is not permitted in connection with non-dispositive motions, LR 7.1(a)(1), and, with respect to dispositive motions, a reply brief must not raise new issues or go beyond the issues raised in the response brief to which it replies. LR 7.1(b)(3).

5. A new subdivision has been added to make it clear that a single word limit applies whether a party files a single summary judgment motion (or motion for partial summary judgment) or several such motions at or about the same time. LR 7.1(b)(4).

6. Requests to enlarge word limits must be made in writing — and permission must be obtained — **before** filing a brief exceeding the word limit. LR 7.1(d).

7. The Court has access to commercial databases maintained by legal research services, as well as to databases maintained by courts; parties need not attach unpublished opinions to briefs if those opinions are available on a publicly-accessible electronic database. LR 7.1(i).

8. A new subdivision governing post-trial and post-judgment motions has been added. LR 7.1(c).

The amended rule also includes additional clarifying language about how to calculate certain deadlines and about the Court's ECF procedures.

2004 Advisory Committee's Note to LR 7.1(b)

Rule 7.1(b) was amended effective January 1, 2004, to set forth the District Judges' requirements for dispositive motions. This amendment replaced the "fully briefed motion" practice that previously had been in effect.

1999 Advisory Committee's Note to LR 7.1(b)(2)

Supporting Affidavits. Rule 7.1(b)(2) specifically contemplates that the factual basis for a dispositive motion will be established with affidavits and exhibits served and filed in conjunction with the initial motion and the responding party's memorandum of law. Although the rule makes provision for a Reply Memorandum, it neither permits nor prohibits the moving party from filing affidavits or other factual material therewith. The rule contemplates that the discovery record will allow the initial summary judgment submission to anticipate and address the responding party's factual claims. Reply affidavits are appropriate only when necessary to address factual claims of the responding party that were not reasonably anticipated. It is improper to withhold information - either from discovery or from initial moving papers - in order to gain an advantage.

1996 Advisory Committee's Note to LR 7.1

LR 7.1(b) was amended to specify the motions considered to be dispositive motions under this rule. The motions considered dispositive motions under this rule are the matters that, under 28 U.S.C. § 636(b)(1)(A) and (B), may be heard by a Magistrate Judge only for the purpose of making proposed findings of fact and recommendations for the disposition.

1996 Advisory Committee's Note to LR 7.1(b)(2)

The new Local Rules significantly change procedures governing motion practice. They are patterned after procedures adopted by several judges on an experimental basis.

These reforms reflect the spirit of the 1993 Amendments to the Federal Rules of Civil Procedure. In particular, they enable counsel to structure motion deadlines to accommodate the differing demands of diverse cases. These rules also minimize Court involvement in the process until dispositive motions have been fully briefed and are ready for hearing. The exchange of briefs may narrow or resolve pending controversies without judicial intervention. By so doing, the rules prevent the expenditure of judicial resources on the controversies which may have become moot at the time of the hearing.

The new rules prescribe deadlines that govern motion practice if counsel cannot agree on a briefing schedule. The new rules also enlarge the briefing periods for briefs responding to motions and for reply briefs. This revision is intended to reduce any unfair advantage favoring the moving party (who may have been preparing the motion for a much longer period than the opponent is afforded for reply). The enlarged deadline for service of Reply Briefs reflects the Committee's consensus that former deadlines often imposed time constraints which undermined the quality of the Reply. These briefing deadlines involve "calendar days," not "business days."

1991 Advisory Committee's Note to LR 7.1

See LR 1.1(f) for the method of computing time.

See LR 37.2 for the form of discovery motions.

LR 7.2 PROCEDURES IN SOCIAL SECURITY CASES

(a) Case Assignment.

(1) The clerk must randomly assign every case filed under 42 U.S.C. § 405(g) to a magistrate judge.

(2) On or before the date on which the answer must be filed, each party must submit a completed Social Security Case Assignment Form, through which the party either:

(A) consents to disposition of the case by the magistrate judge under 28 U.S.C. § 636(c); or

(B) asks to have a district judge assigned to the case.

(3) The Social Security Case Assignment Form must be submitted to the clerk in paper and not filed on the ECF system.

(4) If any party asks to have a district judge assigned to the case, the clerk must randomly assign the case to a district judge. The magistrate judge assigned to the case will remain assigned to the case to conduct such proceedings as the district judge directs.

(b) Filing an Answer.

(1) Within 60 days after the United States is served with a pleading under 42 U.S.C. § 405(g), the Commissioner of Social Security must file and serve an answer and a certified copy of the administrative record.

(2) If the Commissioner seeks an extension of time to answer, the Commissioner must move for the extension before the end of the 60-day period set forth in LR 7.2(a)(1).

(c) Motions; Time Limits.

(1) Within 60 days after the Commissioner of Social Security serves the answer and administrative record, the plaintiff must file and serve a summary-judgment motion and a supporting memorandum. Within 45 days after the plaintiff serves its summary-judgment motion, the Commissioner must file and serve a summary-judgment motion and a supporting memorandum. Within 14 days after the Commissioner serves its summary-judgment motion, the plaintiff may file and serve a reply memorandum.

(2) Unless the court orders otherwise, all motions will be decided without oral argument.

(3) If a magistrate judge issues a report and recommendation, a party may object to the report and recommendation in accordance with Fed. R. Civ. P. 72(b), LR 72.2(b), and 28 U.S.C. § 636(b)(1)(B), and the opposing party may respond to the objecting party in accordance with the same rules and laws. Objections and responses must not exceed the word limit set forth in LR 72.2(b).

(d) Review After Remand When Courts Retain Jurisdiction.

(1) If the Commissioner of Social Security's final decision upon remand is adverse to the plaintiff, the Commissioner must file and serve a supplemental administrative record within 60 days after that final decision.

(2) Within 60 days after the Commissioner serves the supplemental administrative record, the plaintiff may file and serve a summary-judgment motion and a supporting memorandum. Within 45 days after the plaintiff serves its summary-judgment motion, the Commissioner must file and serve a summary-judgment motion and a supporting memorandum. Within 14 days after the Commissioner serves its summary-judgment motion, the plaintiff may file and serve a reply memorandum.

(e) Attorney's Fees Under the Social Security Act. Petitions for fees under the Social Security Act must be filed within 30 days after the plaintiff's attorney is notified of the Commissioner of Social Security's award certificate.

[Adopted effective November 1, 1996; amended January 3, 2000; amended May 17, 2004; amended October 18, 2007; amended September 24, 2009; amended December 1, 2009; amended January 31, 2011; amended September 12, 2014; amended December 1, 2015]

2015 Advisory Committee's Note to LR 7.2

LR 7.2(a) has been amended to require that a party's consent to the disposition of a case by a magistrate judge be explicit. Under former LR 7.2(a)(1)(B), a party was deemed to implicitly consent to disposition by a magistrate judge if that party did not notify the Court otherwise. Although it is clear that a party can implicitly consent to the disposition of a case by a magistrate judge (*see Roell v. Withrow*, 538 U.S. 580 (2003)), LR 7.2(a)(1)(B) was nevertheless in some tension with 28 U.S.C. § 636(c)(2), which seems to envision that any such consent will be explicit. To remove that tension, LR 7.2(a) has been amended to require each party to submit a Social Security Case Assignment Form, through which the party will inform the Court whether he or she consents to disposition of the case by the magistrate judge. The form is available on the Court's website.

Each party must submit a completed copy of the Social Security Case Assignment Form on or before the date on which the answer is due. The form must not be filed on the ECF system; instead, a paper copy must be submitted to the clerk. This procedure helps "to protect the voluntariness of the parties' consent." 28 U.S.C. § 636(c)(2).

2014 Advisory Committee's Note to LR 7.2

The rule was amended to require that social security appeals be initially assigned to only a magistrate judge. The court will presume that the parties consent to disposition by a magistrate judge unless a party notifies the court to the contrary on or before the date that the answer is due. If a party does notify the court to the contrary, a district judge will also be assigned to the case, the magistrate judge will issue a report and recommendation (R&R), and either or both parties may seek de novo review of the R&R from the district judge. Thus, these amendments do not in any way affect the substantive rights of parties to social security appeals.

2011 Advisory Committee's Note to LR 7.2

The language of LR 7.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

LR 7.2(b) corrects an inadvertent inconsistency with the word limits set forth in LR 72.2(b).

The former provisions in LR 7.2(d) describing when motions for attorney's fees under certain laws may be filed are deleted as redundant.

2007 Advisory Committee's Note to LR 7.2

The rule was amended by replacing all references to "Secretary of Health and Human Services" to "Commissioner of Social Security" as referenced in the statute upon which the local rule is based.

1996 Advisory Committee's Note to LR 7.2

LR 7.2(b)(3) was amended to properly refer to "Magistrate Judge" rather than "Magistrate."

LR 7.2(c) was amended so that it applies only to cases remanded under sentence six of 42 U.S.C. § 405(g) where the Court has retained jurisdiction. See Note accompanying LR 7.2(d).

LR 7.2(d)(1): Although this paragraph was not amended, practitioners should be aware that the date which triggers the time for filing a motion or petition for attorney's fees varies in Social Security cases remanded by the Court to the Secretary depending on which sentence of 42 U.S.C. § 405(g) authorized the remand.

In *Melkonyan v. Sullivan*, 501 U.S. 89 (1991), the Supreme Court discussed the time for filing a petition for attorney's fees under the Equal Access to Justice Act (EAJA) in Social Security appeals. The Supreme Court recognized that under 42 U.S.C. § 405(g), a federal district court has the authority to remand a Social Security appeal under two separate and distinct circumstances.

The Court may, under the fourth sentence of § 405(g), "enter a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing." If the Court remands the cause for a rehearing under this sentence, it is referred to as a "sentence four" remand.

The Court may, under the sixth sentence of § 405(g), "on motion for the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken by the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding." These remands are called "sentence six" remands.

When a claim is remanded by the Court under sentence four, the remand is a final decision and the judge's order shall state that a judgment should be entered. The Court does not retain jurisdiction to review the proceedings on remand. In Shalala v. Schaefer, 509 U.S. 292 (1993), the Supreme Court held that a claimant becomes a prevailing party by obtaining a sentence-four judgment. The time within which to petition for attorney's fees under the EAJA begins on the date of entry of the final judgment in conjunction with the remand order. If the decision on remand is adverse to the claimant, the claimant must file and serve a new summons and complaint.

When a claim is remanded under sentence six, the Court properly retains jurisdiction until after the administrative proceedings on remand. After the final decision of the Secretary upon remand, the Court must take some further action. If the decision is favorable to the claimant, the Court should issue a final judgment in the claimant's favor. The time within which to petition for attorney's fees under EAJA begins on the date of the entry of the final judgment. If the final decision of the Secretary upon remand is adverse to the claimant, then the procedure set forth in LR 7.2(c)(1) and (2) should be followed.

LR 7.3 TELEPHONIC HEARINGS

(a) General Rule; Form of Requests; Arrangements. The court may allow a telephonic hearing for any pretrial matter.

(1) Form of request. A party seeking a telephonic hearing must request the hearing by filing and serving a letter requesting a telephonic hearing and contacting the judge's courtroom deputy after the letter is filed to coordinate the request. This rule authorizes the party to file this letter by ECF.

(2) Arrangements. Unless the court directs otherwise, the requesting party must arrange the logistics of the hearing and must communicate the specific arrangements to all parties before the hearing.

(3) Transcription. If any party intends to request that the telephonic hearing be transcribed, that party must inform the judge's courtroom deputy at least 24 hours before the hearing.

(b) Hearings Without Written Notice. When deposition-related issues can and must be immediately resolved to avoid manifest injustice, the court may hold a telephonic hearing without written notice. Unless otherwise directed by the magistrate judge, a party may request such a hearing only in exigent circumstances. If, in such a hearing, a party or its attorney takes a position wholly unsupported by legal authority, the court may impose the sanctions allowed under Fed. R. Civ. P. 37(b).

[Adopted effective November 1, 1996; amended May 14, 2013]

2013 Advisory Committee's Note to LR 7.3

The language of LR 7.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (a) has been revised to clarify that a party must request a telephonic hearing by filing a letter in ECF and follow up that request by contacting the judge's courtroom deputy. Subsection (a)(3) was added to require that parties inform the judge's courtroom deputy if they intend to have the telephonic hearing transcribed. Telephonic hearings for certain nondispositive motions are recorded at the judge's discretion.

Former subsection (b), which related to requesting a transcript of a telephonic hearing, was deleted as unnecessary with the addition of the language in (a)(3).

1996 Advisory Committee's Note to LR 7.3

In 1993, the Civil Justice Reform Act Advisory Group recommended the use of cost-efficient measures to reduce the expense of civil pretrial proceedings, including increased use of telephonic appearances. The rule on telephonic hearings is based on strong competing interests, and the effort to appropriately balance those interests. On the one hand, the rule reflects the interest in controlling the costs and burdens associated with multiple court appearances, and the economies associated with hearings that do not require personal appearances.

On the other hand, the Court's time is a valuable resource which is carefully scheduled. It is in the interests of justice that previously scheduled matters not be disrupted by spontaneous hearing requests, and that parties and counsel previously scheduled to be in Court be allowed the Court's undivided attention. For that reason, the rule provides for spontaneous telephonic hearings only in exigent circumstances when manifest unfairness would otherwise occur. Each judicial officer retains the discretion whether to entertain spontaneous telephonic hearings on a case-by-case basis.

LR 9.1 SOCIAL SECURITY NUMBER IN SOCIAL SECURITY CASES

A plaintiff suing the Commissioner of Social Security under 42 U.S.C. § 405(g) must serve—but not file—the plaintiff's social security number with the complaint. The complaint will not be dismissed for failure to comply with this rule.

[Adopted effective February 1, 1991; amended September 24, 2009; amended May 14, 2013; amended March 13, 2018]

2018 Advisory Committee's Note to LR 9.1

Local Rule 9.1 formerly required that a plaintiff suing the Commissioner of Social Security under 42 U.S.C. § 405(g) serve and file both the complaint and the plaintiff's social security number. Under the amended rule, only the complaint must be both served and filed; the plaintiff's social security number must be served but not filed. Plaintiffs should bear in mind that, under Fed. R. Civ. P. 4(i), the complaint and the plaintiff's social security number must be served on both the Commissioner and the United States Attorney's Office.

2013 Advisory Committee's Note to LR 9.1

The language of LR 9.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

A new provision, subsection (b), has been added to clarify that the required paper containing the worker's social security number will be filed under seal.

1991 Advisory Committee's Note to LR 9.1

See LR 7.2 for motion practice in Social Security cases.

LR 9.3 STANDARD FORMS FOR HABEAS CORPUS PETITIONS AND MOTIONS BY PRISONERS

The following documents must be filed on forms that are substantially the same as forms available from the clerk:

- petitions for a writ of habeas corpus;
- motions under 28 U.S.C. § 2255; and
- complaints by prisoners under 42 U.S.C. § 1983 or any other civil-rights statute.

[Adopted effective February 1, 1991; amended July 23, 2012]

2012 Advisory Committee's Note to LR 9.3

The language of LR 9.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

1991 Advisory Committee's Note to LR 9.3

This rule modifies former D. Minn. Local Rule 15 (1987). The requirement that the pleadings be "in writing, signed and verified" was deleted on grounds that it was duplicative of the requirements of 28 U.S.C. § 2254 and, to some extent, Fed.R.Civ.P. 11. The rule only requires "substantial compliance" with forms supplied by the Clerk of Court in recognition of the fact that the Supreme Court and Congress have generally avoided strict compliance with forms submitted by pro se petitioners.

LR 12.1 CRIMINAL DISCOVERY AND PRETRIAL MOTIONS

(a) Discovery.

(1) To the extent practicable, the government must fulfill its discovery obligations under Fed. R. Crim. P. 16(a) within 7 days after the defendant's arraignment.

(2) To the extent practicable, the defendant must fulfill the defendant's discovery obligations under Fed. R. Crim. P. 16(b) within 14 days after the defendant's arraignment.

(b) Requirement to Confer. Before filing a motion under Fed. R. Crim. P. 12(b), the moving party must confer with the responding party. The parties must attempt in good faith to clarify and narrow the issues in dispute.

(c) Pretrial Motions.

(1) Moving Party.

(A) Time Limits. A motion under Fed. R. Crim. P. 12(b) must be filed within 21 days after the arraignment.

(B) Motion Contents. To the extent practicable, a motion under Fed. R. Crim. P. 12(b) to suppress evidence must identify that evidence and the nature of the challenge.

(2) Responding Party Time Limits. A response to a motion under Fed. R. Crim. P. 12(b) must be filed within 35 days after the arraignment.

(3) Notice of Intent to Call Witnesses.

(A) Notice. When a party intends to call witnesses at a hearing on a motion under Fed. R. Crim. P. 12(b), the party must file a notice within 35 days after the arraignment. The notice must identify the number of witnesses whom the party intends to call, the motion or motions that each witness will be addressing, and the estimated duration of each witness's testimony.

(B) Responsive Notice. If after reviewing a notice under LR 12(c)(3), a party intends to call witnesses at the same hearing, that party must file a responsive notice within 38 days after the arraignment. The responsive notice must identify the number of witnesses whom the party intends to call, the motion or motions each witness will be addressing, and the estimated duration of each witness's testimony.

(C) Defendant Testimony. A defendant is not required to declare in advance whether the defendant will testify at the hearing.

(d) Motion Hearing. The motion hearing will be scheduled no earlier than 42 days after the arraignment.

(e) Modification of Schedule. The court may modify the requirements of this rule for good cause.

[Adopted effective October 13, 2014]

2014 Advisory Committee's Note to LR 12.1

This rule is intended to promote early and comprehensive disclosures in criminal cases and an ongoing exchange of information between the parties, particularly as to discovery and suppression issues to be addressed at a hearing. Identification of the evidence that may be introduced at trial and the nature of any challenges to that evidence will facilitate efficient resolution of suppression and other motions.

The requirement that the parties confer is not intended to alter the discovery obligations imposed by the Federal Rules of Criminal Procedure and by case law. The conferral requirement is also not intended to require disclosure of information protected by the attorney-client privilege, work-product doctrine, or any other privilege.

This rule is further intended to provide magistrate judges with advance notice of the anticipated duration and complexity of a motion hearing. As a general rule, a hearing on one or more motions filed under Fed. R. Crim. P. 12(b) will be limited to the factual and legal issues addressed in the motion papers and to any unanticipated issues that arise at such hearings.

