



## Proposed Amendments to Local Rules

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## LR 7.1 Proposed Changes – Redline

### LR 7.1 Civil Motion Practice

(a) **Nondispositive Motions.** Unless otherwise ordered by the District Judge or Magistrate Judge, all nondispositive motions, including but not limited to discovery, third-party practice, intervention or amendment of pleading, shall be heard by the Magistrate Judge to whom the matter is assigned. A hearing date must be secured before filing motion papers. Hearings may be scheduled by contacting the calendar clerk of the appropriate Magistrate Judge. After securing a hearing date, the parties may jointly request to have the hearing eliminated. If the Court approves the request or sua sponte cancels the hearing, all subsequently-filed motion papers must be served as if the hearing date was still in effect, and the motion will be considered submitted as of the original hearing date.

(1) *—Moving Party; Supporting Documents; Time Limits.* No motion shall be heard by a Magistrate Judge unless the moving party files pursuant to LR 5.2 and serves the following documents at least 14 days prior to hearing:

- (A) Notice of ~~Motion~~ Hearing
- (B) Motion
- ~~(C) Proposed Order~~
- (C) Memorandum of Law
- (D) Affidavits and Exhibits
- ~~(E) Memorandum of Law~~
- (E) Proposed Order\*

Affidavits and exhibits shall not be attached to the memorandum of law, but shall be filed separately. Exhibits filed without a corresponding affidavit must contain a separate title page.

Reply briefs are not permitted to be filed in support of non-dispositive motions, except by prior permission of the Court.

(2) *Responding Party; Supporting Documents; Time Limits.* Any party responding to the motion shall file pursuant to LR 5.2 and serve the following documents at least 7 days prior to the hearing:

- (A) Memorandum of Law
- (B) Affidavits and Exhibits

Affidavits and exhibits shall not be attached to the memorandum of law, but shall be filed separately. Exhibits filed without a corresponding affidavit must contain a separate title page.

(b) **Dispositive Motions.** Unless otherwise ordered by the ~~district judge~~ District Judge, dispositive motions in any civil case shall be heard by the ~~judge~~ District Judge to whom the case is assigned. A hearing date must be secured before filing motion papers. Hearings may be scheduled by contacting the calendar clerk of the appropriate ~~judge.~~ Motions District Judge. After securing a hearing date, the parties may jointly request to have the hearing eliminated. If the Court approves the request or sua sponte cancels the hearing, all subsequently-filed motion papers must be served as if the hearing date was still in effect, and the motion will be considered submitted as of the original hearing date. For the purposes of this Rule, motions for injunctive relief, judgment on the pleadings, summary judgment, to dismiss, ~~and~~ to certify a class action, and to exclude experts under Daubert and Fed. R. Evid. 702 are considered dispositive motions ~~for the purpose of this rule. This rule does not govern post-trial or post-judgment motions.~~

(1) *Moving Party; Supporting Documents; Time Limits.* No motion shall be heard by a ~~district judge~~ District Judge unless the moving party files and serves the following documents in accordance with Local Rule 5.1 et seq., the Electronic Case Filing Procedures, and Fed. R. Civ. P. 5(b) at least 45 days prior to the hearing:

- (A) ~~Motion~~ (B) Notice of Hearing
- (B) Motion
- (C) Memorandum of Law
- (D) Affidavits and Exhibits
- (E) Proposed Order\*

(2) *Responding Party; Supporting Documents; Time Limits.* Any party responding to the motion shall file and serve the following documents in accordance with Local Rule 5.1 et seq., the Electronic Case Filing Procedures, and Fed. R. Civ. P. 5(b) at least 20 days prior to the hearing:

- (A) Memorandum of Law
- (B) Affidavits and Exhibits

(3) *Reply Memorandum.* The moving party may submit a reply memorandum of law by filing and serving such memorandum in accordance with Local Rule 5.1 et seq., the Electronic Case Filing Procedures, and Fed. R. Civ. P. 5(b) at least 12 days prior to the hearing. A reply memorandum may not raise new grounds for relief or present matters that do not relate to the response.

(4) *Multiple Dispositive Motions.* Multiple motions for summary judgment (or partial summary judgment) filed by a single party at or about the same time will be considered as a single motion for purposes of Local Rule 7.1(d).

\*Refer to the Electronic Case Filing Procedures and the Orders section for information on providing the ~~court~~ Court with proposed orders.

(c) **Post-trial and Post-judgment Motions.** Post-trial and post-judgment motions that are filed within the applicable time periods set forth in the Federal Rules of Civil Procedure may be made to the District or Magistrate Judge before whom the case was heard. Hearings may be scheduled by contacting the calendar clerk of the appropriate Judge. The requirements of section (b) shall govern post-trial and post-judgment motions except that, upon the timely filing of any such motion, the Court may order a different briefing schedule for the memoranda of law and supporting documents than set forth in section (b).

