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.

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 ___, 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 ___, 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.

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 ___, 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.

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 ___, 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 5.3 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 __, 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 5.5 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 __, 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 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 __, 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, 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 calendar clerk 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 simultaneously:

(A) file and serve the following documents:

(i) motion;

(ii) notice of hearing;

(iii) memorandum of law;

(iv) any affidavits and exhibits; and

(v) meet-and-confer statement; and

(B) provide to chambers and serve a proposed order.

(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 calendar clerk. The calendar clerk 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 calendar clerk — the moving party must simultaneously:

(A) file and serve the following documents:

(i) motion;

(ii) notice of hearing;

(iii) memorandum of law;

(iv) any affidavits and exhibits; and

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

(B) provide to chambers and serve a proposed order.

(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 two pages or less 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.

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

(3) 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).

(4) After filing a motion for emergency injunctive relief, the moving party must contact the judge's calendar clerk to obtain a briefing schedule.

(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 calendar clerk 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 two pages or less requesting such permission. A party who opposes such a request may file and serve a letter of two pages or less 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 two pages or less requesting such permission. A party who opposes such a request may file and serve a letter of two pages or less 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; Proposed Orders.

(1) 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.

(2) Proposed Orders. Parties must not file proposed orders on the court's ECF system. Instead, proposed orders must be emailed to chambers and served in accordance with the procedures set forth in the court's most recent civil ECF Guide.

[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 ___, 2012]

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, 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 calendar clerk to obtain a briefing schedule.

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 __, 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.

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 __, 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 ___, 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.

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 ____, 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.

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 ___, 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.

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 ___, 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.

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 Chief Magistrate Judge is 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 ___, 2012]

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.

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 ___, 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.

LR 16.7 OTHER PRETRIAL CONFERENCES [Abrogated]

[Adopted effective November 1, 1996; abrogated ___, 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.

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 __, 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 ___, 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 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 either:

(A) LR Form 3, if no party asserts a claim that arises under the patent laws; or

(B) LR Form 4, if a party asserts a claim that arises under the patent laws.

(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:

(A) If no party asserts a claim that arises under the patent laws, the joint Rule 26(f) report and proposed scheduling order must be in the form prescribed in LR Form 3.

(B) If a party asserts a claim that arises under the patent laws, the joint Rule 26(f) report and proposed scheduling order must be in the form prescribed in LR Form 4.

(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, that:

(A) if no party asserts a claim that arises under the patent laws, the joint proposed protective order be in the form prescribed in LR Form 6; or

(B) if a party asserts a claim that arises under the patent laws, the proposed protective order be in the form prescribed in LR Form 5.

(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 ___, 2012]

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). 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).

LR 26.2 FORM OF CERTAIN DISCOVERY DOCUMENTS [Abrogated]

[Adopted effective February 1, 1991; amended November 1, 1996; abrogated ___, 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 ___, 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.

LR 26.4 FILING OF DISCOVERY DOCUMENTS [Abrogated]

[Abrogated in 2001]

LR 37.1 FORM OF DISCOVERY MOTIONS

(a) A motion presenting a discovery dispute must include, in the motion itself or in an attached memorandum:

(1) a specification of the discovery in dispute; and

(2) either a verbatim recitation of each interrogatory, request, answer, response, or objection that is the subject of the motion, or a copy of the actual discovery document that is the subject of the motion.

(b) If the discovery dispute involves interrogatories, document requests, or requests for admission, the moving party's memorandum must set forth only:

(1) the particular interrogatories, document requests, or requests for admission that are the subject of the motion;

(2) the response or objection in dispute; and

(3) a concise statement of why the response or objection is improper.

[Adopted effective February 1, 1991 as LR 37.2; amended and renumbered as LR 37.1 on ___, 2012]

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

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.

LR 37.2 [Renumbered as LR 37.1]

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 __, 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 54.3 TIME LIMIT FOR MOTION FOR AWARD OF ATTORNEY'S FEES AND FOR COSTS OTHER THAN ATTORNEY'S FEES

(a) Applications for fees under the Equal Access to Justice Act shall be filed within 30 days of final judgment as defined by 28 U.S.C. § 2412.