The following table illustrates the timeline described in LR 12.1:

Day	Event	LR Subsection
Day X	Arraignment	
Day X + 7	Discovery of government	(a)(1)
Day X + 14	Reciprocal discovery of defendant	(a)(2)
Day X + 21	Motion deadline	(c)(1)(A)
Day X + 35	Motion response deadline and notice deadline	(c)(2), (c)(3)(A)
Day X + 38	Responsive notice deadline	(c)(3)(B)
Day X + 42	Motion hearing	(d)

The schedule prescribed in this rule may be modified for good cause. For example, modifications may be warranted in cases that involve complex issues or voluminous discovery. Likewise, modifications may be warranted to expedite cases involving little motion practice.

The committee recognizes that a defendant may file a motion – for example, a motion to compel disclosure under *Brady v. Maryland*, 373 U.S. 83 (1963) – in order to preserve the defendant's rights, even if there does not appear to be a dispute between the parties. This rule is not intended to interfere with that practice.

LR 15.1 AMENDED PLEADINGS AND MOTIONS TO AMEND

(a) Amended Pleadings. Unless the court orders otherwise, any amended pleading must be complete in itself and must not incorporate by reference any prior pleading.

(b) Motions to Amend. Any motion to amend a pleading must be accompanied by: (1) a copy of the proposed amended pleading, and (2) a version of the proposed amended pleading that shows — through redlining, underlining, strikeouts, or other similarly effective typographic methods — how the proposed amended pleading differs from the operative pleading. If the court grants the motion, the moving party must file and serve the amended pleading.

[Adopted effective February 1, 1991; amended January 3, 2000; amended May 17, 2004; amended September 24, 2009; amended July 23, 2012]

2012 Advisory Committee's Note to LR 15.1

The language of LR 15.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

LR 16.1 CONTROL OF PRETRIAL PROCEDURE BY INDIVIDUAL JUDGES

(a) Each judge may prescribe any pretrial procedures that the judge deems appropriate and that are consistent with the Federal Rules of Civil Procedure and with these rules.

(b) When a judge schedules a conference authorized by LR 16.2-16.6, the judge must give the parties reasonable notice of the date and time for the conference.

(c) At a conference authorized by LR 16.2-16.6, the judge may require attendance by the parties, the parties' attorneys, the parties' representatives, or representatives of insurance companies whose coverage may apply.

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000; amended July 23, 2012]

2012 Advisory Committee's Note to LR 16.1

The language of LR 16.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The language about alternative dispute resolution in former subsections (d) and (e) of this rule has been moved to LR 16.5. The language requiring parties to consider the use of ADR has been removed because it is addressed in LR 26.1 and Forms 3-4.

1999 Advisory Committee's Note to LR 16.1

The Alternative Dispute Resolution Act of 1998 requires that each district implement an ADR program to encourage and promote the use of Alternative Dispute Resolution in the District. The Act further requires that the Court designate an ADR Administrator which may a judicial officer or court employee who is knowledgeable in alternative dispute resolution practices and processes to implement administer, oversee and evaluate the court's alternative dispute resolution program. Title 28 United State Code, Sections 651; 652) Local Rule 16.1(d)and (e) are designed to comply with the mandate of the Act in these respects.

1996 Advisory Committee's Note to LR 16.1

The Civil Justice Reform Act Implementation Plan (CJRA Plan) adopted by the District Court observes that early and ongoing judicial control of the pre-trial process promotes efficient case management. Local Rules 16.1 through 16.8 are designed to implement many of the provisions of the CJRA Plan. These Local Rules codify many of the Court's past practices by defining with some particularity some of the more useful ways in which the Court has employed the Rule 16 conference to manage cases. The Rules are also designed to provide some uniformity among the judicial officers of the Court without sacrificing the flexibility Fed. R. Civ. P. 16 is intended to encourage.

LR 16.1 authorizes each Judge to manage his or her own docket by the adoption of any pre-trial procedures which are consistent with the Federal Rules of Civil Procedure and these Local Rules. The Rule also requires that reasonable notice of the time for the conference be given to all parties and makes clear that the Court has the power to order the attendance at any conference those whose attendance is necessary to accomplish the business of the conference.

LR 16.2 INITIAL PRETRIAL CONFERENCE AND SCHEDULING ORDER

(a) When a Conference Is Required. Except in a proceeding listed in Fed. R. Civ. P. 26(a)(1)(B), the court must set an initial pretrial conference for the purpose of adopting a scheduling order.

(b) Attendance. Unless the court orders otherwise, only the attorneys and unrepresented parties need to attend the initial pretrial conference.

(c) Protective Order. At the initial pretrial conference, the court must address any unresolved issues relating to a proposed protective order submitted under LR 26.1(c).

(d) Scheduling Order.

(1) Required Contents. The scheduling order must include:

(A) a deadline for joining other parties;

(B) a deadline for amending the pleadings;

(C) a deadline for completing fact discovery;

(D) deadlines with respect to expert discovery, including one or more of the following:

(i) a deadline for disclosing the identity of expert witnesses;

(ii) a deadline for disclosing, in accordance with Fed. R. Civ. P. 26(a)(2)(B) or (C), the substance of each expert witness's testimony; and

(iii) a deadline for completing expert discovery;

(E) deadlines for filing and serving:

(i) nondispositive motions; and

(ii) dispositive motions;

(F) a date by which the case will be ready for trial;

(G) any modifications to the extent of discovery, such as, among other things, limits on:

(i) the number of fact depositions each party may take;

(ii) the number of interrogatories each party may serve;

(iii) the number of expert witnesses each party may call at trial;

(iv) the number of expert witnesses each party may depose; and

(H) a statement of whether the case will be tried to a jury or the bench and an estimate the trial's duration.

(2) Permitted Contents. In addition to matters specified in Fed. R. Civ. P. 16(b)(3)(B), the scheduling order may include procedures for handling the discovery and filing of confidential or protected documents.

(3) Discovery Deadlines. The discovery deadlines established under LR 16.2(d)(1)(C) and (D)(iii) are deadlines for completing discovery, not for commencing discovery. To be timely, a discovery request must be served far enough in advance of the applicable discovery deadline that the responding party's response is due before the discovery deadline.

[Adopted effective November 1, 1996, amended February 9, 2006; amended December 1, 2009; amended July 23, 2012]

2012 Advisory Committee's Note to LR 16.2

The language of LR 16.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Matter previously found in LR 16.2(a) that related to the parties' conference under Fed. R. Civ. P. 26(f) has been relocated to LR 26.1. New LR 16.2(c) and (d)(2) have been added to specify that issues related to confidential or protected documents must be addressed at the initial pretrial conference and may be addressed in the scheduling order. New LR 16.2(d)(3) clarifies the nature of discovery deadlines.

2005 Advisory Committee's Note to LR 16.2 and Form 4 and 5

Form 4 addresses recurring issues in patent cases. Form 4 is intended to reduce motion practice and to encourage parties to narrow and focus issues for resolution by the Court, including claim construction issues. Although various provisions in Form 4 are phrased in terms of the "plaintiff" and the "defendant", in cases of counterclaims of patent infringement or for declaratory judgment, each party asserting a patent is expected to provide the information required for "plaintiff", and each party asserting a defense to patent infringement is expected to provide the information required for "defendant".

Paragraph (c) allows discovery related to a charge of willful infringement and to defenses of invalidity and unenforceability, such as the defense of inequitable conduct, without pleading of those defenses, in order to encourage parties to explore whether there is a substantial basis for such pleading

before pleading them. The Court of Appeals for the Federal Circuit has commented that "the habit of charging inequitable conduct in almost every major patent case has become an absolute plague." *Burlington Indus. v. Dayco Corp.*, 849 F.2d 1418, 1422 (Fed. Cir. 1988). The Committee considered a proposal to require leave of the Court for pleading inequitable conduct or willfulness, similar to Minn. Stat. § 549.191 (2003), but concluded that the power of the Court to dismiss such allegations under Rules 12 and 56 of the Federal Rules of Civil Procedure provides an existing tool for management of insufficient charges of inequitable conduct or willfulness.

Paragraph (e)(7) encourages the parties to agree in advance as to the discoverability of drafts of expert reports and provides that in the absence of agreement, such drafts are not discoverable. Under the Federal Rule of Civil Procedure 26, the Court has power to limit use of any discovery method by local rule if the Court determines that the burden or expense of proposed discovery outweighs its benefit. Discovery of drafts of expert reports rarely provides substantial benefits. This paragraph is intended to end motion practice as to the discoverability of drafts of expert reports.

Paragraphs (f) and (g) provide a sequence of exchanges intended to focus issues for claim construction by the Court. The parties are expected to determine the most appropriate intervals for the exchanges given the particular circumstances of a case. In general, the Court has ordered intervals of 30 to 60 days between each step in the series of exchanges. In particular cases, a different schedule may be appropriate, for example if a party intends to bring an early motion that does not depend on claim construction, such as a motion to dismiss for lack of subject matter jurisdiction.

Paragraph (h) provides for a delay of the waiver of attorney-client privilege when an opinion of counsel is offered as part of a defense to a charge of willful infringement and a provision allowing the parties to make proposals addressing other phasing or sequencing issues in discovery. The Committee considered and rejected recommending any presumptions for phased discovery or establishing schedules for phased discovery because of the variety of circumstances presented in patent cases. For example, in certain cases, prejudice could result from discovery of willfulness issues relating to attorney-client materials. On the other hand, willfulness discovery could be relevant to issues of infringement and/or equitable defenses to infringement. Depending upon the case, phasing of discovery could save discovery expense or cause an expensive duplication of discovery efforts.

Paragraph (h)(1) is intended to address discovery controversies that frequently arise when there is a claim of willful infringement and a denial based upon reliance on advice of counsel. Motion practice often follows requests for discovery, including motions to compel discovery or motions to stay discovery and bifurcate trial. Paragraph (h)(1) encourages the parties to agree on the time table for discovery regarding the waiver of any applicable attorney-client privilege on topics relevant to willfulness or articulate proposals regarding such discovery in advance of the initial pretrial conference. The parties are not required to propose that the Court phase discovery regarding the waiver of any applicable attorney-client privilege on topics relevant to willfulness. This provision provides a format for the parties to meet and confer on this subject and either present joint or individual proposals to be considered by the Court.

The general provision set forth in paragraph (h)(2) is intended to encourage the parties to identify other areas of agreement or dispute regarding discovery phasing early so these matters can be addressed at the initial pretrial conference. Optional responses to paragraph (h)(2) include no proposals, joint proposals, or individual proposals regarding the phasing or sequencing of discovery. The inclusion of paragraph (h)(2) should not be interpreted to mean phased discovery is favored in patent cases. Whether discovery on topics that are the subject of discovery are phased depends upon the Court's discretion in adopting a pretrial schedule. Whether phased discovery is proposed or adopted also does not create a presumption regarding the bifurcation of any issues for trial.

Paragraph (h)(3) addresses protective orders and proposes, but does not require, Form 5 as a template for such orders. The Committee concluded that repeated negotiation of such orders wastes the parties' resources and delays the beginning of discovery. The parties are accordingly required to raise

issues relating to any protective order, including issues relating to what persons may have access to documents designated for protection under the order, at the initial pretrial conference, and the Court is to endeavor to resolve such issues in connection with the conference.

Form 5 is meant to focus attention on the issues that are typically contested in negotiating protective orders rather than resolve those issues. This Form is thus presented as one that might serve as a template for protective orders even though in any individual case, parties may by agreement or by motion depart from the template.

Paragraph (n) provides for the use of a tutorial describing the technology and matters in issue for the benefit of the Court. A technology tutorial is not mandatory. Rather, the parties are free to decide whether a technology tutorial would be helpful to educate the Court regarding the technology at issue. A mandatory technology tutorial would unnecessarily increase the cost of and needlessly complicate patent suits involving relatively simple, easily understandable technologies.

If the parties believe that it would be helpful to the Court to have a tutorial, it is not required that the tutorial be in the form of a video tape. Should the parties determine that a format other than video tape be more appropriate, such as a DVD or a computerized presentation, they may suggest the format at the initial pretrial conference. For any such format selected, the parties must confirm the Court's technical ability to access the information contained in the tutorial. The parties may further choose to present the tutorials in person.

The purpose of the technology tutorial is to educate the Court. As such, the scheduling of the tutorial should preferably be early in the litigation, and most preferably before the exchange of claim construction briefs. However, the scheduling of the tutorial may vary based on the complexity of the case and the amount at stake in the litigation. In some cases, the parties may suggest that the tutorial be due mid-discovery to allow its use in connection with any possible summary judgment motions or claim construction hearing. In cases that are likely to settle early on, the parties may suggest the deadline for the tutorial be set late in the litigation in hopes of avoiding its cost altogether.

Whether or not the parties agree to use a technology tutorial, the Court may request that the parties have their experts appear to explain the technology. However, expert legal testimony (as opposed to technical testimony) on such substantive issues as invalidity (by anticipation, obviousness, on-sale bar, etc.) and claim construction and infringement are not intended to be part of the tutorial.

Paragraph (o) provides for the use of the patent procedure tutorial. The purpose of the patent procedure tutorial is to educate the jury about the patent process. The Federal Judicial Center distributes this 18-minute video, entitled "An Introduction to the Patent System". This video provides jurors with an overview of patent rights in the United States, patent office procedure, and the contents of a patent.

A decision by one or all the parties not to show a patent procedure tutorial as set forth in Paragraph (o) does not preclude a Court from showing the patent procedure tutorial on its own initiative.

1996 Advisory Committee's Note to LR 16.2

LR 16.2 incorporates the requirement of the CJRA Plan that an early scheduling conference be held as soon as practicable. The Rule defines this as an Initial Pre-Trial Conference and requires that one be scheduled in every case, except those in categories that the Court, by Local Rule 16.8, has determined to be inappropriate for such a conference. The Rule 26(f) Report form 3 and the recitation of what a pre-trial schedule shall contain is designed to create some uniformity among the judicial officers of the Court with respect to the content of pre-trial schedules.

LR 16.2 contemplates that the pre-trial schedule will set a single date by which all discovery shall be completed and by which all non-dispositive pre-trial motions shall be filed and served. The Advisory Committee considered and rejected a suggestion that the Rule 16 pre-trial schedule set different dates for the termination of discovery and for the hearing of non-dispositive motions, in order to create a period, following the close of discovery, for hearing non-dispositive motions. The Committee rejected the suggestion because it would be inconsistent with LR 37.1, which requires that motions involving discovery disputes shall be served and filed prior to the discovery termination date established pursuant to Rule 16. This provision of LR 37.1 was designed to address the practical problem of how to timely resolve discovery disputes which arise near the close of the discovery period.

Under LR 37.1, by counting backward from the discovery deadline, counsel can plan to serve their discovery requests in such a way that, in the event the response is inadequate, they will still have time to make a motion before the termination of discovery. Because the motion, to be timely, needs only to be filed and served, the inability to get a hearing date before the close of discovery will not prejudice any party.

LR 16.3 MODIFICATION OF A SCHEDULING ORDER

(a) A motion under Fed. R. Civ. P. 16(b)(4) to modify a scheduling order—even a stipulated or uncontested motion — must be made in accordance with LR 7.1(b).

(b) A party that moves to modify a scheduling order must:

(1) establish good cause for the proposed modification: and

(2) explain the proposed modification's effect on any deadlines.

(c) If a party moves to modify a scheduling order's discovery deadlines, the party must also:

(1) describe what discovery remains to be completed;

(2) describe the discovery that has been completed;

(3) explain why not all discovery has been completed; and

(4) state how long it will take to complete discovery.

(d) Except in extraordinary circumstances, before the passing of a deadline that a party moves to modify, the party must obtain a hearing date on the party's motion to modify the scheduling order. The hearing itself may take place after the deadline.

[Adopted effective February 1, 1991; amended November 1, 1996; amended July 23, 2012]

2012 Advisory Committee's Note to LR 16.3

The language of LR 16.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Under Fed. R. Civ. P. 16(b)(4), "[a] schedule may be modified only for good cause and with the judge's consent." The changes to LR 16.3(a) and (b) are intended to clarify for parties that they cannot simply stipulate to a change in a scheduling order. Instead, parties must move to modify a scheduling order.

1996 Advisory Committee's Note to LR 16.3

LR 16.3 is intended to discourage modifying pre-trial schedules unless good cause has been shown. This Rule, which was enacted before the CJRA Implementation Plan was adopted, is consistent with the Plan's suggestion that judicial officers be authorized to impose and enforce discovery deadlines that promote adequate but prompt case preparation.

LR 16.4 CASE-MANAGEMENT CONFERENCE

(a) The court may schedule a case-management conference at any time if the complexity of the case or other factors warrant such a conference.

(b) A party may request that a case-management conference be scheduled.

(c) The court may, before a case-management conference, require the parties to prepare a plan to efficiently manage litigation costs. The parties should consider case-management techniques such as, among others:

(1) limiting the number, length or scope of depositions;

(2) minimizing travel costs and saving attorney time by using telephonic and videoconferencing tools for depositions;

(3) using a shared digital document repository;

(4) using multiple-track discovery to expedite complex matters;

(5) minimizing discovery costs by stipulating to facts; and

(6) enforcing discovery deadlines that promote adequate but prompt case preparation.

(d) After a case-management conference, the court may adopt a case-management order.

[Adopted effective November 1, 1996; amended July 23, 2012]

2012 Advisory Committee's Note to LR 16.4

The language of LR 16.4 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

1996 Advisory Committee's Note to LR 16.4

LR 16.4 attempts to provide judicial officers with the flexibility needed to manage large complex cases which can consume a disproportionate amount of judicial resources. The Rule encourages the parties and the Court to adopt creative case management techniques. The techniques suggested by the Rule are those expressly mentioned in the CJRA Plan, but are illustrative only. The Rule does not intend by the enumeration of certain techniques to in any way discourage or disparage the use of other cost containment techniques. The Rule enables any party to request a Case Management Conference. Whether to convene such a conference, however, is left to the discretion of the judicial officers.

LR 16.5 ALTERNATIVE DISPUTE RESOLUTION AND MEDIATED SETTLEMENT CONFERENCE

(a) Alternative Dispute Resolution.

(1) Purpose. The court has devised and implemented an alternative dispute resolution program to encourage and promote the use of alternative dispute resolution in this district.

(2) Authorization. The court authorizes the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, except that the use of arbitration is authorized only as provided in 28 U.S.C. § 654.

(3) Administrator. The court will designate by administrative order the administrator of the court's alternative dispute resolution program.

(4) Neutrals. The full-time magistrate judges constitute the panel of neutrals made available for use by the parties. The disqualification of a magistrate judge from serving as a neutral is governed by 28 U.S.C. § 455.

(b) Mediated Settlement Conference. Before trial — except in a proceeding listed in Fed. R. Civ. P. 26(a)(1)(B) — the court must schedule a mediated settlement conference before a magistrate judge. The court, at a party's request or on its own, may require additional mediated settlement conferences. Each party's trial counsel, as well as a party representative having full settlement authority, must attend each mediated settlement conference. If insurance coverage may be applicable, an insurer's representative having full settlement authority must also attend.