(d) **Length of Memoranda of Law; Certification of Compliance.** No party shall file a memorandum of law exceeding 12,000 words, or, if it uses a monospaced face, 1,100 lines of text, except by prior permission of the Court. If a reply memorandum of law is filed, the cumulative total of the original memorandum and the reply memorandum shall not exceed 12,000 words, or, if it uses a monospaced face, 1,100 lines of text, except by permission of the Court. All text, including headings, footnotes, and quotations, count toward the word and line limitation. The caption designation required by LR 5.2, the signature text, and any certificates of counsel do not count toward the limitation. Any requests to expand these limits, and any responses to such requests, shall be made by letter to the Court of no more than two pages in length, filed and served in accordance with the ECF procedures.

A memorandum of law submitted under LR 7.1(a) or 7.1(b) must include a certificate by the attorney, or an unrepresented party, that the memorandum complies with the length limitation of this rule and with the type size limitation of LR 7.1(e). The certificate must state either the number of words or the number of lines of monospaced type in the memorandum. If a reply memorandum of law is filed, the certificate included with the reply memorandum shall designate the cumulative total of words or lines of the two memoranda. The person preparing the certificate may rely on the word or line count of the word processing program used to prepare the memorandum only if the preparer certifies that the word or line count of the word processing program has been applied specifically to include all text, including headings, footnotes, and quotations. The certificate of compliance must also include the name and version of the word processing software used to prepare the memorandum.

(~~d~~ e) **Failure to Comply.** In the event a party fails to timely deliver and serve a memorandum of law, the Court may strike the hearing from its motion calendar, continue the hearing, refuse to permit oral argument by the party not filing the required statement, consider the matter submitted without oral argument, allow reasonable attorney's fees, or proceed in such other manner as the Court deems appropriate.

(~~e~~ f) **Type Size.** Memoranda of law filed by a represented party shall be typewritten and double-spaced. Quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. All text, including footnotes,

must appear in at least font size 13 based on the designation of the word processing program used to prepare the memorandum. Pages shall be 8 ½ by 11 inches in size, and no text may appear beyond the page area of 6 ½ by 9 inches, except that page numbers may be placed in the margins.

Memoranda of law filed by a party pro se shall be typewritten and double-spaced or, if handwritten, shall be printed legibly.

(f g) **Unsolicited Memoranda of Law.** Except with permission of the Court, no memoranda of law will be allowed except as provided in these rules.

(g h) **Motion to Reconsider.** Motions to reconsider are prohibited except by express permission of the Court, which will be granted only upon a showing of compelling circumstances. Requests to make such a motion, and responses to such requests, shall be made by letter to the Court of no more than two pages in length, ~~a copy of which must be sent to opposing counsel.~~ which shall be filed and served in accordance with the ECF procedures.

(i) **Citing Judicial Dispositions.** A party should file and serve a copy of any federal judicial opinion, order, judgment, or disposition with the brief or other paper in which it is cited, only to the extent that it is not available in a publicly accessible electronic database.

## LR 7.1 Proposed Final Language

### LR 7.1 Civil Motion Practice

(a) **Nondispositive Motions.** Unless otherwise ordered by the District Judge or Magistrate Judge, all nondispositive motions, including but not limited to discovery, third-party practice, intervention or amendment of pleading, shall be heard by the Magistrate Judge to whom the matter is assigned. A hearing date must be secured before filing motion papers. Hearings may be scheduled by contacting the calendar clerk of the appropriate Magistrate Judge. After securing a hearing date, the parties may jointly request to have the hearing eliminated. If the Court approves the request or sua sponte cancels the hearing, all subsequently-filed motion papers must be served as if the hearing date was still in effect, and the motion will be considered submitted as of the original hearing date.

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(2) *Responding Party; Supporting Documents; Time Limits.* Any party responding to the motion shall file pursuant to LR 5.2 and serve the following documents at least 7 days prior to the hearing:

- (A) Memorandum of Law
- (B) Affidavits and Exhibits

Affidavits and exhibits shall not be attached to the memorandum of law, but shall be filed separately. Exhibits filed without a corresponding affidavit must contain a separate title page.

(b) **Dispositive Motions.** Unless otherwise ordered by the District Judge, dispositive motions in any civil case shall be heard by the District Judge to whom the case is assigned. A hearing date must be secured before filing motion papers. Hearings may be scheduled by contacting the calendar clerk of the appropriate District Judge. After securing a hearing date, the parties may jointly request to have the hearing eliminated. If the Court approves the request or sua sponte cancels the hearing, all subsequently-filed motion papers must be served as if the hearing date was still in effect, and the motion will be considered submitted as of the original hearing date. For the purposes of this Rule, motions for injunctive relief, judgment on the pleadings, summary judgment, to dismiss, to certify a class action, and to exclude experts under Daubert and Fed. R. Evid. 702 are considered dispositive motions.