(b) In all other cases in which attorney's fees are sought, the party seeking an award of fees shall:

(1) Within 30 days of entry of judgment in the case, file and serve an itemized motion for the award of fees. Within 14 days after being served with a motion for the award of fees, a party may file and serve a response. A reply brief may not be filed unless the Court otherwise permits; or,

(2) Within 14 days after the entry of judgment in the case, serve on all counsel of record and deliver to the Clerk of Court a Notice of Intent to Claim an Award of Attorney's Fees. The Notice shall specify the statutory or other authority for the award of fees and shall identify the names of all counsel who rendered the legal services upon which the claim is based. The Notice may propose a schedule for the presentation of motions for attorney's fees. Thereafter, the Court, or the Clerk of Court acting at the Court's direction, shall issue an order setting a schedule for the submission and consideration of the motion for attorney's fees and all supporting documentation.

(3) For good cause shown, the Court may excuse failure to comply with LR 54.3(b).

(c) In all cases in which costs are sought under Federal Rule of Civil Procedure 54(d)(1):

(1) Within 30 days of entry of the judgment in the case, a party seeking costs shall file and serve a verified bill of costs using the approved form.

(2) Within 14 days after being served with a copy of the bill of costs, a party may file and serve objections to the bill of costs. If objections are filed, a party may file and serve a response to the objections within 7 days after service of the objections.

(3) Unless the Court directs otherwise, the Clerk will tax costs at the conclusion of the procedure outlined in subsection (c)(2), above.

(4) Within 14 days after the entry of the Clerk's decision, any party may file and serve a motion and supporting documents for review of the Clerk's decision. Within 14 days after being served with the motion for review, a party may file and serve a response. A reply brief may not be filed unless the Court otherwise permits.

(5) The filing of a bill of costs does not affect the appealability of the judgment previously entered.

(6) The Clerk of Court will promptly enter any costs taxed in the mandate of the Court of Appeals under Fed. R. App. P. 39(d). Appeal costs taxable in the district court under Fed. R. App. P. 39(e) will be taxed in accordance with this rule, provided that a bill of costs or amended bill of costs is filed within 14 days of the issuance of the mandate of the Court of Appeals.

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

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.

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 14 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.

A party may respond to another party's objections within 14 days after being served with a copy thereof.

The District Judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law. The District Judge may also reconsider any matter sua sponte.

(b) Dispositive Matters. A Magistrate Judge assigned without consent of the parties to hear a pretrial matter dispositive of a claim or defense of a party or a prisoner petition challenging the conditions of confinement shall promptly conduct such proceedings as are required. A record shall be made of all evidentiary proceedings before the Magistrate Judge, and a record may be made of such other proceedings as the Magistrate Judge deems necessary. The Magistrate Judge shall file with the Clerk of Court a recommendation for disposition of the matter, including proposed findings of fact when appropriate.

A party objecting to the recommended disposition of the matter shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the District Judge otherwise directs. Within 14 days after being served with a copy of the recommended disposition, unless a different time is prescribed by the Magistrate Judge or a District Judge, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 14 days after being served with a copy thereof.

The District Judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the Magistrate Judge's disposition to which specific written objection has been made in accordance with this rule. The District Judge, however, need not normally conduct a new hearing and may consider the record developed before the Magistrate Judge and make a determination on the basis of that record. The District Judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the Magistrate Judge with instructions.

(c) Consent of the Parties. In proceedings where the Magistrate Judge has been designated to exercise civil jurisdiction pursuant to the consent of the parties, in accordance with Title 28, U.S.C. Section 636(c), appeal from a judgment entered upon direction of a Magistrate Judge will be to the appropriate Court of Appeals as it would from a judgment entered upon direction of the District Judge.

(d) 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 two pages or less requesting such permission. A party who opposes such a request may file and serve a letter of two pages or less 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(d)(1) and with the type-size limit of LR 72.2(d)(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 __, 2012]

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.