(c) Other Dispute Resolution Processes.

(1) Mandatory Judicial Processes. The court may order the parties, trial counsel, and other persons whose participation the court deems necessary to participate in any or all of the following processes before a judge: mediation, early neutral evaluation, and, if the parties consent, arbitration.

(2) Mandatory Nonjudicial Processes. The court may order the parties, trial counsel, and other persons whose participation the court deems necessary to participate in any or all of the following processes before someone other than a judge: mediation, early neutral evaluation, and, if the parties consent, arbitration. The court may order the parties to pay, and may allocate among them, the reasonable costs and expenses associated with such a process, but the court must not allocate any such costs or expenses to a party who is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915.

(3) Optional Processes. The court may offer civil litigants other alternative dispute resolution processes such as, for example, mediation, early neutral evaluation, minitrials, summary trials, and arbitration.

(d) Confidentiality of Dispute Resolution Communications.

(1) Definition. A "confidential dispute resolution communication" is any communication that is:

(A) made to a neutral during an alternative dispute resolution process; and

(B) expressly identified to the neutral as being confidential information that the party does not want communicated to any other person outside of the alternative dispute resolution process.

(2) Nondisclosure. A confidential dispute resolution communication must not be disclosed outside the alternative dispute resolution process by anyone without the consent of the party that made the confidential dispute resolution communication.

[Adopted effective November 1, 1996; amended January 3, 2000; amended July 23, 2012; amended May 14, 2014]

2014 Advisory Committee's Note to LR 16.5

Local Rule 16.5(a)(3) has been amended to provide that the court will designate an administrator of the court's alternative dispute resolution program by administrative order, rather by local rule.

2012 Advisory Committee's Note to LR 16.5

The language of LR 16.5 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The title and structure of LR 16.5 have been amended to emphasize the importance of the required mediated settlement conference and to specify, as envisioned by 28 U.S.C. § 652(b), that such a conference is not required in certain actions (namely, proceedings listed in Fed. R. Civ. P. 26(a)(1)(B)). Former LR 16.5(a)(2) required that a mediated settlement conference be held "[w]ithin 45 days prior to trial." This time limit has been eliminated as unnecessary in revised LR 16.5(b), which relates to mediated settlement conferences. Other subsections of LR 16.5 have been revised to more closely conform their language to the language of the governing statute, the Alternative Dispute Resolution Act of 1998, 28 U.S.C §§ 651-658. Arbitration as an alternative dispute resolution process is governed by 28 U.S.C. §§ 654-658.

1999 Advisory Committee's Note to LR 16.5

The Alternative Dispute Resolution Act of 1998 requires that every district authorize the use of Alternative Dispute Resolution processes in all civil actions, (Title 28 United States Code, Section 651(b))and to provide litigants in all civil cases with at least one alternative dispute resolution process (Title 28 United States Code, Section 652(a)). By this Local Rule 16.5(a)(1) the Court complies with the requirement of the Act that it authorize the use of Alternative Dispute Resolution processes. To comply with the requirement of Section 652(a) of Title 28 United States Code, (the Alternative Dispute Resolution Act of 1998), that the court provide litigants in all civil cases with at least one alternative dispute resolution process, Local Rule 16.5(a)(2) requires that a settlement conference be held in every civil case, not exempted by the Rule. The Judges of the District Court have concluded that a mediated settlement conference presided over by a magistrate judge is the one alternative dispute resolution process it will provide to litigants in all civil cases.

Parties are of course free to agree upon the use of other alternative dispute resolution processes, and Local Rule 16.5(b) authorizes the court to order any other alternative dispute resolution process which it deems necessary. Because the voluntary selection by the parties of alternative dispute resolution processes as well as court-ordered alternative dispute resolution processes depart from the "panel of neutrals" made available by LR 16.5(a)(3), the Court is not establishing by this Rule the "amount of compensation" (See 28 U.S.C. § 658) to be received by such persons, allowing that compensation to be freely negotiated, as in longstanding practice, by the parties.

The Alternative Dispute Resolution Act of 1998 also requires that the Court adopt appropriate processes for making neutrals available for use by the parties, and authorizes the use of Magistrate Judges for this purpose. (See Title 28 United States Code, Section 653) By this Rule, the Court expressly designates the full time Magistrate Judges of the District to be the panel of neutrals contemplated by the Act, and expressly makes them available to the parties for the purpose of conducting mediated settlement conferences in every civil case not otherwise exempted by local rule. The Act further requires that the court adopt rules for the disqualification of neutrals. To comply with this provision of the Act, the Court expressly incorporates by reference the provisions of Title 28 United States Code, Section 455.

The Act further requires that the court adopt rules to provide for the confidentiality of the alternative dispute resolution process and to prohibit disclosure of confidential dispute resolution communications. See Tile 28 United States Code Section 652(d). By Local Rule 16.5(c) the Court complies with this requirement of the Act.

1996 Advisory Committee's Note to LR 16.5

In 1986, the Federal Practice Committee in the District of Minnesota recommended that the Court not adopt a formal ADR program. In 1993, the Civil Justice Reform Act Advisory Group also recommended that the Court not impose mandatory ADR. The Advisory Committee, like the CJRA Group, supports the use of selective ADR mechanisms on a case by case basis as determined by the individual Judge or Magistrate Judge. This Rule recognizes the Court's authority to require the parties to pay reasonable costs associated with ADR, but expressly exempts from this requirement parties who are proceeding in forma pauperis.

Regarding settlement conferences, see 28 U.S.C. 473(b)(5), which provides "a requirement that, upon notice by the Court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference."

LR 16.6 FINAL PRETRIAL CONFERENCE

(a) Timing. No more than 45 days before trial — except in a proceeding listed in Fed. R. Civ. P. 26(a)(1)(B) — the court must hold a final pretrial conference. This final pretrial conference may be combined with the mediated settlement conference required by LR 16.5(b).

(b) Matters for Discussion. At the final pretrial conference, the parties must be prepared to discuss with the court:

(1) stipulated and uncontroverted facts;

(2) issues to be tried;

(3) disclosure of all witnesses;

(4) exhibit lists and the exchange of copies of all exhibits;

(5) motions in limine, pretrial rulings, and, where possible, objections to evidence;

(6) disposition of all outstanding motions;

(7) elimination of unnecessary or redundant proof, including limitations on expert witnesses;

(8) itemized statements of each party's total damages;

(9) bifurcating the trial;

(10) limits on the length of trial;

(11) jury-selection issues;

(12) facilitating in other ways the just, speedy, and inexpensive disposition of the action, such as, for example, presenting testimony by way of deposition or by a summary written statement; and

(13) any other matter identified in Fed. R. Civ. P. 16(c) and (e), Fed. R. Civ. P. 26(a)(3), or LR 39.1.

(c) Jury Instructions in Patent Cases. If the case involves a claim arising under the patent laws that is to be tried to a jury, the parties must confer before the final pretrial conference with the goal of agreeing on a common set of model jury instructions to be used as a template for each party's proposed jury instructions.

(d) Final Pretrial Order. After the final pretrial conference, the court must issue a final pretrial order that includes:

(1) a deadline for filing and serving motions in limine;

(2) a deadline for the disclosures required by Fed. R. Civ. P. 26(a)(3);

(3) a deadline for filing and exchanging the documents identified in LR 39.1(b); and

(4) any other deadline.

[Adopted effective November 1, 1996, amended February 9, 2006; amended July 23, 2012]

2012 Advisory Committee's Note to LR 16.6

The language of LR 16.6 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (b) of LR 16.6 has been revised in two ways. First, subsection (b) was revised to clarify that although parties must be prepared to discuss the listed subjects, if some of the subjects are not relevant in a particular case, the court is not required to discuss them. Second, item (b)(13) was added to clarify that the final pretrial conference can embrace any of the subjects identified in the relevant provisions of the Federal Rules of Civil Procedure.

2005 Advisory Committee's Note to LR 16.6(c)

The Committee recognizes that there are several model jury instructions that could be used as a template for proposed jury instructions. Specifically, model jury instructions issued by the United States Courts of Appeals for Fifth, Ninth, and Eleventh Circuits, the United States District Courts for the District of Delaware and the Northern District of California, the American Intellectual Property Law Association, and the Federal Circuit Bar Association might be appropriate.

1996 Advisory Committee's Note to LR 16.6

LR 16.6's requirement of a final pretrial conference is intended to facilitate the efficient trial of the case while minimizing the element of surprise. The Rule is also designed to provide some uniformity among the members of the Court with respect to the content of the final pretrial order.

LR 16.7 OTHER PRETRIAL CONFERENCES [Abrogated]

[Adopted effective November 1, 1996; abrogated July 23, 2012]

2012 Advisory Committee's Note to LR 16.7

Local Rule 16.7 is abrogated as redundant of Fed. R. Civ. P. 16(a), which allows the court to schedule "one or more pretrial conferences . . . ." The rule number is reserved for possible future use.

1996 Advisory Committee's Note to LR 16.7

LR 16.7 is designed to give Judges and Magistrate Judges maximum flexibility to schedule pretrial conferences at any time to consider any of the subjects contemplated by Fed. R. Civ. P. 16.

LR 17.1 SETTLEMENT OF ACTION OR CLAIM BROUGHT BY GUARDIAN OR TRUSTEE

In diversity actions brought on behalf of a minor or ward or by a trustee appointed to maintain a wrongful-death action, the court follows the State of Minnesota's procedure for approving settlements and allowing attorney's fees and expenses.

[Adopted effective February 1, 1991; amended July 23, 2012]

2012 Advisory Committee's Note to LR 17.1

The language of LR 17.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

LR 23.1 DESIGNATION OF "CLASS ACTION" IN THE CAPTION

A party who seeks to maintain a case as a class action must include the words "Class Action" next to the caption of the complaint or other pleading asserting a class action.

[Adopted effective February 1, 1991; amended July 23, 2012]

2012 Advisory Committee's Note to LR 23.1

The language of LR 23.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

LR 24.1 PROCEDURE FOR NOTIFICATION OF ANY CLAIM OF UNCONSTITUTIONALITY [Abrogated]

[Adopted effective February 1, 1991; abrogated January 31, 2011]

2011 Advisory Committee's Note to LR 24.1

Local Rule 24.1 is abrogated as redundant of Fed. R. Civ. P. 5.1. The rule number is reserved for possible future use.

LR 26.1 CONFERENCE OF THE PARTIES UNDER FED. R. CIV. P. 26(f); REPORT; PROTECTIVE ORDERS

(a) Conference Content. At the Rule 26(f) conference, the parties must discuss:

(1) the matters specified in Fed. R. Civ. P. 26(f);

(2) the matters specified in the notice of the initial pretrial conference and in any applicable order; and

(3) the matters specified in the Rule 26(f) Report and Proposed Scheduling Order Form.

(b) Rule 26(f) Report and Proposed Scheduling Order.

(1) Timing. Within 14 days of the Rule 26(f) conference, the parties must file a joint Rule 26(f) report and proposed scheduling order.

(2) Form. Unless the court orders otherwise, the parties must use the Rule 26(f) Report and Proposed Scheduling Order Form.

(3) Disagreements. If the parties disagree about an aspect of a proposed scheduling order, each party must set forth its separate proposal with respect to the area of disagreement in the joint Rule 26(f) report and proposed scheduling order.

(c) Protective Order.

(1) Proposed Order. If a party believes that a protective order to govern discovery is necessary, the parties must jointly submit a proposed protective order as part of the joint Rule 26(f) report and proposed scheduling order required under LR 26.1(b).

(2) Form. The court encourages, but does not require, the parties to use the Stipulation for Protective Order Form.

(3) Disagreements. If the parties disagree about an aspect of a proposed protective order, the parties must submit a joint report identifying

their areas of disagreement. This joint report may be — but is not required to be — separate from the parties' joint Rule 26(f) report.

(d) Request for Early Rule 26(f) Conference.

(1) Right to Request a Conference. Any party may request a Rule 26(f) conference before the date on which Rule 26(f) requires the conference to be held.

(2) Mandatory Attendance.

(A) If all parties have been served, the non-requesting parties must attend a conference requested under LR 26.1(d)(1) if:

(i) the request is made in writing at least 14 days before the requested date for the conference; and

(ii) the request is made at least 30 days after each defendant has answered, pleaded, or otherwise responded in the action.

(B) If some parties have not been served, the non-requesting parties who have been served must attend a conference requested under LR 26(d)(1) if:

(i) the request is made in writing at least 14 days before the requested date for the conference;

(ii) the request is made at least 30 days after the parties that have been served have answered, pleaded, or otherwise responded in the action; and

(iii) significant delay is expected to occur before the remaining parties will be served.

(3) Failure to Attend. If a party fails to attend a conference requested under LR 26(d)(1), the court may impose appropriate sanctions under Fed. R. Civ. P. 37(f).

(4) Right to Reschedule. A party may make a reasonable request to reschedule a conference requested under LR 26(d)(1) to a date within 14 days of the date initially requested for the conference. A party that makes such a request to reschedule is not required to attend the conference on the date initially requested.

[Adopted effective November 1, 1996; amended January 3, 2000; amended August 31, 2001; amended December 1, 2009; amended July 23, 2012; amended April 1, 2017]

2017 Advisory Committee's Note to LR 26.1

In 2017, the Court removed all forms from its local rules. The Rule 26(f) Report and Proposed Scheduling Order Form and the Stipulation for Protective Order Form may be found on the Court's website.

2012 Advisory Committee's Note to LR 26.1

The language of LR 26.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

New LR 26.1(a)-(b) clarifies the parties' obligations to meet and confer and file a report under Fed. R. Civ. P. 26(f) in the form prescribed in LR Form 3 (non-patent cases) or LR Form 4 (patent cases), unless the court orders otherwise. New LR 26.1(a)-(b) includes matter previously found in LR 16.2 relating to Fed. R. Civ. P. 26(f). Forms 3 and 4 were revised as described in the 2012 Advisory Committee's Preface on LR Forms 3-6.

Local Rule 26.1(c) is new. Subsection (c) was added to require the parties to address whether a protective order is necessary and incorporates reference to LR Form 5 and Form 6. Forms 5-6 are presented as templates for protective orders; the court may on its own or on motion depart from the templates.

The language in LR 26.1(d) was previously found in former LR 26.1(f).

2001 Advisory Committee's Note to LR 26.1

(1) The 1993 Amendments to the Federal Rules of Civil Procedure permitted district courts to exempt classes of cases from the "initial disclosure" rules. The 2000 Amendments to the Federal Rules of Civil Procedure remove the authorization for local-rule exemption. The Committee Notes to the 2000 Federal Rules of Civil Procedure Amendments state that the purpose of the amendments are to "establish a nationally uniform practice" for initial disclosures and to "restore national uniformity to disclosure practice." Accordingly, the local rule exemptions to initial disclosures are removed.

(2) The 1993 Amendments to the Federal Rules of Civil Procedure stated, "By order or by local rule, the court may alter the limits in these rules on the number of depositions and interrogatories and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36." The 1996 Local Rules Amendments interpreted that language to permit limitations on discovery for certain categories of cases. The 2000 Federal Rules of Civil Procedure Amendments remove the authorization for local-rule limitations on discovery (except for limitations on Rule 36 Admissions). The Local Rules Advisory Committee interprets this amendment as removing the authorization for the categorical limitations on discovery by local rule. In addition, the 2000 Amendments appear to remove the authority to exempt certain cases by local rule (e.g., class actions) from the Federal Rules of Civil Procedure limits on interrogatories and depositions.

(3) Given the deletion of the remainder of 26.1(b), the Advisory Committee determined that there was no need for this cross-reference.

(4) The 1996 Local Rules permitted discovery in certain classes of cases to begin before the 26(f) meeting. This rule was authorized by FED.R.CIV.P. 26(d) which provided, "Except when authorized under these rules or by local rule, order, or agreement of the parties, a party may not seek discovery from

any source before the parties have met and conferred as required by subdivision (f)." The 2000 Amendments to the Federal Rules of Civil Procedure remove the authority for local-rule modification of the general rule that discovery must be delayed until after the 26(f) meeting.

(5) The 2000 Amendments to the Federal Rules of Civil Procedure removed the authority for local rule exemptions from the 26(f) meeting requirement. Thus, those exemptions have been removed from the local rule. The 2000 Federal Rules of Civil Procedure Amendments lengthened the lead-time between 26(f) meeting and pretrial conference from 14 to 21 days. This change is reflected in the local rule. Nothing in the 2000 Amendments limits the district court's authority to clarify the means of scheduling a 26(f) conference or specify the content of the report to the court. Accordingly, these provisions of the local rule are unchanged.

LR 26.2 FORM OF CERTAIN DISCOVERY DOCUMENTS [Abrogated]

[Adopted effective February 1, 1991; amended November 1, 1996; abrogated July 23, 2012]

2012 Advisory Committee's Note to LR 26.2

Local Rule 26.2 has been abrogated as unnecessary due to the direction provided in renumbered LR 37.1 concerning the form of discovery motions.

LR 26.3 DISCLOSURE AND DISCOVERY OF EXPERT TESTIMONY [Abrogated]

[Adopted effective November 1, 1996; abrogated July 23, 2012]

2012 Advisory Committee's Note to LR 26.3

In 2012, LR 16.2, LR 26.1, and Forms 3 and 4 were amended. In light of those amendments, LR 26.3 became superfluous. Accordingly, LR 26.3 was abrogated.

1996 Advisory Committee's Note to LR 26.3

The new national rules relating to expert discovery were vigorously debated among the committee members. Those who supported new Federal Rule of Civil Procedure 26(a)(2) suggested that the timely exchange of detailed reports, as required by the new rule, would discourage parties from "bluffing" about their claims or defenses until the eleventh hour. The requirement that detailed expert reports be timely exchanged would encourage more prompt settlements of lawsuits. Supporters of the new national rules also observed that new Rule 26(b)(4), which permits depositions of experts without a Court order, simply conforms the rule to actual practice in Minnesota, where expert depositions have become fairly routine.

Opponents of the new rules expressed concern that they would significantly and needlessly increase the cost of discovery for a substantial proportion of lawsuits venued in federal court by requiring both a detailed report and a subsequent expert depositions. Opponents also argued that the new rule makes it more difficult to find persons willing to serve as experts, because many are reluctant to invest the time needed to prepare a report that conforms to the requirements of the new rule. Opponents argued that the old practice of giving summary descriptions of expert opinions in interrogatory answers drafted by lawyers functioned well (and continues to function well in state court) and therefore should not be modified.