(1) *Moving Party; Supporting Documents; Time Limits.* No motion shall be heard by a District Judge unless the moving party files and serves the following documents in accordance with Local Rule 5.1 et seq., the Electronic Case Filing Procedures, and Fed. R. Civ. P. 5(b) at least 45 days prior to the hearing:

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(4) *Multiple Dispositive Motions.* Multiple motions for summary judgment (or partial summary judgment) filed by a single party at or about the same time will be considered as a single motion for purposes of Local Rule 7.1(d).

\*Refer to the Electronic Case Filing Procedures and the Orders section for information on providing the Court with proposed orders.

(c) **Post-trial and Post-judgment Motions.** Post-trial and post-judgment motions that are filed within the applicable time periods set forth in the Federal Rules of Civil Procedure may be made to the District or Magistrate Judge before whom the case was heard. Hearings may be scheduled by contacting the calendar clerk of the appropriate Judge. The requirements of section (b) shall govern post-trial and post-judgment motions except that, upon the timely filing of any such motion, the Court may order a different briefing schedule for the memoranda of law and supporting documents than set forth in section (b).

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A memorandum of law submitted under LR 7.1(a) or 7.1(b) must include a certificate by the attorney, or an unrepresented party, that the memorandum complies with the length limitation of this rule and with the type size limitation of LR 7.1(e). The certificate must state either the number of words or the number of lines of monospaced type in the

memorandum. If a reply memorandum of law is filed, the certificate included with the reply memorandum shall designate the cumulative total of words or lines of the two memoranda. The person preparing the certificate may rely on the word or line count of the word processing program used to prepare the memorandum only if the preparer certifies that the word or line count of the word processing program has been applied specifically to include all text, including headings, footnotes, and quotations. The certificate of compliance must also include the name and version of the word processing software used to prepare the memorandum.

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(i) **Citing Judicial Dispositions.** A party should file and serve a copy of any federal judicial opinion, order, judgment, or disposition with the brief or other paper in which it is cited, only to the extent that it is not available in a publicly accessible electronic database.

## Proposed Changes LR 7.2(a)-(c) – Redline

### LR 7.2 Procedures In Social Security Cases

#### (a) Filing an Answer.

(1) Within 60 days of the service upon the United States of a pleading under 42 U.S.C. § 405(g), the Commissioner of Social Security shall deliver to the Clerk of Court an answer and a certified copy of the ~~transcript of the~~ administrative record.

(2) A motion to extend the time in which to answer shall be brought prior to the expiration of the 60 day period.

#### (b) Motions - Time Limits.

(1) Within 60 days of the filing and service of the answer and administrative record ~~transcript~~, plaintiff shall file with the Clerk of Court and serve on defendant a motion for summary judgment and a memorandum of law in support. Within 45 days from the date of service of plaintiff's motion, defendant shall file with the Clerk of Court and serve on plaintiff a motion for summary judgment and a memorandum of law in support. Plaintiff may submit a reply memorandum. The reply memorandum shall be filed with the Clerk of Court and served on defendant within 10 days from the date of service of defendant's motion.

(2) All motions shall be decided without oral argument unless otherwise ordered by the Court.

(3) Pursuant to Fed.R.Civ.P. 72(b) and the provisions of 28 U.S.C. § 636(b)(1)(B), within 10 days after being served with a copy of a Magistrate Judge's report and recommendation, any party seeking to object to the same shall file with the Clerk of Court and serve on the opposing party written objections to the proposed findings and recommendations. Any party objecting to a magistrate judge's proposed findings and recommendation shall file a brief within 10 days after being served with a copy of the recommended disposition. A party may respond to the objecting party's brief within 10 days after being served. All briefs filed under this rule shall be limited to 10 pages.

#### (c) Review After Remand When Courts Retain Jurisdiction.

(1) Within 60 days of the final decision of the Commissioner of Social Security upon remand, if the final decision upon remand is adverse to the plaintiff, the Commissioner shall file with the Clerk of Court and serve a supplemental administrative record ~~transcript~~.

(2) If the plaintiff intends to seek review of the Commissioner's action following remand, within 60 days of the service of the supplemental administrative

~~record transcript~~ on plaintiff, plaintiff shall file with the Clerk of Court and serve on defendant a motion for summary judgment and a memorandum of law in support. Within 45 days from the date of service of plaintiff's motion, defendant shall file with the Clerk of Court and serve on plaintiff a motion for summary judgment and a memorandum of law in support.