FORM 3 RULE 26(f) REPORT AND PROPOSED SCHEDULING ORDER

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Name of Plaintiff,

CIVIL FILE NO. _____

Plaintiff,

RULE 26(f) REPORT

v.

Name of Defendant,

Defendant.

_____

The parties/counsel identified below conferred as required by Fed. R. Civ. P. 26(f) and the Local Rules, on _____, and prepared the following report.

The initial pretrial conference required under Fed. R. Civ. P. 16 and LR 16.2 is scheduled for _____, 20____, before the United States Magistrate Judge _____ in Room ____, of the U.S. Courthouse in, _____, Minnesota. The parties [request/do not request] that the pretrial be held by telephone.

(a) Description of the 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 a jury trial has been timely demanded by any party:

(6) Statement as to whether the parties agree to resolve the matter under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota, if applicable:

(b) Pleadings.

Statement as to whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action:

(c) Fact Discovery.

The parties recommend that the Court establish the following fact discovery deadlines and limitations:

(1) The parties must make their initial disclosures under Fed. R. Civ. P. 26(a)(1) on or before_____.

(2) The parties must complete any physical or mental examinations under Fed. R. Civ. P. 35 by _____.

(3) The parties must commence fact discovery procedures in time to be completed by _____.

(4) The parties propose that the Court limit the use and numbers of discovery procedures as follows:

(A) _____ interrogatories;

(B) _____ document requests;

(C) _____ factual depositions;

(D) _____ requests for admissions;

(E) _____ Rule 35 medical examinations; and

(F) _____ other.

(d) Expert Discovery.

(1) The parties anticipate that they [will/will not] require expert witnesses at the time of trial.

(A) The plaintiff anticipates calling _____ (number) experts in the fields of: _____.

(B) The defendant anticipates calling _____ (number) experts in the fields of: _____,

(2) The parties propose that the Court establish the following plan for expert discovery:

(A) Initial experts.

(i) The identity of any expert who may testify at trial regarding issues on which the party has the burden of persuasion must be disclosed on or before _____.

(ii) The initial expert written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before _____.

(B) Rebuttal experts.

(i) The identity of any experts who may testify in rebuttal to any initial expert must be disclosed on or before _____.

(ii) Any rebuttal expert's written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before _____.

(3) All expert discovery must be completed by _____.

(e) Other Discovery Issues.

(1) Protective Order. The parties have discussed whether they believe that a protective order is necessary to govern discovery and jointly submit a [proposed protective order/report identifying areas of disagreement].

(The parties are encouraged, though not required, to use Form 6 as a template for a proposed protective order.)

(2) Discovery of Electronically Stored Information. The parties have discussed issues about disclosure or discovery of electronically stored information as required by Fed. R. Civ. P. 26(f), including the form or forms in which it should be produced and inform the Court of the following agreements or issues:

(3) Claims of Privilege or Protection. The parties have discussed issues about claims of privilege or of protection as trial-preparation materials as required by Fed. R. Civ. P. 26(f), including whether the parties agree to a procedure to assert these claims after production and request the Court to include the following agreement in the scheduling order:

(f) Proposed Motion Schedule.

The parties propose the following deadlines for filing motions:

(1) Motions seeking to join other parties must be filed and served by _____.

(2) Motions seeking to amend the pleadings must be filed and served by _____.

(3) All other non-dispositive motions must be filed and served by _____.

(4) All dispositive motions must be filed and served by _____.

(g) Trial-Ready Date.

(1) The parties agree that the case will be ready for trial on or after _____.

(2) The parties propose that the final pretrial conference be held on or before _____.

(h) Insurance Carriers/Indemnitors.

List all insurance carriers/indemnitors, including limits of coverage of each defendant or statement that the defendant is self-insured.

(i) Settlement.

(1) The parties will discuss settlement before the initial pretrial conference, by the plaintiff making a written demand for settlement and each defendant making a written response/offer to the plaintiff's demand.

(2) The parties propose that a settlement conference be scheduled to take place before _____.

(3) The parties have discussed whether alternative dispute resolution will be helpful to the resolution of this case and recommend the following:

(j) Trial by Magistrate Judge.