The committee attempted to accommodate the concerns of both the proponents and opponents of the new national rules. The parties may agree to, and the Court may order, any form of expert disclosure and discovery, including but not limited to discovery in the manner it was conducted prior to the 1993 Amendments, discovery as specified in the National Rules as they now stand, or any other set of procedures that will advance the goals of the Federal Rules of Civil Procedure. These Local Rules create no preference or presumption for any particular form of expert disclosure and discovery. LR 26.3(a) as now drafted recognizes the power of the parties to fashion a disclosure and discovery plan designed to meet the needs of the individual case. For example, if the expense associated with the preparation of detailed reports would unduly increase the cost of the case, the parties can agree to or the Court may order, a less expensive approach to expert discovery. Moreover, expert depositions are not "required" if the parties choose not to take them or the Court determines that they should be allowed only upon a showing of good cause. This approach is also consistent with the 1993 Advisory Committee Notes to the National Rules, which expressly recognize the ability of the parties to waive the requirement of a written report or to impose the requirement on additional persons who will provide opinion testimony under Fed. R. Evid. 702. If the parties are unable to agree upon an approach to expert discovery, as with other aspects of the discovery plan, LR 26.3(b) contemplates that the parties will set forth their respective proposals in the Rule 26(f) report. The Court will then decide which process will be employed to govern the discovery of the experts' opinions. In the absence of any stipulation, or case specific Court order, LR 26.3(c) provides that new Federal Rule of Civil Procedure 26(a)(2) and 26(b)(4) will govern.

LR 26.4 FILING OF DISCOVERY DOCUMENTS [Abrogated]

[Abrogated in 2001]

2001 Advisory Committee's Note to LR 26.4

Fed.R.Civ.P. 5(d) was amended in 2000, changing the default rule for the filing of discovery and disclosure documents. Prior to the amendment, discovery documents were required to be filed, unless the court ordered otherwise. Under the amendment, initial and expert disclosure documents and enumerated discovery documents are not to be filed until they are used in the proceeding, or the Court orders that they be filed. The 1991 and 1996 amendments to the local rule anticipated the 2000 Amendments in the national rule by restricting the filing of disclosure and discovery documents. In view of the restrictions in the national rule, the local rule is now superfluous, and has been eliminated.

LR 37.1 FORM OF DISCOVERY MOTIONS

A motion under Federal Rule of Civil Procedure 36(a)(6) or 37 must contain, either in the motion itself or in the accompanying memorandum—

(a) any certification required by a federal or local rule that the movant has in good faith conferred or attempted to confer with the party failing to act;

(b) a specification of the disclosure or discovery in dispute;

(c) the text (which may appear in an exhibit to which the motion or memorandum refers) of any interrogatory, request, question, or notice in dispute, together with each answer, response, or objection to any such interrogatory, request, question, or notice;

(d) a concise statement of why the disclosure, answer, response, production, or objection is insufficient, evasive, incomplete, or otherwise improper;

(e) if the motion concerns a failure to preserve electronically stored information, a showing that the information—

(1) should have been preserved in the anticipation or conduct of litigation,

(2) was lost because a party failed to take reasonable steps to preserve it, and

(3) cannot be restored or replaced through additional discovery; and

(f) the remedy sought, together with an argument for why the requested remedy is authorized and justified.

[Adopted effective February 1, 1991 as LR 37.2; amended and renumbered as LR 37.1 on July 23, 2012; amended December 1, 2015]

[Former LR 37.1 adopted effective November 1, 1996; amended September 24, 2009; abrogated July 23, 2012]

2015 Advisory Committee's Note to LR 37.1

Local Rule 37.1 has been amended to incorporate the amendments made to Fed. R. Civ. P. 37, particularly the changes in Fed. R. Civ. P. 37(e) regarding failure to preserve electronically stored information. The rule has also been reorganized to make the rule easier to read and understand.

2012 Advisory Committee's Note to LR 37.1

The language of new LR 37.1 (former LR 37.2) has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

In 2012, LR 7.1 was amended to require parties to meet and confer before filing any motion, and to file a meet-and-confer statement with the motion. This change, along with other changes to LR 16.2 through 26.1, rendered former Rule 37.1 superfluous. Accordingly, former LR 37.1 was abrogated, and former LR 37.2 was renumbered as LR 37.1.

1996 Advisory Committee's Note to LR 37.1

The language of LR 37.1 supplements provisions of the National Rules that require certification of good faith efforts to resolve discovery disputes. See, e.g., Fed. R. Civ. P. 26(c) and Fed. R. Civ. P. 37(a)(2)(A), 37(a)(2)(B), 37(a)(4)(A), and 37(d).

LR 37.2 [Renumbered as LR 37.1]

[Adopted effective February 1, 1991; renumbered July 23, 2012]

2012 Advisory Committee's Note to LR 37.2

Former LR 37.2 was renumbered as LR 37.1 after former LR 37.1 was abrogated.

LR 38.1 DEMAND FOR A JURY TRIAL

A party that demands a jury trial under Fed. R. Civ. P. 38(b) may do so by writing "Demand for Jury Trial" (or the equivalent) on the front page of a pleading, immediately after the pleading's title. A party may also use any other manner of demanding a jury trial that complies with Fed. R. Civ. P. 38(b).

[Adopted effective February 1, 1991; amended July 23, 2012]

2012 Advisory Committee's Note to LR 38.1

The language of LR 38.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The substance of the last sentence of the former version of LR 38.1 ("Failure to use this manner of noting the demand will not result in a waiver under Rule 38(d).") has been recast in a positive form. The rule now instructs parties that they may demand a jury trial either by the method prescribed in LR 38.1, or by any other method that complies with Fed. R. Civ. P. 38(b) — even if that other method differs from the method prescribed in LR 38.1.

LR 39.1 PREPARATION FOR TRIAL IN CIVIL CASES

(a) Trial Date. Each judge regularly places a group of civil cases on a trial calendar and sets the date that a trial will begin in one of those cases (the "trial date"). At least 21 days before the trial date, the judge must notify the parties of a case's placement on the trial calendar. Cases on the trial calendar may be tried in any order, in front of any judge.

(b) Trial-Related Documents. Unless the court orders otherwise, each party must submit or make available the following documents:

(1) Before any trial.

(A) Initial pretrial documents. At least 14 days before the trial date, each party must file and serve the following documents:

(i) Trial brief.

(ii) Exhibit list. Parties must use an exhibit-list form that is substantially the same as the exhibit-list form available from the clerk. Parties must mark each exhibit with the offering party's role (and, if necessary, the offering party's name), a unique arabic numeral identifying the exhibit, and the case number. For example:

- Pltf. 1, 08-CV-1234

- Deft. 1, 08-CV-1234
- Pltf. Smith 1, 08-CV-1234

(iii) Witness list. A party's witness list must briefly summarize each witness's expected testimony.

(iv) List of deposition testimony. A party must designate the specific parts of a deposition to be offered at trial, except that a party need not designate specific parts of a deposition that may be offered only to impeach testimony given at trial.

(v) Motions in limine.

(B) Exhibits. At least 14 days before the trial date, the parties must make exhibits available to one another for examination and copying.

(C) Deposition objections. At least 7 days before the trial date, a party who objects to deposition testimony designated by another party for introduction at trial must file and serve a list of objections.

(2) Before a jury trial. In a jury trial, each party must also file and serve the following documents at least 14 days before the trial date:

(A) Proposed voir dire questions.

(B) Proposed jury instructions.

(i) In general. Each proposed jury instruction must be numbered, must begin on a separate page, and must identify the supporting legal authority.

(ii) Patent cases. In a case that involves a claim that arises under the patent laws, if a proposed jury instruction is based on model jury instructions that the parties agreed to use under LR 16.6(c), the proposed instruction must show how it differs from the model instruction.

(C) Proposed verdict form.

(3) Before a bench trial. In a bench trial, each party must also file and serve proposed findings of fact and conclusions of law at least 14 days before the trial date.

[Adopted effective February 1, 1991; amended November 1, 1996; amended May 17, 2004, amended February 9, 2006; amended December 1, 2009; amended May 14, 2013]

2013 Advisory Committee's Note to LR 39.1

The language of LR 39.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The provision relating to the submission of exhibit lists, now LR 39.1(b)(1)(A)(ii), has been revised to permit parties to submit their exhibit lists either on a form available from the clerk or on a form substantially the same as the clerk's form.

Former LR 39.1(c), related to sanctions for failure to comply with LR 39.1, was deleted as a needless cross-reference to LR 1.3, which applies of its own force.

2005 Advisory Committee's Note to LR 39.1(b)(2)(B)(ii)

In general. Paragraph (b)(2)(B)(ii) set outs a suggested practice in which the jury instructions of both parties relating to the scope, validity, enforcement, or unenforceability of patents is based on a single, common set of standard jury instructions. The handling of jury instructions has proven to require significant resources from both the parties and the Court. The instructions can be lengthy and detailed. In addition, the traditional process, by which the parties construct their proposed instructions in isolation from each other, presents inherent inefficiencies. It tends to cause the parties to suggest differing instructions even where they do not disagree over substance. In addition, it makes it difficult to identify the substantive points that the parties actually dispute. The problems are especially acute in cases relating to patents.

The suggestion in paragraph (b)(2)(B)(ii) addresses these problems by encouraging the parties to present their proposed suggestions as additions to or deletions from a common set of standard instructions. Under this practice, the instructions proposed by the parties will agree unless at least one party takes the affirmative step of proposing a modification of the standard language. Presumably this will occur only where the party considers the matter to be worth addressing. As a result, aspects of the instructions over which the parties do not disagree, and which the parties consider routine, will be proposed in unmodified form in such a manner as to make the lack of dispute clear. Accordingly, the areas of true disagreement will be plainly visible. In this way, the paragraph should reduce the time and cost, for both the parties and the Court, of attending to jury instructions.

Various other districts have promulgated local rules that require or encourage the parties' proposed instructions to be related to a common set of standard instructions. The suggestion in paragraph (b)(2)(B)(ii) is similar to the more lenient of these rules.

Two-stage procedure; default standard instructions. Paragraph (b)(2)(B)(ii) operates in connection with paragraph (c) of Local Rule 16.6. Under the two paragraphs, the parties are to consult regarding the selection of a particular set of pattern jury instructions as part of the final pretrial conference. The Rule contemplates that the parties will, in most cases, be able to agree on a particular set of pattern jury instructions. In the event that they are unable to agree, however, the parties should expect that the Court may, on its own initiative, impose a set of common instructions on them.

Scope of requirement; included cases vs. included instructions. The suggestion in paragraph (b)(2)(B)(ii), and the related requirement to confer under paragraph (c) of Local Rule 16.6, are intended to apply to cases relatively broadly. Cases that are included under the Rule are any that involve

a claim or defense relating to patents. This includes, but is not limited to, cases that include claims for patent infringement and/or declarations for patent non-infringement or invalidity. It also includes cases in which the claims may not "arise under" the law of patents strictly, but in which the claim or defense draws upon or involves a patent more tangentially. Examples of this latter type of case include, for example, claims for breach of contract, where the contract terms at issue refer to patents or patentable subject matter, or claims for violation of antitrust law where the accused conduct involves the use of a patent or patent rights.

At the same time, the suggestion in paragraph (b)(2)(B)(ii) actually to submit instructions in terms of additions and/or deletions from a standard text is narrower. It applies only to those instructions, in an included case, that relate to the scope, validity, enforcement, or unenforceability of a patent. This is less than all the issues that may exist in an included case, and it is contemplated that, under the usual circumstances, only some of the instructions in an included case will be of the type that the Rule suggests be presented as additions and/or deletions. Instructions not included in the suggestion can be presented in any acceptable manner.

Freedom to propose particular instructions; consistency with Fed. R. Civ. P. 51. Under the practice suggested in paragraph (b)(2)(B)(ii), all parties retain the freedom to propose whatever instructions they choose. The practice does not restrict the substance of what the parties must propose; rather, it addresses only the form. The paragraph contemplates that parties who disagree with a particular standard instruction have the freedom to alter it if necessary to lay out the text of the instruction that they wish to propose. In this way, paragraph (b)(2)(B)(ii) is fully consistent with the parties' general freedom to present jury instructions, as set out for example in Fed. R. Civ. P. 51.

LR 39.2 CONDUCT OF TRIALS AND HEARINGS

(a) Addressing the Court and Examining Witnesses.

(1) When addressing the court, counsel must stand and speak clearly and audibly from the counsel table or the lectern. Counsel must not approach the bench for private communications except at the judge's request or with the judge's permission.

(2) Ordinarily, counsel must examine a witness from the lectern. But counsel may, if necessary, approach the witness or the court reporter's table to present or examine an exhibit.

(3) Unless the court orders otherwise, only one attorney for each party may examine a witness or present argument to the court with respect to a motion or other matter.

(b) Examining Jurors.

(1) In general. Unless the court orders otherwise, the court will conduct voir dire examination of jurors. A party may submit proposed voir dire questions to the court.

(2) Peremptory challenges.

(A) When exercised. No party may exercise a peremptory challenge until a full panel has been called, sworn, and qualified.

(B) Ordinary civil cases. In an ordinary civil case, the defendant and plaintiff will take turns — in that order — exercising their peremptory challenges by striking one juror each until each party has exhausted or waived its peremptory challenges.

(C) Civil cases with third-party defendants. In a civil case involving a third-party defendant, the defendant, the third-party defendant, and the plaintiff will take turns — in that order — by striking one juror each until each party has exhausted or waived its peremptory challenges.

(D) Criminal cases. In a normal criminal case with a panel of 28 jurors, the parties will exercise peremptory challenges as follows:

- 3 by defendant;
- 2 by the government;
- 3 by defendant;
- 2 by the government;
- 2 by defendant;
- 1 by the government;
- 2 by defendant; and
- 1 by the government.

(c) Opening Statements and Final Arguments

(1) Opening statements.

(A) In general. Unless the court orders otherwise, an opening statement must not exceed one hour.

(B) Civil cases. After a jury has been selected and before evidence is presented, a party may make an opening statement that summarizes generally what the party expects to prove. If the party with the burden of proof wishes to make an opening statement, that party makes the first opening statement. Unless the

court orders otherwise, a party may not make an opening statement after evidence has been presented.

(C) Criminal cases. The defendant in a criminal case may make an opening statement either:

(i) after the jury has been selected and before any evidence is presented; or

(ii) after the prosecution rests.

(2) Final arguments.

(A) In general. Unless the court orders otherwise, a final argument must not exceed one hour.

(B) Civil cases. Each party may make a final argument. The party without the burden of proof on a claim makes its final argument first, with no opportunity for rebuttal.

(C) Criminal cases. The government makes its final argument first. The defendant makes his or her final argument next. The government may make a brief rebuttal, to which the defendant may not respond.

[Adopted effective February 1, 1991; amended May 14, 2013]

2013 Advisory Committee's Note to LR 39.2

The language of LR 39.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The title of the rule has been revised to eliminate an inconsistency between the previous rule's title and its text. Specifically, former LR 39.2(a)(3) referred to "the presentation of a motion or other matter," which would seem to refer to hearings other than trials, but the rule's title was "Conduct of Trials." The rule's new title clarifies that LR 39.2's non-trial-specific provisions apply to hearings as well as trials. To be consistent with the time limit imposed for final arguments, LR 39.2(c)(1) imposes a time limit of one hour for opening statements.

LR 40.1 INDIVIDUAL CALENDAR SYSTEM

(a) Assignment of Cases.

(1) In general. When a case or matter is filed, the clerk must assign it to a specific judge by a method of random allocation approved by the court. Unless the assigned judge orders otherwise, that judge will preside over the case until it is finally determined.

(2) Requests for immediate relief. When a party requests immediate relief such as an order to show cause, a temporary restraining order, or a similar order, the request will ordinarily go to the judge assigned in accordance with LR 40.1(a)(1). But if the assigned judge is unavailable, the request will go to a judge designated by the assigned judge to review such requests.

(b) Scheduling. Each judge independently schedules all matters.

[Adopted effective February 1, 1991; amended May 14, 2013]

2013 Advisory Committee's Note to LR 40.1

The language of LR 40.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

LR 40.1(b) has been revised to reflect the court's current practice of allowing each judge to schedule matters independently. Former LR 40.1(c) was deleted as a needless cross-reference to LR 6.1, which applies of its own force.

1991 Advisory Committee's Note to LR 40.1

LR 40.1 is the same as 1987 Local Rule 2, except that, to conform with the uniform numbering system, part (C) of 1987 Local Rule 2, dealing with continuance of cases, was re-numbered as LR 6.1.

This rule is not intended to modify the procedures for recusal or the reassignment of related cases. The random allocation order is on file with the Clerk of Court and is available to counsel.

LR 47.2 CONTACTS WITH JURORS

(a) General Rule. Unless the court orders otherwise, a party and anyone acting for a party must not directly or indirectly contact a juror until the court has discharged the juror from service.

(b) Law Enforcement Exception. In extraordinary circumstances involving a jury-tampering investigation or related criminal investigation, federal law enforcement authorities may contact undischarged jurors without prior court approval. The government must notify the court as soon as possible after such contact.

[Adopted effective February 1, 1991; amended May 14, 2013]

2013 Advisory Committee's Note to LR 47.2

The language of LR 47.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

LR 49.1 FILING DOCUMENTS UNDER SEAL IN CRIMINAL CASES

(a) Application of Rule. This rule sets forth the procedure for filing documents under seal in a criminal case. This rule does not affect a party's obligation to redact personal identifiers under Fed. R. Crim. P. 49.1.

(b) Electronic Filing Required. All documents submitted in a criminal case —whether sealed or not — must be filed electronically in compliance with the Criminal ECF Procedures Guide.

(c) Documents Not Requiring a Motion to Seal.

(1) Documents that must be filed under seal. The following documents must be filed under seal and must not be unsealed except by court order:

(A) grand-jury material that must remain secret under federal law;

(B) an application, any supporting documents, and an order disposing of an application:

(i) to authorize the interception of oral, wire, or electronic communications under 18 U.S.C. §§ 2510-2522;

(ii) to authorize a pen register or trap-and-trace device under 18 U.S.C. §§ 3121-3127;

(iii) to authorize the disclosure of customer-communication records under 18 U.S.C. §§ 2703-2705;

(iv) for a writ of habeas corpus ad testificandum;

(v) for a subpoena duces tecum on behalf of a defendant;

(vi) for a subpoena under Fed. R. Crim. P. 17(c); and

(vii) for review of *Brady/Giglio* materials.

(C) a document related to a juvenile proceeding;

(D) a motion for change of custody related to cooperation, any supporting documents, and an order disposing of the motion;

(E) a document supporting counsel's motion to withdraw that discloses attorney-client privileged information;

(F) a presentence report or victim-impact statement; and

(G) a document protected from public disclosure by federal statute (such as 18 U.S.C. § 3509(d)) or federal rule (such as Fed. R. Evid. 412(c)).