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## **LR 7.2 (a)-(c) Proposed Final Language**

### **LR 7.2 Procedures In Social Security Cases**

#### **(a) Filing an Answer.**

- (1) Within 60 days of the service upon the United States of a pleading under 42 U.S.C. § 405(g), the Commissioner of Social Security shall deliver to the Clerk of Court an answer and a certified copy of the administrative record.
- (2) A motion to extend the time in which to answer shall be brought prior to the expiration of the 60 day period.

#### **(b) Motions - Time Limits.**

- (1) Within 60 days of the filing and service of the answer and administrative record, plaintiff shall file with the Clerk of Court and serve on defendant a motion for summary judgment and a memorandum of law in support. Within 45 days from the date of service of plaintiff's motion, defendant shall file with the Clerk of Court and serve on plaintiff a motion for summary judgment and a memorandum of law in support. Plaintiff may submit a reply memorandum. The reply memorandum shall be filed with the Clerk of Court and served on defendant within 10 days from the date of service of defendant's motion.
- (2) All motions shall be decided without oral argument unless otherwise ordered by the Court.
- (3) Pursuant to Fed.R.Civ.P. 72(b) and the provisions of 28 U.S.C. § 636(b)(1)(B), within 10 days after being served with a copy of a Magistrate Judge's report and recommendation, any party seeking to object to the same shall file with the Clerk of Court and serve on the opposing party written objections to the proposed findings and recommendations. Any party objecting to a magistrate judge's proposed findings and recommendation shall file a brief within 10 days after being served with a copy of the recommended disposition. A party may respond to the objecting party's brief within 10 days after being served. All briefs filed under this rule shall be limited to 10 pages.

#### **(c) Review After Remand When Courts Retain Jurisdiction.**

(1) Within 60 days of the final decision of the Commissioner of Social Security upon remand, if the final decision upon remand is adverse to the plaintiff, the Commissioner shall file with the Clerk of Court and serve a supplemental administrative record.

(2) If the plaintiff intends to seek review of the Commissioner's action following remand, within 60 days of the service of the supplemental administrative record on plaintiff, plaintiff shall file with the Clerk of Court and serve on defendant a motion for summary judgment and a memorandum of law in support. Within 45 days from the date of service of plaintiff's motion, defendant shall file with the Clerk of Court and serve on plaintiff a motion for summary judgment and a memorandum of law in support.

\* \* \* \* \*

## LR 9.1 Proposed Changes – Redline

### LR 9.1 Social Security Number In Social Security Cases

Any person seeking judicial review of a decision of the Commissioner of Social Security ~~Secretary of Health and Human Services~~ under Section 405(g) of the Social Security Act (42 U.S.C. § 405(g)) shall provide, on a separate paper attached to the complaint served on the Commissioner of Social Security ~~Secretary of Health and Human Services~~ the social security number of the worker on whose wage record the application for benefits was filed. The person shall also state, in the complaint, that the social security number has been attached to the copy of the complaint served on the Commissioner of Social Security ~~Secretary of Health and Human Services~~. Failure to provide a social security number to the Commissioner of Social Security ~~Secretary of Health and Human Services~~ will not be grounds for dismissal of the complaint. . . .

## LR 9.1 Proposed Final Language

### LR 9.1 Social Security Number In Social Security Cases

Any person seeking judicial review of a decision of the Commissioner of Social Security under Section 405(g) of the Social Security Act (42 U.S.C. § 405(g)) shall provide, on a separate paper attached to the complaint served on the Commissioner of Social Security the social security number of the worker on whose wage record the application for benefits was filed. The person shall also state, in the complaint, that the social security number has been attached to the copy of the complaint served on the Commissioner of Social Security. Failure to provide a social security number to the Commissioner of Social Security will not be grounds for dismissal of the complaint. . . .

## **LR 15.1 Proposed Changes – Redline**

### **LR 15.1 Form Of A Motion To Amend And Its Supporting Documentation**

A party who moves to amend a pleading shall file such motion and shall attach [to the motion: \(1\) a copy of the proposed amended pleading, and \(2\) a redline comparing the proposed](#) amended pleading to the ~~motion~~ [party's operative pleading](#). If the Court grants the motion to amend, the moving party shall file the amended pleading with the Clerk of Court. Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must, except by leave of Court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference.

## **LR 15.1 Proposed Final Language**

### **LR 15.1 Form Of A Motion To Amend And Its Supporting Documentation**

A party who moves to amend a pleading shall file such motion and shall attach to the motion: (1) a copy of the proposed amended pleading, and (2) a redline comparing the proposed amended pleading to the party's operative pleading. If the Court grants the motion to amend, the moving party shall file the amended pleading with the Clerk of Court. Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must, except by leave of Court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference.

## **LR 37.1 Proposed Changes – Redline**

### **LR 37.1 Motions Presenting Discovery Disputes**

Except for motions made under LR 16.3, no motion for modification of discovery or disclosure requirements will be entertained unless it is accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the matter without Court action.