The parties [have/have not] agreed to consent to jurisdiction by the Magistrate Judge under 28 U.S.C. § 636(c). (If the parties agree to consent, file the consent with the Rule 26(f) Report.)

DATE: _____ _____
Plaintiff's Counsel
License #
Address
Phone #

DATE: _____ _____
Defendant's Counsel
License #
Address
Phone #

FORM 4 RULE 26(f) REPORT AND PROPOSED SCHEDULING ORDER (PATENT CASES)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Name of Plaintiff,

Plaintiff,

CIVIL FILE NO. _____

v.

RULE 26(f) REPORT
(PATENT CASES)

Name of Defendant,

Defendant.

The parties/counsel identified below conferred as required by Fed. R. Civ. P. 26(f) and the Local Rules, on _____, and prepared the following report.

The initial pretrial conference required under Fed. R. Civ. P. 16 and LR 16.2 is scheduled for _____, 20____, before the United States Magistrate Judge _____ in Room _____, of the U.S. Courthouse in _____, Minnesota. The parties [request/do not request] that the initial pretrial conference be held by telephone.

(a) Description of the Case.

(1) Concise factual summary of plaintiff's claims, including the patent number(s), date(s) of patent(s), and patentee(s):

(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 a jury trial has been timely demanded by any party:

(b) Pleadings.

Statement as to whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action:

(c) Discovery and Pleading of Additional Claims and Defenses.

(1) Discovery is permitted with respect to claims of willful infringement and defenses of patent invalidity or unenforceability not pleaded by a party, where the evidence needed to support these claims or defenses is in whole or in part in the hands of another party.

(2) Once a party has given the necessary discovery, the opposing party may seek leave of Court to add claims or defenses for which it alleges, consistent with Fed. R. Civ. P. 11, that it has support, and such support must be explained in the motion seeking leave. Leave must be liberally given where prima facie support is present, provided that the party seeks leave as soon as reasonably possible following the opposing party providing the necessary discovery.

(d) Fact Discovery.

The parties recommend that the Court establish the following fact discovery deadlines and limitations:

(1) The parties must make their initial disclosures under Fed. R. Civ. P. 26(a)(1) on or before _____.

(2)The parties must commence fact discovery procedures in time to be completed by _____.

(3) The parties propose that the Court limit the use and numbers of discovery procedures as follows:

(A) _____ interrogatories;

(B) _____ document requests;

(C) _____ factual depositions;

(D) _____ requests for admissions; and

(E) _____ other.

(e) Discovery Relating to Claim Construction Hearing.

(1) Plaintiff’s Claim Chart.

(A) Plaintiff’s claim chart must be served on or before _____.

(B) Plaintiff's claim chart must provide a complete and detailed explanation of:

(i) which claim(s) of its patent(s) it alleges are being infringed;

(ii) which specific products or methods of defendant's it alleges literally infringe each claim;

(iii) where each element of each claim listed in paragraph (e)(1)(B)(i) is found in each product or method listed in paragraph (e)(1)(B)(ii), including the basis for each contention that the element is present; and

(iv) if there is a contention by plaintiff that there is infringement of any claims under the doctrine of equivalents, plaintiff must separately indicate this on its claim chart and, in addition to the information required for literal infringement, plaintiff must also explain each function, way, and result that it contends are equivalent, and why it contends that any differences are not substantial.

Plaintiff may amend its claim chart only by leave of the Court for good cause shown.

(2) Defendant's Claim Chart.

(A) Defendant's claim chart must be served on or before _____.

(B) Defendant's claim chart must indicate with specificity which elements on plaintiff's claim chart it admits are present in its accused device or process, and which it contends are absent, including in detail the basis for its contention that the element is absent. And, as to the doctrine of equivalents, Defendant must indicate on its chart its contentions concerning any differences in function, way, and result, and why any differences are substantial.

Defendant may amend its claim chart only by leave of Court for good cause shown.

(3) Exchange of Claim Terms and Proposed Constructions.

(A) On or before _____, the parties must simultaneously exchange a list of claim terms, phrases, or clauses that each party contends should be construed by the Court.