(2) Documents that may be filed under seal without court permission. The following documents may be filed under seal without obtaining the court's permission and will be unsealed when the judgment is entered:

(A) an application for an order to disclose tax returns and return information, any supporting documents, and an order disposing of the application;

(B) an application for an order authorizing travel by a defendant's appointed counsel, any supporting documents, and an order disposing of the application;

(C) an application for appointment of counsel for a subpoenaed witness, any supporting documents, and an order disposing of the application;

(D) a motion for withdrawal of counsel and any supporting documents;

(E) a motion for appointment of a taint team to review privileged information and any supporting documents;

(F) a motion for a downward departure under U.S.S.G. § 5K1.1 or 18 U.S.C. § 3553(e) and any supporting documents;

(G) a motion to compel testimony of a witness upon grant of use immunity and any supporting documents;

(H) a joint motion to extend the time to file an indictment; and

(I) letters, emails, and similar materials submitted in connection with a sentencing hearing.

(d) Documents Requiring a Motion to Seal. A document not listed in LR 49.1(c) may not be filed under seal except by order of the court.

(1) Motion to seal. A party moving to seal a document not listed in LR 49.1(c) must first file the document under temporary seal and then, after a docket number is assigned, must file:

(A) a publicly filed motion that does not disclose the information filed under temporary seal;

(B) a memorandum of law, which may be filed under temporary seal, and which must:

(i) identify by docket number and describe the document filed under temporary seal;

(ii) explain why the document should remain under seal;

(iii) address whether the document may be redacted; and

(iv) propose a specific date when the document will be unsealed;

(C) any supporting affidavits or exhibits, which may be filed under temporary seal; and

(D) if applicable, a redacted version of the document, which will be publicly filed if the motion to seal is granted, and which prominently identifies:

(i) that it is a redacted version of a sealed document; and

(ii) the docket number of that sealed document.

(2) Proposed Order. A moving party must file a proposed order (an editable copy of which must be emailed to chambers), sealing the document and identifying a specific date the document will be unsealed.

(3) Multiple Documents Under Seal. A party moving to seal more than one document at a time must separately file each document under temporary seal, but may file a single motion that relates to all such documents.

(4) Order granting motion to seal. An order granting a motion to seal must direct the clerk to:

(A) unseal the document on a specific date; and

(B) if applicable, immediately unseal the redacted version of the sealed document.

(5) Option to Withdraw After Denial of Motion. If the court denies the motion to seal in whole or in part:

(A) Within 7 days after entry of the order denying the motion, the moving party may withdraw the temporarily sealed document by filing a notice of withdrawal. The notice must identify the docket number of the temporarily sealed document.

(i) If the document is timely withdrawn, the clerk must make the document inaccessible to the parties and the public.

(ii) If the document is not timely withdrawn, the clerk must unseal the document.

(B) A temporarily sealed document that is withdrawn is not part of the record and will not be considered by the court unless the document is refiled as a public document.

(e) Sealed Indictments.

(1) Single-Defendant Indictment. If a single-defendant indictment is filed under seal, the clerk must unseal the case when:

(A) the defendant makes an initial appearance, or

(B) the court orders the unsealing of the case.

(2) Multi-Defendant Indictment. If a multi-defendant indictment is filed under seal:

(A) the United States Attorney must, at or before the initial appearance of any defendant, publicly file a redacted indictment that discloses the charges against that defendant; and

(B) the clerk must unseal a defendant's case when:

(i) the United States Attorney files a redacted indictment that discloses the charges against that defendant, or

(ii) the court orders the unsealing of that defendant's case; and

(C) the clerk must unseal the entire indictment when:

(i) all defendants have made an initial appearance; or

(ii) the court orders the unsealing of the entire indictment.

(f) Extending the Time a Document Is Sealed. The court may extend the time a document is sealed on its own motion or on a party's motion. While a party's motion is pending, the clerk must not unseal the document.

(1) Motion to extend. At any time before a document is scheduled to be unsealed, a party moving to extend the time the document is sealed must file the following, all of which may be filed under seal:

(A) a motion;

(B) a memorandum of law which must:

(i) identify by docket number and describe the document filed under seal;

(ii) explain why the document should remain under seal; and

(iii) propose a specific date when the document will be unsealed; and

(C) any supporting affidavits or exhibits.

(2) Proposed Order. A moving party must file a proposed order (an editable copy of which must be emailed to chambers), continuing the sealing of the document and identifying a specific date the document will be unsealed.

(3) Order extending seal. The order extending the time a document is sealed must direct the clerk to unseal the document on a specific date.

[Adopted effective July 20, 2015; amended May 16, 2016; amended April 1, 2017]

2017 Advisory Committee Note to LR 49.1

Local Rule 49.1 has been amended to instruct parties to file proposed orders on ECF. That allows parties to use ECF to serve proposed orders and makes unnecessary the filing of certificates of service. Parties must continue to submit copies of proposed orders to chambers via email in Microsoft Word or a similar editable format.

2016 Advisory Committee Note to LR 49.1

Local Rule 49.1(e) has been amended to address single-defendant sealed indictments and to clarify the treatment of multi-defendant sealed indictments.

2015 Advisory Committee Note to LR 49.1

This new rule significantly changes the procedures governing the sealing of documents in criminal cases. It requires all documents — whether sealed or not — to be filed electronically in compliance with the Criminal ECF Procedures Guide.

The rule establishes separate procedures for two categories of sealed documents: (1) documents that do not require a motion to seal; and (2) documents that require a motion to seal. Documents not requiring a motion to seal are further divided into two subcategories: documents that *must* be filed under seal and documents that *may* be filed under seal without court permission.

The rule specifies that all letters, emails, or other materials submitted in connection with sentencing — including communications from defendants, family members, friends, and members of the public — will be electronically filed in the case and will be unsealed when the judgment is entered. The court's website provides a notice to the public that any communication made to the court in connection with sentencing will be filed in the case and may be publicly disclosed.

If a motion to seal a document is required, the filing party must file the document under temporary seal and then file a motion to seal. If the motion to seal is granted, the document may remain sealed until the date specified in the court order. If the court denies the motion to seal, the filing party may withdraw the temporarily sealed document by filing a notice to the clerk. A withdrawn document is not part of the record and will not be considered by the court unless it is refiled as a public document. If the document is not withdrawn within 7 days after the motion to seal is denied, the temporarily sealed document will be unsealed and become part of the record.

Parties may file a single motion and a single memorandum under LR 49.1(d)(1) to request that multiple documents be sealed. Documents that parties seek to seal, however, must be filed under seal separately so that each is assigned its own docket number, as provided in LR 49.1(d)(2). For more information on how to file a motion to seal under LR 49.1, consult the court's Criminal ECF Procedures Guide.

The rule contemplates that all documents filed under seal without court permission under LR 49.1(c)(2) will be unsealed when judgment is entered. This deadline is intended to encourage parties to address sealing issues at or before sentencing. If a party wishes to maintain a document under seal after entry of judgment, that party should request an extension of the time the document is sealed at or before sentencing.

The rule also provides procedures for when the United States Attorney files a multi-defendant indictment under seal. In such cases the United States Attorney must, at or before the initial appearance of a defendant, publicly file a redacted indictment that discloses the charges against that defendant. The rule also directs when the clerk must unseal a multi-defendant indictment.

The rule governs only the sealing of specific documents in a criminal case, not the sealing of an entire criminal case.

LR 54.3 COSTS AND ATTORNEY'S FEES

(a) Under EAJA. A party must file and serve an application for fees under the Equal Access to Justice Act within 30 days of final judgment as that term is defined in 28 U.S.C. § 2412(d)(2)(G).

(b) Under Rule 54(d)(2). When a party timely files and serves a motion for attorney's fees and related nontaxable expenses under Fed. R. Civ. P. 54(d)(2), the court must issue a briefing schedule. A party who seeks to be excused for failing to comply with the briefing schedule must show good cause.

(c) Under Rule 54(d)(1). If a party seeks costs under Fed. R. Civ. P. 54(d)(1):

(1) Bill of costs.

(A) Within 30 days after judgment is entered, a party seeking costs must file and serve a verified bill of costs using a form available from the clerk.

(B) Within 14 days after being served with the bill of costs, the opposing party may file and serve objections.

(C) Within 7 days after being served with any objections, the party seeking costs may file and serve a response.

(2) Taxing of costs by the clerk. Unless the court directs otherwise, the clerk will tax costs after the bill of costs, any objections, and any response have been filed and served in accordance with LR 54.3(c)(1).

(3) Review of clerk's action.

(A) Within 14 days after the clerk taxes costs, a party may file and serve a motion and supporting documents for review of the clerk's action.

(B) Within 14 days after being served with the motion for review, a party may file and serve a response.

(C) Unless the court orders otherwise, a party must not file a reply brief.

(d) Under Fed. R. App. P. 39.

(1) At the request of the circuit clerk under Fed. R. App. P. 39(d), the clerk must promptly add the statement of costs on appeal (or any amendment of that statement) to the mandate of the court of appeals.

(2) A party that seeks costs taxable under Fed. R. App. P. 39(e) must file a verified bill of costs (or amended bill of costs) within 14 days after the court of appeals issues the mandate. The procedures described in LR 54.3(c) — except the deadline for filing the initial bill of costs found in LR 54.3(c)(1)(A) — govern a bill of costs under this subsection.

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000; amended May 17, 2004; amended December 1, 2009; amended July 23, 2012; amended May 14, 2013]

2013 Advisory Committee's Note to LR 54.3

The language of LR 54.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (b) has been revised to eliminate a filing deadline that was inconsistent with Fed. R. Civ. P. 54(d)(2)(B). Accordingly, the timeliness of a motion for attorney's fees and related nontaxable expenses depends on sources of law outside of LR 54.3(b), and LR 54.3(b) relates only to briefing schedules for such motions.

Former LR 54.3(c)(5), which specified that filing a bill of costs does not affect the appealability of a final judgment, has been deleted as unnecessary. When and whether a final judgment is appealable is the type of legal issue that is not subject to a court's local rules.

For organizational purposes, former subsection (c)(6) is now designated as subsection (d). New subsection (d)(2) (formerly part of subsection (c)(6)) relating to appellate costs taxable in the district court under Fed. R. App. P. 39(e) has been revised to clarify that — as with an ordinary bill of costs under LR 54.3(c) — a party must file a "verified" bill of costs, as required by 28 U.S.C. § 1924.

2012 Advisory Committee's Note to LR 54.3

Former subsection (d), which stated that motions filed under this rule must comply with LR 7.1, has been deleted as redundant of LR 7.1.

2009 Advisory Committee's Note to LR 54.3

This local rule has been amended to be consistent with the amendments to the federal rules on time-computation and changes the past practice of the Clerk of Court not to tax costs until all applicable appeal periods have expired. The amended rule now requires the request to be filed promptly after the entry of judgment.

The form referenced in LR 54.3(c)(1) is available in all Clerk's Office locations and electronically on the Court's website at www.mnd.uscourts.gov. When filing a bill of costs or amended bill of costs under subsection (c)(6), refer to Fed. R. App. P. 41 to determine when the Court of Appeals mandate was issued.

Parties are encouraged to refer to the District Court's Bill of Costs Guide, which is available in all Clerk's Office locations and electronically on the Court's website at www.mnd.uscourts.gov.

1991 Advisory Committee's Note to LR 54.3

In general, applications for attorney's fees should be submitted promptly after a determination of the case on the merits. Prompt submission aids the trial Judge, whose memory of the work of the lawyers is fresh, and facilitates appellate consideration of the whole controversy. As a general procedure, then, the rule requires attorney's fees motions to be submitted within 30 days of the entry of judgment.

The Equal Access to Justice Act, 28 U.S.C. § 2412, requires (and permits) applications for fees to be made "within thirty days of final judgment in the action". "Final judgment" is defined as "a judgment that is final and not appealable, and includes an order of settlement". It is clear that the EAJA contemplates that fee applications will be made either after appeal, or after the time for appeal has run. The rule adopts the statutory time and definitions for EAJA petitions. Some circumstances (in addition to those relating to the EAJA) may call for a different schedule for the submission of fee motions. For example, if post-judgment motions may significantly affect the results of the case (and thus the extent of the award), it may be more fair or more efficient to postpone submission and consideration of the fee motions until after those motions are decided. Additionally, in rare instances, delaying the fee consideration until after an appeal is determined may promote justice and efficiency. Subparagraph (b)(2) provides a procedure by which a party seeking fees can ask the Court to establish an alternate schedule. The Notice of Intention to Claim an Award of Attorney's Fees tolls the time for submitting a fee motion, pending the establishment of the schedule by the district court. The drafters contemplate that the Court will, in its schedule, provide adequate time for the preparation and submission of the detailed fee petition.

Finally, Section (b)(3) provides that the Court may excuse failure to abide by the provisions of the rule, for good cause shown. This section does not apply to EAJA petitions, which are governed by the statutory time limit.

LR 58.1 FIXED-SUM PAYMENT FOR PETTY OFFENSES AND OTHER MISDEMEANORS

(a) Authorization. For a petty offense or misdemeanor listed in the court's fixed-sum payment schedule, the court may accept a fixed-sum payment in lieu of the defendant's appearance and end the case.

(b) Fixed-Sum Payment Schedule. The full-time magistrate judges must maintain a schedule of petty offenses and other misdemeanors for which a fixed-sum payment may be accepted in lieu of the defendant's appearance. The fixed-sum payment schedule must specify the amount of payment required for each identified offense and the effective date of the schedule. The fixed-sum payment schedule must be filed in the clerk's offices and made available on the court's website. The magistrate judges may amend the fixed-sum payment schedule periodically.

(c) Payment.

(1) How made. To pay a fixed sum, a defendant must submit payment to the Central Violations Bureau on or before the date the defendant is scheduled to appear in court.

(2) Effect. A defendant who pays a fixed sum in lieu of appearing for a petty offense or other misdemeanor waives the right to contest the charged violation.

(d) Failure to Appear. If a defendant does not pay a fixed sum and does not appear in court for a charged petty offense or other misdemeanor, the magistrate judge may:

(1) impose any punishment — including fine, imprisonment or probation — that would be permitted upon conviction;

(2) direct that a new summons be issued that orders the defendant to appear on a new date; or

(3) order that a warrant be issued for the defendant's arrest.

(e) Arrest and Mandatory Appearance. Local Rule 58.1 does not prohibit a law-enforcement officer from:

(1) requiring a defendant to appear in court based on the aggravated nature of the offense;

(2) arresting a defendant for committing an offense; or

(3) taking an arrested defendant, promptly after the arrest, before a magistrate judge.

[Adopted effective February 9, 2006; amended May 14, 2013]

2013 Advisory Committee's Note to LR 58.1

The language of LR 58.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Local Rule 58 was renumbered to LR 58.1 to be consistent with the court's local rule numbering conventions. Subsection (b) was amended to eliminate the list of agencies that may have a fixed-sum payment schedule and instead require that the fix-sum payment schedule be posted on the court's website. Subsection (c) is amended to reflect that fixed sum payments must now be made through the federal courts' Central Violation Bureau (CVB). Payments to CVB may be made by phone, mail, or online at www.cvb.uscourts.gov. Subsection (e) was combined with former subsection (f) to include those instances where, within the law-enforcement officer's discretion, the defendant must appear in court due to the aggravated nature of the offense or that an arrest must be made.

LR 67.1 DEPOSITING MONEY IN THE COURT REGISTRY

(a) Court Order Required. A party may deposit money in the court registry under Fed. R. Civ. P. 67(a) only by court order.

(b) Motion to Deposit Money.

(1) A party seeking to deposit money in the court registry must file:

(A) a motion for leave to make the deposit;

(B) a completed Registry Deposit Information form; and

(C) a proposed order (an editable copy of which must be emailed to chambers), specifying the amount of money to be deposited.

(2) A party opposing the motion must file a response within 7 days after the motion is filed.

(3) The moving party may file a reply within 7 days after the response is filed.

(4) No motion, response, or reply may exceed 1,500 words.

(c) Administration of Registry Money

(1) The clerk will administer money deposited in the court registry pursuant to 28 U.S.C. §§ 2041 to 2045.

(2) *Court Registry Investment System*.

(A) The clerk will deposit all registry money, except money posted as bond, in the Court Registry Investment System (CRIS) of the Administrative Office of the U.S. Courts.

(B) The clerk will deposit interpleader money in the CRIS Disputed Ownership Fund.

(3) *Custodian of CRIS Funds.* The Director of the Office of the United States Courts is the custodian of CRIS funds and may:

(A) assess fees based on the District Court Miscellaneous Fee Schedule;

(B) withhold and pay federal taxes on Disputed Ownership Funds; and

(C) distribute income from fund investments after assessing fees.

[Adopted effective February 1, 1991; amended October 29, 2003; amended January 31, 2011; amended May 14, 2013; amended April 1, 2017]

2017 Advisory Committee's Note to LR 67.1

Local Rule 67.1 has been amended to reflect changes in how the court's registry fund is administered.

Parties must file a completed Registry Deposit Information Form with a motion to deposit funds, identifying any interpleader funds. The form is available on the court's website. The information collected on the form is provided to determine the appropriate tax liability for the deposited funds. Interpleader funds deposited under 28 U.S.C. § 1335 meet the IRS definition of a "disputed ownership fund," a taxable entity that requires tax administration (26 C.F.R. § 1.468B-9(b)(1), 9(h)9(3)). Interpleader funds are deposited with the court by a non-owner, third party for court determination of ownership.

All court-registry-funds, except money posted as bond, will be deposited in the Court Registry Investment System (CRIS) and administered pursuant to 28 U.S.C. § 2045. Funds on deposit with the court are pooled with all funds on deposit with the Treasurer of the United States to purchase Government Account Series securities through the Bureau of Public Debt. An account is established in the CRIS Liquidity Fund titled in the name of the case giving rise to the deposit invested in the fund.

Income generated from CRIS investments will be distributed to each case based on the ratio of each account's principal and earnings to the aggregate principal and earnings in the fund after CRIS fees have been applied. The CRIS fees are set forth in the District Court Miscellaneous Fee Schedule, which may be found at the website of the United States Courts at www.uscourts.gov.

For each interpleader case, an account will be established in the CRIS Disputed Ownership Fund (DOF), titled in the name of the case giving rise to the deposit invested in the fund. Income generated from fund investments will be distributed to each case after the DOF fee has been applied and taxes are deducted.

Parties may obtain reports showing the interest earned, principal amounts contributed, and fees applied for all registry funds on deposit with the court by contacting the Clerk's Office Financial Unit at 612-664-5000.

2013 Advisory Committee's Note to LR 67.1

The language of LR 67.1 relating to proposed orders has been revised to be consistent with similar language in LR 7.1.