Motions to extend or modify the pretrial discovery schedule are governed by LR 16.3.

Requests for telephonic hearings are governed by LR 7.3.

Any motions presenting discovery disputes shall be filed and served ~~and filed~~ prior to the discovery termination date established pursuant to LR 16.

## **LR 37.1 Proposed Final Language**

### **LR 37.1 Motions Presenting Discovery Disputes**

Except for motions made under LR 16.3, no motion for modification of discovery or disclosure requirements will be entertained unless it is accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the matter without Court action.

Motions to extend or modify the pretrial discovery schedule are governed by LR 16.3.

Requests for telephonic hearings are governed by LR 7.3.

Any motions presenting discovery disputes shall be filed and served prior to the discovery termination date established pursuant to LR 16.

## LR 72.2(a) Proposed Changes – Redline

### LR 72.2 Review Of Magistrate Judge Rulings

#### (a) Nondispositive Matters

A Magistrate Judge to whom a pretrial matter not dispositive of a claim or defense of a party is referred shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter. Within 10 days after being served with a copy of the Magistrate Judge's order, unless a different time is prescribed by the Magistrate Judge or a District Judge, a party may ~~serve~~ file and ~~file~~ serve objections to the order; a party may not thereafter assign as error a defect in the Magistrate Judge's order to which objection was not timely made.

\* \* \* \* \*

## LR 72.2(a) Proposed Final Language

### LR 72.2 Review Of Magistrate Judge Rulings

#### (a) Nondispositive Matters

A Magistrate Judge to whom a pretrial matter not dispositive of a claim or defense of a party is referred shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter. Within 10 days after being served with a copy of the Magistrate Judge's order, unless a different time is prescribed by the Magistrate Judge or a District Judge, a party may file and serve objections to the order; a party may not thereafter assign as error a defect in the Magistrate Judge's order to which objection was not timely made.

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## LR 83.10 Proposed Changes – Redline

### LR 83.10 Sentencing Procedures In Criminal Cases Subject To The Sentencing Reform Act Of 1984

The following procedures are hereby established to govern sentencing proceedings for all criminal proceedings subject to the Sentencing Reform Act of 1984, 18 U.S.C. § 3551, et seq.:

**(a) Plea Agreement and Sentencing Stipulations.** At the time of a plea or the offer of a plea agreement, counsel for the defendant and counsel for the government will submit a written plea agreement and statement of facts. This written submission shall include the maximum potential penalties for the charged offenses, all terms of the plea agreement, and, to the extent possible, stipulations of fact which address the essential elements of the offense and the relevant sentencing guidelines. Prior to entry of ~~the~~ a guilty plea, counsel for the defendant and counsel for the government shall make every effort to resolve all material disputes in order to minimize the necessity of an evidentiary hearing at the time of sentencing. The parties' resolution ~~of material disputes must~~ remains subject to Court review and acceptance.

**(b) ~~The~~ Preliminary Presentence Report.** The probation office shall exercise due diligence in conducting the presentence investigation and preparing ~~the presentence report~~ a Preliminary Presentence Report. Within the reasonable constraints of ongoing investigations and proceedings, counsel for the government shall exercise due diligence in providing materials to the probation office for purposes of preparing a Preliminary Presentence Report. On request, defendant's counsel is entitled to notice and reasonable opportunity to attend any interview of the defendant by the probation officer, in the course of the presentence investigation. ~~Upon completion of the presentence report, the report shall be disclosed to the parties within 3 days. The presentence report~~ The Preliminary Presentence Report shall be deemed to have been disclosed ~~when 1) a copy of the report is physically obtained by counsel from the probation office, 2) one day after the report's availability is orally communicated, or 3) when the report or notice of the report's availability is mailed~~ three calendar days after it has been mailed or otherwise delivered to counsel for the parties.

**(c) Objections to the Preliminary Presentence Report.** ~~Within~~ If a party objects to the guideline calculations and/or the facts underlying the guideline calculation set forth in the Preliminary Presentence Report, within14 days of disclosure of the Preliminary pPresentence ~~r~~Report to the parties, counsel ~~for the defendant and counsel for the government~~ shall deliver to the probation officer ~~and opposing counsel~~ either:

- ~~(1)~~ written correspondence objecting to the Preliminary Presentence Report identifying all such objections. ~~and all proposed amendments a party may have to the presentence report, including any objections to~~ A party shall

include material information ~~or sentencing guideline ranges referenced in the presentence report and the basis for any applicable departures; or~~

~~(2) written correspondence adopting the findings of the presentence report and/or legal support for any such objections as well as any minor amendments and/or corrections that do not affect the guideline calculations.~~

Untimely submissions by counsel may not be accepted by the probation office absent approval of the presiding Judge.