2011 Advisory Committee's Note to LR 67.1

The filing requirements of LR 7.1(a)-(b), Civil Motion Practice, do not apply to motions to deposit money in the court registry. Parties who desire to deposit money into the court registry under Fed. R. Civ. P. 67(a) need only file a motion on the court's ECF system requesting the court to enter an order to deposit money into the court registry and e-mail the presiding judge a proposed order on that motion. Refer to the ECF Guides for information on providing the court with proposed orders.

Please note that the court requires the order to deposit money into the court registry to identify the exact amount that will be deposited. If the amount to be deposited changes between when the proposed order is filed and the order is to be entered — because of accrued interest, for example — the moving party must provide the court an amended proposed order identifying the exact amount to be deposited.

LR 67.2 WITHDRAWING MONEY FROM THE COURT REGISTRY

(a) Court Order Required. A party may withdraw money from the court registry only by court order.

(b) Motion to Withdraw Money.

(1) A party seeking to withdraw money from the court registry must file:

(A) a motion for leave to make the withdrawal;

(B) a Withdrawal Payee Information form (under seal); and

(C) a proposed order (an editable copy of which must be emailed to chambers), specifying the amount of principal and percentage of interest to be disbursed to each payee.

(2) A party opposing the motion must file a response within 7 days after the motion is filed.

(3) The moving party may file a reply within 7 days after the response is filed.

(4) No motion, response, or reply may exceed 1,500 words.

(c) Timing of Disbursement. The clerk must not disburse money from the court registry until 14 days after entry of the order granting leave.

[Adopted effective February 1, 1991; amended January 31, 2011; amended January 28, 2013; amended April 1, 2017].

2017 Advisory Committee's Note to LR 67.2

Local Rule 67.2 has been amended to allow the Withdrawal Payee Information form to be filed under seal. Under the former rule, a party had to file the form conventionally. The amended rule also corrects a clerical error in former subsection (b)(4).

2013 Advisory Committee's Note to LR 67.2

The language of LR 67.2 relating to proposed orders has been revised to be consistent with similar language in LR 7.1. Subsection (c) has been amended to reflect the fees that must be assessed when funds are deposited in an interest-bearing account with the court's registry.

2011 Advisory Committee's Note to LR 67.2

The filing requirements of LR 7.1(a)-(b), Civil Motion Practice, do not apply to motions to withdraw money from the court registry. Parties who desire to withdraw money from the court registry need only: (1) conventionally file the Withdrawal Payee Information form; (2) file a motion on the court's ECF system requesting the court to enter an order to withdraw money from the court registry; and (3) e-mail the presiding judge a proposed order. Refer to the ECF Guides for information on providing the court with proposed orders.

The Withdrawal Payee Information form is available from the clerk and electronically on the court's website at www.mnd.uscourts.gov. The social security number information collected by the clerk on the form is provided to the depository institution pursuant to I.R.S. Ruling 76-50. This information is used for administrative purposes only and will be kept confidential. The Withdrawal Payee Information form will not be filed on the court's ECF system.

Please note that even if the court orders money to be withdrawn before the expiration of the 14-day stay period, administrative delays may occur in the disbursing of funds. Questions about money deposited into the court registry should be directed to the finance department at 612-664-5000.

LR 67.3 BONDS AND SURETIES

(a) General Requirements. Every bond must be executed by the principal obligor and, if applicable, one or more sureties qualified as provided in this rule.

(b) Not Qualified as Sureties. Unless the court orders otherwise, the following persons may not serve as sureties on any bond:

(1) an employee of the United States District Court, District of Minnesota;

(2) an employee of the United States Marshals Service for the District of Minnesota; and

(3) a member of the bar of the United States District Court, District of Minnesota, or any such member's agent.

(c) Corporate Sureties.

(1) A corporate surety must be qualified to write bonds under 31 U.S.C. §§ 9301-9309 and approved by the Secretary of the Treasury of the United States.

(2) The representative of the corporate surety that signs the bond must attach to the bond a power of attorney that establishes the representative's authority to bind the corporate surety.

(d) Real-Property Bonds.

(1) A person may serve as a surety on a real-property bond only by court order. A person seeking permission to serve as a surety on a real-property bond must:

(A) offer as security real property located in the State of Minnesota of an unencumbered value equal to or greater than the stated amount of the bond;

(B) be competent to convey the real property; and

(C) submit an affidavit and supporting documents including:

(i) a legal description of the real property;

(ii) a complete list of all encumbrances and liens on the real property;

(iii) a current appraisal of the real property by a qualified appraiser;

(iv) a waiver of inchoate rights;

(v) a certification that the real property is not exempt from execution; and

(vi) proof of payment of property taxes.

(2) Within 14 days after the court approves the real-property bond, the surety must file with the court a copy of a notice of encumbrance filed by the surety with the county recorder or registrar of titles that identifies the bond as an encumbrance on the real property.

(3) A real-property bond will be released only by court order.

(e) Cost Bonds. The court may, on motion or on its own, order a party to file a bond or other security for costs in an amount, and subject to conditions, specified by the court.

(f) Cash Bonds. Deposit of cash bonds is governed by LR 67.1. Withdrawal of cash bonds is governed by LR 67.2.

(g) Personal-Recognizance Bond. On a personal-recognizance bond, the obligor promises to comply with all conditions imposed by the court. An obligor that fails to comply with a condition or fails to appear will be subject to penalties as authorized by statute.

(h) Objections. Any party may object to the issuance of a bond.

[Adopted effective January 31, 2011].

2011 Advisory Committee's Note to LR 67.3

To confirm that a corporate surety is qualified to write a bond parties may consult the list of federally approved sureties and reinsuring companies at the website of the United States Department of Treasury.

LR 71.1 CONDEMNATION CASES [Abrogated]

[Adopted effective February 1, 1991; abrogated May 14, 2013]

2013 Advisory Committee's Note to LR 71.1

Local Rule 71.1 is abrogated as unnecessary. The court has general procedures for consolidating related cases, and those procedures are adequate for handling land-condemnation cases.

LR 72.1 MAGISTRATE JUDGE DUTIES

(a) General Designation. In every case, the court designates the magistrate judge assigned to the case to perform the following duties authorized by 28 U.S.C. § 636:

(1) Conduct scheduling conferences and enter pretrial schedules;

(2) Hear and determine any pretrial matter pending before the court, except a motion: for injunctive relief; for judgment on the pleadings; for summary judgment; to dismiss or to permit maintenance of a class action; to dismiss for failure to state a claim upon which relief can be granted; or to involuntarily dismiss an action;

(3) Conduct hearings, including evidentiary hearings, and submit to the district judge proposed findings and recommendations for the disposition of:

(A) dispositive pretrial motions in criminal cases, such as motions to dismiss or quash an indictment or information made by a defendant and motions to suppress evidence;

(B) applications for post-trial relief made by individuals convicted of criminal offenses;

(C) prisoner petitions challenging conditions of confinement; and

(D) motions for summary judgment in Social Security appeals under 42 U.S.C. § 405;

(4) Conduct arraignments in criminal cases;

(5) Conduct settlement conferences in civil cases; and

(6) In accordance with 18 U.S.C. § 3401, with respect to misdemeanors committed within the district:

(A) Try a defendant accused of, and sentence a defendant convicted of, a petty offense; and

(B) With the defendant's consent, try a defendant accused of, and sentence a defendant convicted of, a misdemeanor other than a petty offense.

(b) Specific Designation. The district judge assigned to a case may specifically designate a magistrate judge to perform any of the duties authorized by 28 U.S.C. § 636(b). In performing the designated duties, the magistrate judge must conform to the Local Rules and the instructions of the district judge.

(c) Consent Jurisdiction.

(1) In every case, upon the consent of the parties, the court specially designates the assigned full-time magistrate judge under 28 U.S.C. § 636(c) to conduct the proceedings in a civil matter and to order the entry of judgment.

(2) When an action is filed, the clerk will notify the parties that a magistrate judge is available to conduct proceedings upon the parties' consent. Thereafter, a judge may again advise the parties of the magistrate judge's availability, but in doing so, the judge must advise the parties that they are free to withhold consent without adverse substantive consequences.

[Adopted effective February 1, 1991; amended May 17, 2004, amended May 16, 2005; amended September 24, 2009; amended December 1, 2009; amended May 14, 2013]

2013 Advisory Committee's Note to LR 72.1

The language of LR 72.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments. In particular, the language of LR 72.1 has been revised to align more closely with the language of 28 U.S.C. § 636 and 18 U.S.C. § 3401.

2005 Advisory Committee's Note to LR 72.1 and LR 72.2

This Rule was substantially restructured in 2005 to accommodate various changes made over the years to the Magistrate Judge Act, Title 28 United States Code, Section 636 and to Federal Rules of Civil Procedure 72 and 73.

The Rule contemplates that the duties described in Local Rule 72.1. a. will be automatically exercised by the Magistrate Judge in every case to which he or she is assigned without any further direction or reference by the District Court Judge.

In any individual case, pursuant to Local Rule 72.1 b, the District Judge to whom the case is assigned may also designate a Magistrate Judge to perform any of the other duties described in the Magistrate Judge Act. The Court and the Committee intend that these duties include the full range of duties permitted by the Act, Title 28 United States Code, Section 636, and may include but are not limited to: Serving as a special master; taking a jury verdict in the absence of the District Judge; conducting hearings and submitting to the District Judge assigned to the case proposed findings of fact and recommendations for the disposition of dispositive pretrial motions in civil cases; receiving grand jury returns pursuant to Fed. R. Crim. P. 6(f); issuing writs or other process necessary to obtain the presence of parties or witnesses or evidence needed for Court proceedings; and performing any other additional duties as are not inconsistent with the Constitution and laws of the United States @ Title 28 United States Code, Section 636(b)(3).

1991 Advisory Committee's Note to LR 72.1(b)(2) and LR 72.1(c)(2)

The Advisory Committee does not intend to require or encourage the filing of briefs accompanying objections to decisions by the Magistrate Judges. Ordinarily, the briefs submitted to the Magistrate Judge are sufficient for the district Judge to decide on objections. However, this rule gives the objecting party the option of filing a brief when the objecting party believes that special circumstances justify doing so.

The time period for appeal under LR 72.1(b) runs from the "entry of the Magistrate Judge's order". The time period for objecting under LR 72.1(c) runs from "being served with" a copy of the findings, recommendations, or report of the Magistrate Judge. This difference in language appears in Fed. R. Civ. P. 72(a) and Fed. R. Civ. P. 72(b), so the committee reluctantly preserved this distinction in the local rules.

This rule applies to objections to decision of Magistrate Judges under Fed. R. Civ. P. 72. It does not affect practice in appeals from trials by consent under Fed. R. Civ. P. 73-75. See Fed. R. Civ. P. 75(c), which provides time lines for filing briefs in proceedings on appeal from Magistrate Judges to district Judges under Fed. R. Civ. P. 73(d).

LR 72.2 REVIEW OF MAGISTRATE JUDGE RULINGS

(a) Nondispositive Matters. When a pretrial matter not dispositive of a party's claim or defense is referred to and decided by a magistrate judge, a party may seek review of the magistrate judge's order on the matter as follows:

(1) Objections. A party may file and serve objections to the order within 14 days after being served with a copy, unless the court sets a

different deadline. A party may not assign as error a defect in the order not timely objected to.

(2) Response. A party may respond to another party's objections within 14 days after being served with a copy.

(3) Review by district judge. The district judge must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law. The district judge may also reconsider on his or her own any matter decided by the magistrate judge but not objected to.

(b) Dispositive Motions and Prisoner Petitions. When, without the parties' consent, a pretrial matter dispositive of a party's claim or defense or a prisoner petition challenging the conditions of confinement is assigned to and heard by a magistrate judge, a party make seek review of the magistrate judge's recommended disposition as follows:

(1) Objections and transcript. A party may file and serve specific written objections to a magistrate judge's proposed findings and recommendations within 14 days after being served with a copy of the recommended disposition, unless the court sets a different deadline. Unless the district judge orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge deems sufficient.

(2) Response. A party may respond to another party's objections within 14 days after being served with a copy.

(3) Review by district judge. The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. Ordinarily, the district judge does not conduct a new hearing when ruling on a party's objections, but instead relies on the record of proceedings before the magistrate judge.

(c) Format of Objections and Responses.

(1) Word or Line Limits.

(A) Except with the court's prior permission, objections or a response to objections filed under LR 72.2 must not exceed 3,500 words if set in a proportional font, or 320 lines of text if set in a monospaced font.

(B) All text — including headings, footnotes, and quotations — counts toward these limits, except for:

(i) the caption designation required by LR 5.2;

(ii) the signature-block text; and

(iii) certificates of compliance.

(C) A party who seeks to exceed these limits must first obtain permission to do so by filing and serving a letter of no more than two pages requesting such permission. A party who opposes such a request may file and serve a letter of no more than two pages in response. This rule authorizes the parties to file those letters by ECF.

(2) Type Size.

(A) Represented Parties. Objections or a response to objections filed by a represented party must be typewritten. All text, including footnotes, must be set in at least font size 13 (i.e., a 13-point font) as font sizes are designated in the word-processing software used to prepare the objections or response to objections. Text must be double-spaced, with these exceptions: headings and footnotes may be single-spaced, and quotations more than two lines long may be indented and single-spaced. Pages must be 8 ½ by 11 inches in size, and no text — except for page numbers — may appear outside an area measuring 6 ½ by 9 inches.

(B) Unrepresented Parties. Objections or a response to objections filed by an unrepresented party must be either typewritten and double-spaced or, if handwritten, printed legibly.

(3) Certificate of Compliance. Objections or a response to objections must be accompanied by a certificate executed by the party's attorney, or by an unrepresented party, affirming that the document complies with the limits in LR 72.2(c)(1) and with the type-size limit of LR 72.2(c)(2). The certificate must further state how many words (if set in a proportional font) or how many lines (if set in a monospaced font) the document contains. The person preparing the certificate may rely on the word-count or line-count function of his or her word-processing software only if he or she certifies that the function was applied specifically to include all text, including headings, footnotes, and quotations. The certificate must include the name and version of the word-processing software that was used to generate the word count or line count.

[Adopted effective February 1, 1991; amended May 17, 2004, amended May 16, 2005; amended September 24, 2009; amended December 1, 2009; amended July 23, 2012; amended May 14, 2013]

2013 Advisory Committee's Note to LR 72.2

The language of LR 72.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments. In particular, the language of LR 72.2 has been revised to align more closely with the language of Fed. R. Civ. P. 72, and material that was redundant of 28 U.S.C. § 636 and Fed. R. Civ. P. 73 has been deleted. These deletions are not intended to have any substantive effect. Former subsection (c) was deleted and the rule was renumbered accordingly.

2012 Advisory Committee's Note to LR 72.2

Technical amendments were made to LR 72.2 in light of changes made to LR 7.1. Specifically, all cross-references to LR 7.1 were eliminated, and a new subsection (d) was added to LR 72.2 to clarify that the format and filing requirements in LR 72.2 apply to objections and responses to objections filed under this rule in all cases, whether civil or criminal.

2005 Advisory Committee's Note to LR 72.1 and LR 72.2

This Rule was substantially restructured in 2005 to accommodate various changes made over the years to the Magistrate Judge Act, Title 28 United States Code, Section 636 and to Federal Rules of Civil Procedure 72 and 73.

The Rule contemplates that the duties described in Local Rule 72.1. a. will be automatically exercised by the Magistrate Judge in every case to which he or she is assigned without any further direction or reference by the District Court Judge.

In any individual case, pursuant to Local Rule 72.1 b, the District Judge to whom the case is assigned may also designate a Magistrate Judge to perform any of the other duties described in the Magistrate Judge Act. The Court and the Committee intend that these duties include the full range of duties permitted by the Act, Title 28 United States Code, Section 636, and may include but are not limited to: Serving as a special master; taking a jury verdict in the absence of the District Judge; conducting hearings and submitting to the District Judge assigned to the case proposed findings of fact and recommendations for the disposition of dispositive pretrial motions in civil cases; receiving grand jury returns pursuant to Fed. R. Crim. P. 6(f); issuing writs or other process necessary to obtain the presence of parties or witnesses or evidence needed for Court proceedings; and performing any other additional duties as are not inconsistent with the Constitution and laws of the United States @ Title 28 United States Code, Section 636(b)(3).

1991 Advisory Committee's Note to LR 72.1(b)(2) and LR 72.1(c)(2)

The Advisory Committee does not intend to require or encourage the filing of briefs accompanying objections to decisions by the Magistrate Judges. Ordinarily, the briefs submitted to the Magistrate Judge are sufficient for the district Judge to decide on objections. However, this rule gives the objecting party the option of filing a brief when the objecting party believes that special circumstances justify doing so.

The time period for appeal under LR 72.1(b) runs from the "entry of the Magistrate Judge's order". The time period for objecting under LR 72.1(c) runs from "being served with" a copy of the findings, recommendations, or report of the Magistrate Judge. This difference in language appears in Fed. R. Civ.

P. 72(a) and Fed. R. Civ. P. 72(b), so the committee reluctantly preserved this distinction in the local rules.

This rule applies to objections to decision of Magistrate Judges under Fed. R. Civ. P. 72. It does not affect practice in appeals from trials by consent under Fed. R. Civ. P. 73-75. See Fed. R. Civ. P. 75(c), which provides time lines for filing briefs in proceedings on appeal from Magistrate Judges to district Judges under Fed. R. Civ. P. 73(d).

LR 79.1 CUSTODY AND DISPOSITION OF EXHIBITS AND DOCUMENTS

(a) Custody of the Clerk. Ordinarily, a party must deliver to the clerk or the courtroom deputy all exhibits introduced into evidence at a hearing or trial, and the clerk or courtroom deputy will keep custody of the exhibits. But exhibits such as drugs, legal or counterfeit money, firearms, or contraband may be entrusted to the custody of the arresting or investigative government agency pending disposition of a case and during any subsequent appeal period.

(b) Withdrawal of Original Exhibits and Documents. A person may withdraw an original exhibit or document from the custody of the clerk or another court officer only:

(1) by leave of court, and

(2) after leaving a proper receipt with the clerk or officer.

(c) Sealed Documents. The clerk must not disclose or make available documents that are filed under seal, unless the court orders otherwise.

[Adopted effective February 1, 1991; amended November 1, 1996; amended May 1, 2000; amended October 18, 2007; amended May 14, 2013]

2013 Advisory Committee's Note to LR 79.1

The language of LR 79.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Former subsections (d) and (e) concerning the removal and disposition of sealed documents have been eliminated. All documents, including sealed documents that are filed as part of the case record, are maintained in the case record in accordance with the records-disposition schedule approved by the Judicial Conference and the Archivist of the United States.