**(d) ~~Investigation and Resolution of Disputes~~ Final Presentence Report and Addendum.** ~~If a party reasonably disputes sentencing factors or facts material to sentencing or seeks the inclusion of additional factors or facts material to sentencing in the presentence report, it is the obligation of the complaining party to seek informal resolution of such factors or facts through opposing counsel and the U.S. Probation Office within 7 days after submission of the written correspondence referenced in paragraph (c)(1) and prior to filing the pleadings referenced in paragraphs (e) through (g), infra. This presentence conference is mandatory except when sentencing factors or facts are not in dispute. Informal resolution of disputes should be reached to the extent practicable through informal procedures including telephone conferences. The probation officer shall make any revisions to the presentence report deemed proper, and, in the event that any objections made by counsel remain unresolved, counsel are obligated to file the position pleading referenced in paragraph (e) and the based on the parties' submissions. The probation officer shall also prepare an aAddendum setting forth these objections and any comment thereon addressing the parties' objections to the Preliminary Presentence Report.~~

The probation office shall transmit the Final Presentence Report and Addendum to the presiding Judge and to counsel for the parties. The Final Presentence Report shall be deemed to have been disclosed three calendar days after it has been mailed or otherwise delivered to the parties.

The probation office shall also submit a confidential sentencing recommendation to the presiding Judge. This sentencing recommendation shall not be further disclosed without a specific directive by the Court.

**(e) ~~Remaining Objections~~ Position Regarding Sentencing.** Within 14 days of disclosure of the Final Presentence Report ~~When sentencing factors or facts material to sentencing cannot be resolved via the presentence conference,~~ counsel for the defendant and counsel for the government shall each file a pleading entitled "Position of the Parties with Respect to Sentencing Factors" in accordance with Guideline §§ 6A1.2 or in accordance with subsequent rules and policies published by the United States Sentencing Commission. This position Regarding Sentencing. The pleading shall set forth the party's position regarding the applicable Sentencing Guidelines as well as the party's position regarding any relevant sentencing factors set forth in Title 18, United States Code, Section 3553(a). If any issues ~~which remain~~ are in dispute,

~~the parties' positions with respect to all disputed~~ Position Regarding Sentencing shall identify such issues for the Court, the extent to which the Court can rely on the Final Presentence Report to resolve any such objections, and identify all any issues ~~of fact to be tried and determined at the sentencing hearing. The act of filing this pleading will serve as certification that the party has conferred~~ or objections that will be subject to an evidentiary hearing. ~~with opposing counsel and with the U.S. Probation Office in a good faith effort to resolve the disputed matter or matters. This pleading shall be filed with the Clerk of Court, with one copy served upon the probation office and one copy served upon opposing counsel.~~

This pleading shall be filed with the Clerk of Court, with one copy served upon the probation office and one copy served upon opposing counsel. Counsel shall also provide two courtesy copies of the submission to the presiding Judge.

**(f) Request for Evidentiary Hearing.** The parties must indicate in their pPosition Regarding Sentencing pleadings whether an evidentiary hearing is required to resolve any of the issues in dispute. If either party believes a hearing is necessary, the party bearing the burden of proof must file a separate Mmotion requesting an Re: Eevidentiary Hhearing contemporaneous with submission of the pPosition Regarding Sentencing pleading. The motion shall set forth to the extent practicable, the unresolved issues, ~~whether an evidentiary hearing is necessary,~~ and ~~if so,~~ an estimate of the time required for the hearing. At least 5 business days prior to any evidentiary hearing, the parties shall each provide the presiding Judge, opposing counsel and the probation officer with a witness list and exhibit list, ~~and a list of witnesses and exhibits. Within 7 days of service of a Motion for Re: Evidentiary Hearing, opposing counsel must advise the Court whether or not witnesses and/or exhibits will be offered to rebut the movant's position.~~

**(g) ~~Pleading Deadline~~ Reply to Position Regarding Sentencing.** ~~The pleadings referenced in paragraphs (e) and (f) must be served prior to the expiration of the period for the informal resolution of disputed facts or factors; that is, within 21 days of disclosure of the presentence report to the parties. The time set forth for submission of the "Position of the Parties With Respect to Sentencing Factors" and/or the Motion Re: Evidentiary Hearing may be modified by the presiding Judge/Magistrate Judge for good cause shown.~~ No later than 5 business days prior to sentencing, counsel for the defendant and counsel for the government may each file a response to the opposing party's "Position Regarding Sentencing." This pleading shall be filed with the Clerk of Court, with one copy served upon the probation office and one copy served upon opposing counsel. Counsel shall also provide two courtesy copies of the submission to the presiding Judge.