1996 Advisory Committee's Note to LR 79.1

To facilitate reference, the portion of the 1991 version of LR 79.1 that relates to filing of discovery documents has been moved to LR 26.4.

LR 80.1 COURT REPORTERS' TRANSCRIPTS

(a) Filing.

(1) Reporters employed by the judiciary. Unless the court orders otherwise, when an official court reporter employed by the judiciary completes a transcript of a court proceeding, the reporter must promptly file a certified copy on the court's ECF system.

(2) Other reporters. Unless the court orders otherwise, when an official court reporter not employed by the judiciary completes a transcript of a court proceeding, the reporter must promptly file a certified copy with the clerk, and the clerk must then file the copy on the court's ECF system.

(b) Post-Filing Restriction.

(1) Unless the court orders otherwise, access to a transcript prepared by an official court reporter and filed under LR 80.1(a) is restricted as follows:

(A) A transcript of a sealed proceeding or filed in a sealed case must not be made available to the public in any format.

(B) A transcript of a criminal voir dire proceeding must not be made available to the public in any format.

(C) Remote electronic access to a transcript of a civil voir dire proceeding is permanently restricted to the users identified in LR 80.1(b)(2).

(D) Remote electronic access to any other transcript is restricted to the users identified in LR 80.1(b)(2) for 90 days after the transcript is filed.

(2) Unless the court orders otherwise, during the 90 days after a transcript is filed, only the following users may access the transcript through the court's ECF system:

(A) Court staff;

(B) Persons using public terminals in the clerk's office for inspection only, not for copying;

(C) Parties that have purchased the transcript; and

(D) Other persons — such as, for example, appellate attorneys — as ordered by the court.

(c) Availability After 90-Day Restriction Period. After the 90-day post-filing restriction period and after the court resolves all pending motions related to the transcript's availability or contents, a transcript not subject to special restrictions under LR 80.1(b)(1) is available as follows unless the court orders otherwise:

(1) Unredacted transcripts. If an original transcript was not redacted, the clerk must permit remote electronic access to the transcript through the court's ECF system and must permit inspection and copying of the transcript at the clerk's office.

(2) Redacted transcripts. If an original transcript was redacted, the clerk must permit remote electronic access to the redacted transcript through the court's ECF system. Remote electronic access to the unredacted transcript is restricted to the users identified in LR 80.1(b)(2). The clerk must permit inspection and copying of the unredacted transcript at the clerk's office.

(d) Transcript Fees.

(1) Payment required. Ordinarily, until a party makes the required payment, a court reporter may decline to begin preparing a transcript or to furnish a completed transcript. But the court may excuse a party who has been permitted to proceed in forma pauperis from paying for a transcript and may require the court reporter to begin preparing a transcript or to furnish a completed transcript without payment from the party.

(2) Fees for electronic access. A person other than a court employee who remotely accesses a transcript through the court's ECF system must pay the applicable fees. A person may electronically access a transcript at the public terminals in the clerk's office for free.

(3) Fees for purchasing transcript from court reporter. A person may buy a copy of a publicly available transcript from a court reporter by paying the applicable fee.

(4) Fee schedule. The fees for transcript preparation and for transcripts purchased from court reporters are established by the Judicial Conference of the United States. The current fee schedule is available from the clerk and from the official court reporters.

[Adopted effective February 1, 1991; amended April 6, 2004; amended May 12, 2008; amended August 11, 2008; amended May 14, 2013]

2013 Advisory Committee's Note to LR 80.1

The language of LR 80.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

2008 Advisory Committee's Note to LR 80.1

LR 80.1 does not apply to deposition transcripts.

LR 83.2 FREE PRESS - FAIR TRIAL PROVISIONS [Abrogated]

[Adopted effective February 1, 1991; amended November 1, 1996; abrogated April 1, 2017]

2017 Advisory Committee's Note to LR 83.2

Local Rule 83.2 is abrogated because it is inconsistent with the Minnesota Rules of Professional Conduct, which have been adopted by the court. *See* LR 83.6(a).

The provisions regarding photography and recording equipment have been replaced with the court's electronic-devices policy, which is available on the court's website.

LR 83.5 BAR ADMISSION

(a) Members and Nonmembers.

(1) The court's bar consists of those attorneys admitted to practice before the court in accordance with LR 83.5(b) and (c) and who pay the clerk all admission fees the court prescribes. A member of the court's bar must promptly notify the clerk, in writing, of any change in the member's name, mailing address, law-firm affiliation, telephone number, or e-mail address.

(2) A person who is not a member of the court's bar may not appear or participate in a trial or hearing except as follows:

(A) on his or her own behalf, if the person is a party who may represent himself or herself;

(B) as permitted by LR 83.5(d) or (e);

(C) as permitted by Fed. R. Civ. P. 45(f); or

(D) by special permission of the court.

(b) Eligibility. An attorney who has been admitted to practice before the Supreme Court of Minnesota is eligible for admission to the court's bar.

(c) Procedure for Admission.

(1) Petition. An applicant for admission to the court's bar must file with the clerk a petition that includes:

(A) the applicant's residence and office addresses;

(B) a list of all courts before which the applicant has been admitted to practice;

(C) a description of the applicant's legal training and legal experience; and

(D) a certification that the applicant has read and is familiar with:

(i) the Federal Rules of Civil Procedure;

(ii) the Federal Rules of Criminal Procedure;

(iii) the Federal Rules of Evidence; and

(iv) the court's Local Rules.

(2) Fee and Supporting Documents. The petition must be accompanied by:

(A) payment of the admission fee established by the court; and

(B) certificates from two members of the court's bar stating:

(i) where and when they were admitted to practice before the court;

(ii) how long and under what circumstances they have known the petitioner; and

(iii) what they know of petitioner's character and legal experience.

(3) Motion. A member of the court's bar must move for the applicant's admission. The court will entertain a motion for the applicant's admission

only after the clerk has examined the applicant's petition, has found that it complies with this rule, and has presented the petition to a judge.

(4) Oath. If the court grants a motion for an applicant's admission, the applicant must take an oath in open court:

(A) to support the Constitution and laws of the United States;

(B) to discharge faithfully the duties of a lawyer;

(C) to behave uprightly and according to law and the recognized standards of ethics of the profession; and

(D) to comply with the rules of professional conduct as adopted by this court.

(d) Nonresident Attorneys. An attorney who does not represent the United States or one of its officers or agencies, who resides outside of Minnesota, and who is not admitted to practice before the Supreme Court of Minnesota may be permitted to appear before the court pro hac vice only as follows:

(1) The nonresident attorney must be a member in good standing of the bar of a federal district court other than this court.

(2) The nonresident attorney must associate with an active member of the court's bar, in good standing, who must:

(A) participate in the preparation and presentation of the case;

(B) accept service of all papers; and

(C) be a Minnesota resident unless the court, upon motion, orders otherwise.

(3) A member of the court's bar must move for the nonresident attorney's admission pro hac vice. The motion must:

(A) be accompanied by payment of the admission fee established by the court;

(B) be made on the form supplied by the clerk for admission pro hac vice of attorneys other than attorneys for the United States; and, as required by the form,

(C) include:

(i) an affidavit signed by the member of the court's bar who will be associating with the nonresident attorney; and

(ii) an affidavit signed by the nonresident attorney.

(e) Government Attorneys. An attorney who represents the United States or any of its officers or agencies and who is not a member of the court's bar must move for admission on the form supplied by the clerk for the admission pro hac vice of attorneys for the United States. Such an attorney may be permitted to appear pro hac vice only as follows:

(1) An attorney who is a member in good standing of the bar of a federal court of appeals or a federal district court other than this court may, after filing the required form, represent the United States or any of its officers or agencies in this court.

(2) Any other attorney may represent the United States or any its officers or agencies in this court only if the attorney both files the required form and associates with an attorney from the United States Attorney's Office for the District of Minnesota. The associating attorney from the United States Attorney's Office for the District of Minnesota must:

(A) participate in the preparation and presentation of the case; and

(B) accept service on behalf of the United States of all papers.

[Adopted effective February 1, 1991; amended December 5th, 2008; amended January 31, 2011; amended May 9, 2011; amended May 14, 2014]

2014 Advisory Committee's Notes to LR 83.5

Subsection (a)(2) was amended to comply with the 2013 amendments to Fed. R. Civ. P. 45.

2011 Advisory Committee's Note to LR 83.5

The language of LR 83.5 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (e) was changed to provide for the pro hac vice admission for attorneys representing the government who are not admitted to practice in a United States District Court.

LR 83.6 ATTORNEY DISCIPLINE

(a) Required Conduct. An attorney who is admitted to the court's bar or who otherwise practices before the court must comply with the Minnesota Rules of Professional Conduct, which are adopted as the rules of this court. An attorney commits misconduct by failing to comply with the Minnesota Rules of Professional Conduct.

(b) Available Discipline. The court may discipline any attorney who is admitted to the court's bar or who otherwise practices before the court. Such discipline may include, but is not limited to, disbarment, suspension, public reprimand, private admonition, monetary sanctions, or restitution. This rule does not limit the court's inherent, statutory, or other authority to control its proceedings, including through civil or criminal contempt proceedings.

(c) Duty to Report. An attorney must promptly report the following in writing to the clerk:

(1) Discipline. Disbarment, suspension, public reprimand, or other public discipline imposed by any other court or jurisdiction. The attorney's report must include a certified copy of the judgment or order imposing the discipline.

(2) Conviction of a Crime. Any guilty plea to or conviction of committing, attempting to commit, conspiring to commit, or soliciting or aiding another to commit:

(A) any crime punishable by incarceration for more than one year; or

(B) any crime that includes as a necessary element:

- interference with the administration of justice;
- perjury;
- false swearing;
- misrepresentation;
- fraud;
- willful extortion;
- misappropriation; or

- theft.

(d) Automatic Discipline.

(1) Reciprocal Discipline. Unless the court orders otherwise, an attorney who has been temporarily or permanently prohibited from practicing before any other court or jurisdiction automatically forfeits the right to practice before this court for the same period.

(2) Criminal Acts. Unless the court orders otherwise, an attorney who pleads guilty to or has been convicted of a crime set forth in LR 83.6(c)(2) automatically forfeits the right to practice before this court.

(e) Court-Initiated Discipline.

(1) Appointment of Investigatory Counsel. A judge who becomes aware that an attorney may have committed misconduct may appoint investigatory counsel to investigate and advise the judge as to whether to initiate disciplinary proceedings. In the order appointing investigatory counsel, the judge must describe the scope of investigatory counsel's duties. The attorney under investigation must cooperate with investigatory counsel. Investigatory counsel must provide the judge with a written report containing a recommendation as to whether the judge should initiate disciplinary proceedings. Unless otherwise ordered by the court, the court and all parties must file all orders and pleadings in an investigatory proceeding under seal on ECF.

(2) Disciplinary Proceedings. A judge who becomes aware that an attorney may have committed misconduct may initiate disciplinary proceedings as follows:

(A) Order to Show Cause. The judge must issue an order to show cause as to why the respondent-attorney should not be disciplined for the alleged misconduct. The order must describe the alleged misconduct.

(B) Assignment. The chief judge must assign a judge to preside over the disciplinary proceeding. The judge who issued the order to show cause must not be assigned to preside over the disciplinary proceeding.

(C) Hearing; Appointment. The assigned judge must promptly schedule a hearing, appoint disciplinary counsel to prosecute the matter, and provide notice of the hearing and appointment to the respondent-attorney. An attorney who served as investigatory counsel may serve as disciplinary counsel.

(D) Disciplinary Counsel. Disciplinary counsel may introduce evidence, call witnesses (including the respondent-attorney), and cross-examine any witness called by the respondent-attorney.

(E) Respondent-Attorney. The respondent-attorney must have the opportunity to be heard. The respondent-attorney may be represented by counsel. The respondent-attorney may testify, introduce evidence, call witnesses, and cross-examine any witness called by disciplinary counsel.

(F) Rules of evidence. The Federal Rules of Evidence do not apply to any disciplinary proceeding.

(G) Record. The court and all parties must file all orders and pleadings in a disciplinary proceeding under seal on ECF. Any hearing conducted under this rule must be recorded. If the court imposes any form of public discipline, all files and records related to the disciplinary proceeding must be unsealed unless the court orders otherwise.

(3) Written Findings and Discipline. The assigned judge must issue written findings as to whether the alleged misconduct has been proven by clear and convincing evidence and, if so, what discipline will be imposed. The court must file its written findings under seal on ECF. If the court imposes any form of public discipline, the court's written findings must be unsealed unless the court orders otherwise.

(f) Temporary Suspension. The chief judge or his or her designee may temporarily suspend or restrict an attorney's right to practice before this court pending a final determination in a disciplinary proceeding if the chief judge receives:

(1) evidence establishing probable cause to believe that an attorney has committed misconduct; and

(2) evidence establishing that the attorney poses an immediate threat of serious harm to the public, to any person, or to the administration of justice.

(g) Reinstatement. An attorney who has been suspended or disbarred from practicing before this court may file a petition for reinstatement with the clerk.

(1) Assignment. The chief judge must assign a judge to consider the petition.

(2) Timing.

(A) A disbarred attorney must not petition for reinstatement within five years of disbarment.

(B) If an attorney's petition for reinstatement is denied, the attorney must not again file a petition for reinstatement within one year after the denial or such longer period ordered by the court.

(3) Standard for Reinstatement. To be reinstated, the petitioner must establish by clear and convincing evidence that:

(A) the petitioner has the moral qualifications, competence, and learning in the law required for admission to the court's bar;

(B) the petitioner has satisfied all conditions required for reinstatement to the court's bar; and

(C) the petitioner's resumption of the practice of law will not damage the integrity of the court's bar, the administration of justice, or the public interest.

(4) Disposition of Petition. After reviewing the petition for reinstatement, the assigned judge may grant or deny the petition or set the matter for hearing.

(5) Hearing.

(A) Appointment of investigatory counsel. The assigned judge may appoint investigatory counsel to investigate whether the petitioning attorney should be reinstated. The petitioning attorney must cooperate with investigatory counsel.

(B) Petitioning attorney. The petitioning attorney must have the opportunity to be heard. The petitioning attorney may be represented by counsel. The petitioning attorney may testify, introduce evidence, call witnesses, and cross-examine any witness called by investigatory counsel.

(C) Investigatory counsel. Investigatory counsel may introduce evidence, call witnesses (including the petitioning attorney), and cross-examine any witness called by the petitioning attorney.

(D) Rules of evidence. The Federal Rules of Evidence do not apply to any reinstatement proceeding.

(6) Records. Unless the court orders otherwise, all records relating to a petition for reinstatement must be publicly filed. Any reinstatement hearing must be recorded.

(h) Fees and costs of counsel. The court must make arrangements for payment of fees and costs incurred by investigatory or disciplinary counsel.

(1) Disciplinary Proceedings. The court may assess investigatory or disciplinary counsel's fees and costs against an attorney if the court finds that the attorney committed misconduct by clear and convincing evidence.

(2) Reinstatement Proceedings. The court may assess investigatory counsel's fees and costs against an attorney petitioning for reinstatement, whether the petition is granted or denied.

(i) Duties of the Clerk.

(1) Service.

(A) The following must be served personally or by registered or certified mail:

(i) Notice of reciprocal discipline imposed under LR 83.6(d)(1);

(ii) Notice of automatic forfeiture under LR 83.6(d)(2); and

(iii) A show-cause order issued under LR 83.6(e)(2)(A).

(B) All other documents issued by the court must be served as provided by Fed. R. Civ. P. 5(b).

(2) Notice of discipline. If any form of public discipline is imposed by this court on an attorney who is admitted to practice before another court or jurisdiction, the clerk must promptly notify that other court or jurisdiction of the discipline. The notice must include a copy of the disciplinary order and the last known address of the attorney.

(3) Notice to ABA National Lawyer Regulatory Data Bank. The clerk must promptly notify the American Bar Association's National Lawyer Regulatory Data Bank of any order imposing any form of public discipline.

[Adopted effective February 1, 1991; amended December 18, 1997; amended December 1, 2009; amended May 14, 2014]

2014 Advisory Committee's Note to LR 83.6

The revised rule carries forward many of the former rule's provisions, now reorganized and clarified. The revised rule specifies the rights of an attorney who is the subject of court-initiated disciplinary proceedings or who seeks reinstatement to the court's bar. The revised rule also more clearly explains the role of investigatory and disciplinary counsel in disciplinary and reinstatement proceedings. Finally, the revised rule provides new authority to the chief judge to temporarily suspend or restrict an attorney's right to practice when the chief judge finds probable cause to believe that the attorney has committed misconduct and finds that the attorney poses an immediate threat of serious harm to the public, to any person, or to the administration of justice.

1991 Advisory Committee's Note to LR 83.6

The following preface preceded the text of former D.Minn. Local Rule 1(F) (1987), which was the predecessor of LR 83.6. The Advisory Committee adopts it as its Note to LR 83.6:

Statement of Need for Adopting a Rule of Disciplinary Enforcement

Membership in good standing in the bar of a Court of the United States constitutes a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court.

It is the duty of every attorney admitted to practice before a Court of the United States to conform at all times with the standards imposed upon members of the bar as conditions for the privilege to practice law.

It is the duty of the Court to supervise the conduct of the members of its bar in order to assure the public that those standards are scrupulously adhered to. The proper discharge of that duty requires that the Court have the assistance of counsel to investigate and prosecute where there are appropriate allegations that those standards have been violated. To assure competent and knowledgeable counsel, and to avoid unnecessary duplication of systems and personnel, this rule provides for the appointment of the state disciplinary agency whenever appointment of counsel is required hereunder and such appointment is appropriate.

In order to be admitted to practice in the United States District Court for the District of Minnesota, an attorney must demonstrate membership in good standing before the Minnesota Supreme Court. Consequently, for the purposes of admitting attorneys to practice before this Court, it may and does rely upon the standards for admission of the State Supreme Court. Insofar as discipline of admitted attorneys is concerned, however, the Supreme Court of the United States has held that revocation of a license to practice by state or other Courts may not automatically be relied upon by the Courts of the United States. *Theard v. United States*, 354 U.S. 278 (1957). In Theard, the Supreme Court held that while discipline imposed by a state "brings title deeds of high respect," it is not conclusively binding on the federal courts, which, in substance, must satisfy themselves that the attorney's underlying conduct warranted the discipline imposed. *Id.* at 282. For that reason, if there is to be effective discipline within the federal system, effective and appropriate procedures must be developed. This rule is proposed to achieve that purpose as well as to achieve uniformity of procedure by the various federal courts.

LR 83.7 WITHDRAWAL OF COUNSEL

An attorney may withdraw from a case in which he or she has appeared only as follows:

(a) By Notice of Withdrawal. A party's attorney may withdraw from a case by filing and serving a notice of withdrawal, effective upon filing, if:

(1) multiple attorneys have appeared on behalf of the party; and

(2) at least one of those attorneys will still be the party's counsel of record after the attorney seeking to withdraw does so.

(b) By Notice of Withdrawal and Substitution. A party's attorney may withdraw from a case by filing and serving a notice of withdrawal and substitution, effective upon filing, if:

(1) the notice includes:

(A) a statement by substituted counsel that serves as substituted counsel's notice of appearance and affirms that he or she represents the party; and

(B) the names, addresses, and signatures of the withdrawing attorney and substituted counsel;

(2) the withdrawal and substitution will not delay the trial or other progress of the case; and

(3) the notice is filed and served:

(A) in a civil case, at least 90 days before trial; or

(B) in a criminal case, at least 30 days before trial.

(c) By Motion. An attorney who seeks to withdraw otherwise than under LR 83.7(a) or (b) must move to withdraw and must show good cause. The attorney must notify his or her client of the motion.

[Adopted effective February 1, 1991; amended January 31, 2011]

2011 Advisory Committee's Notes

The language of LR 83.7 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (a) was changed to clarify that it is not necessary to file a motion to withdraw if an attorney's withdrawal will not cause a party to lose legal representation.

LR 83.8 STUDENT PRACTICE

(a) Scope. A law student who represents a client in connection with a matter in this court must comply with this rule.

(b) Student requirements. A law student may practice under this rule as follows:

(1) The law student must be supervised by a member of this court's bar. The supervisor must:

(A) assume full responsibility for the law student's work;

(B) accompany the law student to, and be prepared to assist the law student at, every court appearance; and

(C) appear as an attorney of record in the same case in which the law student appears.

(2) The law student must be enrolled in a law school accredited by the American Bar Association.

(3) The law student must have completed the equivalent of at least two semesters of full-time study.

(4) The law student must:

(A) be enrolled for credit in a law-school supervised program and the law student's work must be under the supervision of that program; or

(B) be a paid or unpaid intern representing any state, local, or other governmental unit or agency.

(5) The law student must not accept compensation in connection with the matter, except that a paid intern may receive compensation from his or her employer. But the law-school supervised program in which the law student is enrolled may accept compensation other than from a client, such as a Criminal Justice Act payment.

(c) Supervising-attorney requirements. The attorney supervising the law student must do the following:

(1) Verify that the law student meets the requirements of LR 83.8(b);

(2) Complete the student-practice certification form provided by the clerk and file it with the clerk's office; and

(3) File a copy of the student-practice certification form in any case in which the law student appears.

(d) Effect of certification. A completed student-practice certification form is effective for 12 months after the date it is filed with the clerk's office, unless the chief judge revokes the certification.

(e) Revocation. The chief judge may at any time revoke student-practice certification by sending written notice to the supervising attorney and the student.

[Adopted effective February 1, 1991; amended November 18, 2013.]

2013 Advisory Committee's Note to LR 83.8

The language of LR 83.8 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Local Rule 83.8 has also been amended to broaden the category of eligible law students who may practice before the court to include paid or unpaid interns or externs of a government agency. In addition, LR 83.8 has been amended to streamline the procedure to allow a law student to practice by having the supervising attorney, rather than the law school, certify that a law student is eligible to practice under this rule.

Before a law student may practice in any matter in this court, the supervising attorney must complete and submit the student-certification form by emailing it to the clerk's office. The clerk's office will then stamp the form as having been filed and email it back to the attorney. The supervising attorney must then file the stamped form in each case in which the law student appears.

LR 83.10 CRIMINAL SENTENCING

(a) Plea Agreements and Sentencing Stipulations. Before a defendant enters a guilty plea pursuant to a plea agreement, the defendant and the government must make every effort to resolve material disputes and thus minimize the need for an evidentiary hearing with respect to sentencing. The parties' resolution of such disputes remains subject to court review and acceptance. When the government and the defendant agree to a plea pursuant to a plea agreement, they must jointly submit a written plea agreement. The plea agreement must include:

(1) the maximum potential penalties for the offense (or offenses) to which the defendant agrees to plead guilty;

(2) the terms of the plea agreement; and

(3) to the extent possible, stipulations with respect to:

(A) the essential elements of the offense (or offenses); and

(B) the applicable sentencing guidelines.

(b) Preparing the Preliminary Presentence Report. The probation officer must exercise due diligence in conducting the presentence investigation and preparing a preliminary presentence report. Within the reasonable constraints of ongoing investigations and proceedings, the government must exercise due diligence in providing materials to the probation officer for that officer's use in preparing the preliminary presentence report. The probation officer who interviews a defendant as part of a presentence investigation must, on request, give the defendant's attorney notice and a reasonable opportunity to attend the interview.

(c) Objections to the Preliminary Presentence Report.

(1) Time to Object. By the deadline set by the probation officer in compliance with Fed. R. Crim. P. 32(f)(1), the parties must state in writing any objections to the preliminary presentence report, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report. A party's written objections must include material information and legal authority supporting the objections, as well as any proposed minor amendments or corrections that do not affect the guideline calculations.

(2) Serving Objections. An objecting party must provide a copy of its objections to the opposing party and to the probation officer.

(3) Untimely Objections. If a party's objections are untimely, the probation officer must not accept the objections unless the party has received the court's permission to make untimely objections.

(d) Final Presentence Report, Addendum, and Recommendation.

(1) After the deadline for objections has passed, the probation officer must — in accordance with Fed. R. Crim. P. 32(f)(3) and (g) — revise the presentence report as appropriate, prepare an addendum, and submit the final presentence report and addendum to the parties and the court.

(2) The probation officer must submit a confidential sentencing recommendation to the court. Unless the court directs otherwise, the probation officer must not further disclose this recommendation.

(e) Position Regarding Sentencing. Within 14 days of the date of the final presentence report, each party must file and serve a document entitled "Position

Regarding Sentencing." Two courtesy copies must be provided to the judge and one courtesy copy must be provided to the probation officer. This document must:

(1) set forth the party's position with respect to both the sentencing guidelines and the sentencing factors set forth in 18 U.S.C. § 3553(a);

(2) specifically identify any issues in dispute;

(3) state, with respect to each issue in dispute, the extent to which the court can rely on the final presentence report to resolve the dispute; and

(4) specifically identify any issues as to which the party requests an evidentiary hearing.

(f) Evidentiary Hearing.

(1) With respect to contested issues relevant to sentencing, if a party believes that a hearing on an issue is necessary, that party must file and serve a separate motion requesting an evidentiary hearing on the issue. The motion must:

(A) be filed at the same time as the Position Regarding Sentencing;

(B) set forth the contested issue; and

(C) provide an estimate of the time required for the hearing.

(2) At least 7 days before an evidentiary hearing, each party must provide the judge, the opposing party, and the probation officer with a witness list and an exhibit list.

(g) Response to Position Regarding Sentencing; Motion for Downward Departure.

(1) At least 7 days before sentencing, each party may file and serve a response to the opposing party's Position Regarding Sentencing. Two courtesy copies must be provided to the judge and one courtesy copy must be provided to the probation officer.

(2) If the government intends to move for a downward departure under § 5K1.1 of the Sentencing Guidelines or under 18 U.S.C. § 3553(e), it must do so at least 7 days before sentencing. The government's motion must be filed under seal and served on the defendant. The government

must provide two courtesy copies to the judge and one courtesy copy to the probation officer.

(h) Alternative Procedures in Complex Cases. A party may request permission from the judge to deviate from the procedures and deadlines set forth in this rule. A party making such a request must explain why the complexity or particular nature of the case justifies the request.

(i) Court's Authority. Nothing in this rule restricts the court's authority to accept or to reject a plea agreement or to accept or to reject a stipulation of fact.

(j) Non-Disclosure. Nothing in this rule requires the disclosure of any portions of the presentence report that are not discoverable under Fed. R. Crim. P. 32.

[Adopted effective February 1, 1991; amended November 1, 1996; amended May 17, 2004; amended September 24, 2009; amended May 14, 2013]

2013 Advisory Committee's Note to LR 83.10

The language of LR 83.10 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Revised LR 83.10 does, however, include a handful of substantive changes. Specifically, revised subsection (a) clarifies that parties include in plea agreements "stipulations" of any kind, rather than just "stipulations of fact." The subsection (a)(2) requirement that the agreement include its terms is not intended to preclude the submission of information concerning the plea agreement under seal. Revised subsection (f) provides that either party may request an evidentiary hearing about a contested sentencing-related issue, regardless of whether the requesting party bears the burden of proof on the issue.

Further, the provisions relating to deadlines for objections to presentence reports and deadlines for sentencing position papers have been modified slightly to conform better to current practice and to Fed. R. Crim. P. 32.

With respect to objections, under revised LR 83.10(c), the probation officer will establish a specific deadline for serving objections in every case. That deadline will be communicated along with the preliminary presentence report. The deadline will always be at least 14 days from the date of the report, in accordance with Fed. R. Crim. P. 32(f)(1). An additional 3 days will typically be added to the deadline if the report is delivered by mail; if that adjusted deadline falls on a weekend or holiday, the deadline will be moved to the next business day.

The deadline for sentencing position papers under the revised rule is 14 days from the date of the final presentence report, regardless of how that report is delivered.

The following table illustrates the timelines in revised LR 83.10:

Day	Event
Day *X*	Probation officer issues preliminary presentence report, including deadline for objections.
Deadline set by probation officer (at least Day *X* + 14 days, and sometimes Day *X* + 17 or more days)	Parties serve objections.
Day *Y*	Probation officer issues final presentence report with addendum.
Day *Y* + 14 days	Parties file Positions Regarding Sentencing. Parties file motions for an evidentiary hearing (if one is sought).
Day *Z*	Date of sentencing hearing.
At least 7 days before Day *Z*	Optionally, parties file responses to Positions Regarding Sentencing. Optionally, government moves for downward departure.

2009 Advisory Committee's Note to LR 83.10

[To avoid confusion, the 2013 advisory committee has deleted the table of timelines that previously appeared in the 2009 committee note.]

1991 Advisory Committee's Note to LR 83.10

LR 83.10 supersedes the Court's Revised Order Re Sentencing Procedures Under the Sentencing Reform Act of 1984, dated October 30, 1989.

The purpose of LR 83.10 is to provide adequate time for preparation of the presentence report by the United States Probation Office, for disclosure of the presentence report to the parties, for the filing of presentence submissions by the parties, and to otherwise facilitate administration of the sentencing guidelines.

[A table provided in the 1991 Advisory Committee Notes was removed to avoid confusion with later changes. Please refer to the 2013 committee note for a table illustrating the timelines in LR 83.10.]

LR 83.11 COURT ADMINISTRATION

(a) Divisions. The State of Minnesota constitutes one judicial district, divided into six divisions.

(b) Case Assignment. The court assigns cases to particular divisions and particular judges in accordance with the Order for Assignment of Cases that the court's district judges have adopted. The district judges may modify this order from time to time as they see fit.

(c) Offices of the Clerk.

(1) The Clerk of Court maintains offices in St. Paul, Minneapolis, Duluth, and Fergus Falls. All offices are generally open from 8:00 a.m. to

5:00 p.m., Monday through Friday. But the offices are closed on the following holidays:

- New Year's Day;
- Martin Luther King Jr.'s Birthday;
- Washington's Birthday;
- Memorial Day;
- Independence Day;
- Labor Day;
- Columbus Day;
- Veterans' Day;
- Thanksgiving Day;
- the Friday after Thanksgiving Day; and
- Christmas Day.

(2) In general, the clerk maintains the files for each pending matter in electronic format. A party may file papers relative to any matter in any office, and a party may get copies of publicly filed papers from any office.

(d) Calendars. The court operates on an individual calendar system. Questions about motions, hearing or trial dates, or other issues related to a particular case should be addressed to the courtroom deputy for the judge to whom the case has been assigned.

[Adopted effective February 1, 1991; amended November 1, 1996; amended October 29, 2003; amended May 14, 2013]

2013 Advisory Committee's Note to LR 83.11

The language of LR 83.11 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (c) (former subsection (b)) has been revised to better reflect the court's current practices with respect to what offices are open, what holidays are observed, and how files are maintained.

2003 Advisory Committee's Note to LR 83.11

The first paragraph of LR 83.11 (a) was amended in 2003 to conform to the current Court procedure of assigning cases to divisions and judges pursuant to the Order that may be revised from time to time.

1991 Advisory Committee's Note To LR 83.11

The division system of the United States District Court for the District of Minnesota is a product of the Courts' modification of the division system established by statute to fit the practicalities of present judicial activity within the district.

By statute, Minnesota is divided into six divisions. 28 U.S.C. § 103. The statute provides that terms of Court shall be held in Winona, Mankato, St. Paul, Minneapolis, Duluth, and Fergus Falls. A District Court retains the discretion to pretermit any regular session of Court for insufficient business or other good cause. 28 U.S.C. § 140.

The Court on two occasions has utilized its pretermission authority to effectively eliminate trials or hearings in three divisions. By an Order dated December 2, 1960, the Court pretermitted the terms of Court in the First and Second Divisions. In an order dated January 31, 1990, the Court pretermitted the terms of Court in the Sixth Division. The Judges of the Court maintain chambers in the Third Division and Fourth Division. Cases emanating from counties of the First, Second, Third, Fourth and Sixth Divisions are assigned to either the Third or fourth Division based upon the location of the chambers of the Judge to whom the case is assigned. Cases emanating from the Fifth Division are assigned to the Fifth Division regardless of the location of the chambers of the Judge to whom the case is assigned.

The remaining significance of the division system in Minnesota is two-fold. First, petit juries are selected by division. That is, cases assigned to the Third Division have their jury drawn from individuals residing in counties that make up the Third Division. The same is true in the Fourth and Fifth Divisions. Second, although the Judges of the Court maintain offices in the Third and Fourth Divisions, terms of Court are held in the Fifth Division for matters assigned to the Fifth Division.

LR 83.12 COMPLAINTS AGAINST A JUDGE

A person may file with the Clerk of the United States Court of Appeals for the Eighth Circuit a complaint against a judge alleging misconduct or disability. Such complaints are governed by

- 28 U.S.C. § 372(c);
- the Judicial-Conduct and Judicial-Disability Rules adopted by the Judicial Conference of the United States; and
- the Rules Governing Complaints of Judicial Misconduct and Disability adopted by the Judicial Council of the Eighth Circuit.

[Adopted effective November 1, 1996; amended May 14, 2013]

2013 Advisory Committee's Note to LR 83.12

The language of LR 83.12 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments. In addition, LR 83.12 has been revised to refer not only to the relevant Eighth Circuit rules, but also to the relevant rules of the Judicial Conference of the United States.

1996 Advisory Committee's Note to LR 83.12

LR 83.12 was added in the 1996 amendments upon consideration by the Committee of the request of Judge William J. Bauer, Chairman of the Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of the United States, that federal district courts include in their Local Rules a reference to the procedure established by 28 U.S.C. § 372(c) and to the Circuit Court rules governing the process. The Judicial Council of the Eighth Circuit agreed with this proposal at its meeting of December 6, 1994. See letter from the Honorable William J. Bauer to the Honorable Richard S.

Arnold, October 14, 1994; letter from the Honorable Richard S. Arnold to the Honorable William J. Bauer, December 7, 1994.

LR 83.13 COURT APPOINTEES

(a) Scope. This rule applies to any person whom a judge appoints to assist the court in a matter. Appointees under this rule may include, for example, special masters, receivers, referees, trustees, commissioners, court-appointed experts, investigators, mediators, and arbitrators.

(b) Conflicts of Interest.

(1) If an appointee becomes aware of any circumstances that might constitute, or might reasonably appear to constitute, a conflict of interest, the appointee must immediately inform the appointing judge of all facts relevant to those circumstances. The appointing judge must then determine what, if any, action should be taken.

(2) A "conflict of interest" includes any set of circumstances that affects, or might reasonably appear to affect, an appointee's ability to act impartially in the matter for which he or she was appointed.

(c) Complaints.

(1) A complaint about an appointee's conduct must be made in writing to the appointing judge. The complaint must include a detailed description of the facts and circumstances giving rise to the complaint and must expressly identify the statute, rule, regulation, canon, or other authority on which the complaint is based.

(2) The judge must permit the appointee and the parties to respond to the complaint.

(3) The judge must review the complaint, determine whether the appointee committed misconduct, and decide what action, if any, to take. The judge may take appropriate action to protect the rights and interests of anyone who may have been affected by an appointee's misconduct.

(d) Court-Initiated Discipline. An appointing judge may, at any time, independently review an appointee's conduct and take appropriate action.

[Adopted effective January 3, 2000; amended May 14, 2013; amended November 18, 2013]

2013 Advisory Committee's Note to LR 83.13

The language of LR 83.13 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

After the May 2013 amendments, the language in subsection (b) was further amended to clarify that an appointee is obligated to inform the judge of potential conflicts of interests when circumstances "might reasonably appear" to affect an appointee's ability to act impartially.

1999 Advisory Committee's Note to LR 83.13

The Committee concluded that allegations of misconduct by court appointees will most often arise out of either actual or apparent conflicts of interest. For this reason, the rule expressly requires appointees to disclose any such conflicts to the appointing judge. The Committee further concluded that it would not be feasible or necessary to develop a comprehensive code of ethical conduct for all court appointees. Such appointees will be expected to follow the broad moral and ethical principles that guide the conduct of lawyers and judicial officers.

The Committee recognizes that judges must retain the authority to manage and control their cases. The automatic assignment of an "outside judge" to consider complaints against a court appointee could adversely affect that authority. If a party or the appointing judge believes that some other judge should consider a complaint against an appointee, the general rules regarding recusal would be applicable.

This rule confirms the appointing judge's authority to act on a complaint of misconduct by an appointee. The rule expressly recognizes the judge's authority to (a) preserve the integrity of the court by taking appropriate disciplinary action against the appointee, and (b) protect litigants whose interests may have been adversely affected by the misconduct of an appointee. A judge's response to misconduct by an appointee may include, without being limited to, termination of the appointment, imposition of sanctions, application of the power of contempt, recommending to other judges that the appointee should be barred from future appointments in this District, initiation of attorney disciplinary proceedings in this District pursuant to L.R. 83.6(e), referring the matter to the Minnesota Office of Lawyers Professional Responsibility, or referring the matter to the United States Attorney or the Minnesota Attorney General to consider criminal charges. Complaints regarding fee issues (in cases involving special masters) should be raised and addressed under Fed.R.Civ.P. 53. Any party who is dissatisfied with a judge's action on a complaint against an appointee would retain the same right to appeal that exists for any other action taken by a district court judge.