If the government is to file a downward departure motion made under Section 5K1.1 and/or Title 18, United States Code, Section 3553(e), it shall do so no later than 5 business days prior to sentencing. If filed, this pleading shall be filed under seal with the Clerk of Court, with one copy served upon the probation office and one copy

served upon opposing counsel. Counsel shall also provide two courtesy copies of the submission to the presiding Judge.

~~(h) **Addendum to Presentence Report Complex Cases.** Upon completion of an addendum reflecting the parties' sentencing positions, the probation office shall transmit to the presiding Judge the addendum and the revised presentence report, including guideline computations. When the presentence investigation report is submitted to the Court, the probation office shall also submit a confidential sentencing recommendation. This sentencing recommendation shall not be further disclosed without a specific directive by the Court. The probation office shall also transmit the addendum and any revisions to the presentence report to the parties. To the extent a party deems appropriate given the complexity or particular nature of a case, a party or parties may seek leave from the presiding Judge to deviate from the sentencing procedures or dates set forth herein.~~

**(l) Resolution of Disputes.** If sentencing facts or factors are the subject of reasonable dispute, the Court will afford an opportunity for parties to present relevant information after which the Court shall resolve disputes in accordance with Rule 32(a)(1) of the Federal Rules of Criminal Procedure.

**(j) Court's Authority.** Nothing in this ~~order~~ rule shall restrict the Court's authority to accept or to reject plea agreements or to accept or to reject stipulations of fact.

**(k) Non-Disclosure.** Nothing in this ~~order~~ rule shall require the disclosure of any portions of the ~~p~~Presentence ~~r~~Report that are not discoverable under Fed. R. Crim. P. 32.

## **LR 83.10 Proposed Final Language**

### **LR 83.10 Sentencing Procedures In Criminal Cases Subject To The Sentencing Reform Act Of 1984**

The following procedures are hereby established to govern sentencing proceedings for all criminal proceedings subject to the Sentencing Reform Act of 1984, 18 U.S.C. § 3551, et seq.:

**(a) Plea Agreement and Sentencing Stipulations.** At the time of a plea or the offer of a plea agreement, counsel for the defendant and counsel for the government will submit a written plea agreement and statement of facts. This written submission shall include the maximum potential penalties for the charged offenses, all terms of the plea agreement, and, to the extent possible, stipulations of fact which address the essential elements of the offense and the relevant sentencing guidelines. Prior to entry of a guilty plea, counsel for the defendant and counsel for the government shall make every effort to resolve all material disputes in order to minimize the necessity of an

evidentiary hearing at the time of sentencing. The parties' resolution remains subject to Court review and acceptance.

**(b) Preliminary Presentence Report.** The probation office shall exercise due diligence in conducting the presentence investigation and preparing a Preliminary Presentence Report. Within the reasonable constraints of ongoing investigations and proceedings, counsel for the government shall exercise due diligence in providing materials to the probation office for purposes of preparing a Preliminary Presentence Report. On request, defendant's counsel is entitled to notice and reasonable opportunity to attend any interview of the defendant by the probation officer, in the course of the presentence investigation. The Preliminary Presentence Report shall be deemed to have been disclosed three calendar days after it has been mailed or otherwise delivered to counsel for the parties.

**(c) Objections to the Preliminary Presentence Report.** If a party objects to the guideline calculations and/or the facts underlying the guideline calculation set forth in the Preliminary Presentence Report, within 14 days of disclosure of the Preliminary Presentence Report to the parties, counsel shall deliver to the probation officer and opposing counsel written correspondence objecting to the Preliminary Presentence Report identifying all such objections. A party shall include material information and/or legal support for any such objections as well as any minor amendments and/or corrections that do not affect the guideline calculations.

Untimely submissions by counsel may not be accepted by the probation office absent approval of the presiding Judge.

**(d) Final Presentence Report and Addendum.** The probation officer shall make any revisions to the presentence report deemed proper based on the parties' submissions. The probation officer shall also prepare an Addendum addressing the parties' objections to the Preliminary Presentence Report.

The probation office shall transmit the Final Presentence Report and Addendum to the presiding Judge and to counsel for the parties. The Final Presentence Report shall be deemed to have been disclosed three calendar days after it has been mailed or otherwise delivered to the parties.

The probation office shall also submit a confidential sentencing recommendation to the presiding Judge. This sentencing recommendation shall not be further disclosed without a specific directive by the Court.

**(e) Position Regarding Sentencing.** Within 14 days of disclosure of the Final Presentence Report, counsel for the defendant and counsel for the government shall each file a pleading entitled "Position Regarding Sentencing." The pleading shall set forth the party's position regarding the applicable Sentencing Guidelines as well as the party's position regarding any relevant sentencing factors set forth in Title 18, United States Code, Section 3553(a). If any issues are in dispute, the Position Regarding

Sentencing shall identify such issues for the Court, the extent to which the Court can rely on the Final Presentence Report to resolve any such objections, and identify any issues or objections that will be subject to an evidentiary hearing.

This pleading shall be filed with the Clerk of Court, with one copy served upon the probation office and one copy served upon opposing counsel. Counsel shall also provide two courtesy copies of the submission to the presiding Judge.

**(f) Request for Evidentiary Hearing.** The parties must indicate in their Position Regarding Sentencing whether an evidentiary hearing is required to resolve any of the issues in dispute. If either party believes a hearing is necessary, the party bearing the burden of proof must file a separate motion requesting an evidentiary hearing contemporaneous with submission of the Position Regarding Sentencing. The motion shall set forth to the extent practicable, the unresolved issues and an estimate of the time required for the hearing. At least 5 business days prior to any evidentiary hearing, the parties shall each provide the presiding Judge, opposing counsel and the probation officer with a witness list and exhibit list.

**(g) Reply to Position Regarding Sentencing.** No later than 5 business days prior to sentencing, counsel for the defendant and counsel for the government may each file a response to the opposing party's "Position Regarding Sentencing." This pleading shall be filed with the Clerk of Court, with one copy served upon the probation office and one copy served upon opposing counsel. Counsel shall also provide two courtesy copies of the submission to the presiding Judge.

If the government is to file a downward departure motion made under Section 5K1.1 and/or Title 18, United States Code, Section 3553(e), it shall do so no later than 5 business days prior to sentencing. If filed, this pleading shall be filed under seal with the Clerk of Court, with one copy served upon the probation office and one copy served upon opposing counsel. Counsel shall also provide two courtesy copies of the submission to the presiding Judge.

**(h) Complex Cases.** To the extent a party deems appropriate given the complexity or particular nature of a case, a party or parties may seek leave from the presiding Judge to deviate from the sentencing procedures or dates set forth herein.

**(i) Resolution of Disputes.** If sentencing facts or factors are the subject of reasonable dispute, the Court will afford an opportunity for parties to present relevant information after which the Court shall resolve disputes in accordance with Rule 32(a)(1) of the Federal Rules of Criminal Procedure.

**(j) Court's Authority.** Nothing in this rule shall restrict the Court's authority to accept or to reject plea agreements or to accept or to reject stipulations of fact.

**(k) Non-Disclosure.** Nothing in this rule shall require the disclosure of any portions of the Presentence Report that are not discoverable under Fed. R. Crim. P. 32.

## Form 3 Proposed Changes – Redline

### FORM 3

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
\_\_\_\_\_ DIVISION  
CIVIL FILE NO. \_\_\_\_\_

Name of Plaintiff,

Plaintiff,

v.

### RULE 26(f) REPORT

Name of Defendant,

Defendant.  
\_\_\_\_\_

The parties/counsel identified below participated in the meeting required by Fed.R.Civ.P. 26(f), on \_\_\_\_\_, 20\_\_\_\_, and prepared the following report.

The pretrial conference in this matter is scheduled for \_\_\_\_\_, 20\_\_\_\_, at before the United States Magistrate Judge in Room \_\_\_\_\_, Federal Courts Building, \_\_\_\_\_, Minnesota. The parties request/do not request that the pretrial be held by telephone.

#### (a) Description of Case

- (1) Concise Factual Summary of Plaintiff's Claims;
- (2) Concise Factual Summary of Defendant's claims/defenses;
- (3) Statement of Jurisdiction (including statutory citations);
- (4) Summary of Factual Stipulations or Agreements;
- (5) Statement of whether jury trial has been timely demanded by any party.

[\(6\) If the parties would like the case resolved under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota, a statement of the parties' agreement.](#)

\* \* \* \* \*

## Form 3 Proposed Final Language

### FORM 3

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
\_\_\_\_\_ DIVISION  
CIVIL FILE NO. \_\_\_\_\_

Name of Plaintiff,

Plaintiff,

v.

### RULE 26(f) REPORT

Name of Defendant,

Defendant.  
\_\_\_\_\_

The parties/counsel identified below participated in the meeting required by Fed.R.Civ.P. 26(f), on \_\_\_\_\_, 20\_\_\_\_, and prepared the following report.

The pretrial conference in this matter is scheduled for \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ before the United States Magistrate Judge \_\_\_\_\_ in Room \_\_\_\_\_, Federal Courts Building, \_\_\_\_\_, Minnesota. The parties request/do not request that the pretrial be held by telephone.

#### (a) Description of Case

- (1) Concise Factual Summary of Plaintiff's Claims;
- (2) Concise Factual Summary of Defendant's claims/defenses;
- (3) Statement of Jurisdiction (including statutory citations);
- (4) Summary of Factual Stipulations or Agreements;
- (5) Statement of whether jury trial has been timely demanded by any party.
- (6) If the parties would like the case resolved under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota, a statement of the parties' agreement.

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