(B) Following the exchange of the list of claim terms, phrases, or clauses, but before _____, the parties must meet and confer for the purpose of finalizing a list of claim terms, phrases or clauses, narrowing or resolving differences, and facilitating the ultimate preparation of a joint claim construction statement, and determining whether to request a pre-claim construction conference.

(C) During the meet and confer process, the parties must exchange their preliminary proposed construction of each claim term, phrase or clause which the parties collectively have identified for claim construction purposes and will make this exchange on or before _____.

(D) When exchanging their preliminary claim constructions, the parties must provide a preliminary identification of extrinsic evidence, including without limitation: dictionary definitions, citations to learned treatises and prior art, and

testimony of percipient or expert witnesses that they contend support their respective claim constructions.

(i) The parties must identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced.

(ii) With respect to any such witness, percipient or expert, the parties must also provide a brief description of the substance of that witness' proposed testimony.

(4) Joint Patent Case Status Report.

Following the meet and confer process outlined in paragraph (e)(3)(B)-(D), above, but no later than _____, the parties must file a joint patent case status report. The joint patent case status report must address the following:

(A) whether the parties request a claim construction hearing to determine claim interpretation. If the parties disagree about whether a claim construction hearing should be held, the parties must state their respective reasoning; and

(B) whether the parties request a pre-claim construction conference with the Court and if so, whether they request that the pre-claim construction conference occur before or after the joint claim construction statement is filed.

(i) If the parties request that the pre-claim construction conference occur before the joint claim construction statement is filed, the parties must state why an early conference is necessary.

(ii) If the parties disagree about whether a pre-claim construction conference should be held, the parties must provide their respective positions and reasoning.

(iii) If the parties request a pre-claim construction conference, the parties must submit a summary of the claim construction issues the parties wish to discuss at the conference.

(5) Joint Claim Construction Statement.

(A) Filing the joint claim construction statement.

(i) The joint claim construction statement must be filed with the patent case status report, unless the joint patent case status report requests that the pre-claim construction conference occur before the joint claim construction statement is filed.

(ii) If the Court does not respond to the request to schedule a pre-claim construction conference within 30 days after the joint patent case status report is filed, the parties must file a joint claim construction statement.

(B) Content of the joint claim construction statement. The joint claim construction statement must contain the following information:

(i) the construction of the claim terms, phrases, or clauses on which the parties agree;

(ii) each party's proposed construction of each disputed claim term, phrase, or clause together with an identification of all references from the specification of prosecution history to support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either in support of its proposed construction of the claim or to oppose any other party's proposed construction;

(iii) whether any party proposes to call one or more witnesses, including any experts, at the claim construction hearing; the identity of each witness; and for each expert, a summary of the opinion to be offered in sufficient detail to permit a meaningful deposition of that expert; and

(iv) whether the parties believe that a technology tutorial would be helpful for the Court and, if so, the proposed timing and format of the tutorial.

(6) Claim Construction Hearing Order. If the Court schedules a claim construction hearing, the Court must issue an order before the hearing, addressing:

(A) the date and time for the claim construction hearing;

(B) whether it will receive extrinsic evidence, and if so, the particular evidence it will receive;

(C) whether the extrinsic evidence in the form of testimony must be the affidavits already filed or in the form of live testimony from the affiants; and

(D) a briefing schedule.

(f) Discovery Relating to Validity/Prior Art .

(1) Defendant’s Prior Art Statement.

(A) Within _____ days of receiving plaintiff's claim chart exchanged under paragraph (e)(1),defendant must serve a prior art statement, listing all of the prior art on which it relies and a complete and detailed explanation of its allegations with respect to:

(i) which claim(s) alleged to be infringed are invalid;

(ii) which specific prior art, if any, invalidates each claim;

(iii) where in such prior art each element of the allegedly invalid claims may be found; and

(iv) whether a basis for invalidity other than prior art is alleged, specifying what the basis is and whether such allegation is based upon 35 U.S.C. §§ 101, 102, 103, and 112, or another statutory provision.

(B) Defendant may amend its prior art statement only by leave of the Court for good cause shown.

(2) Plaintiff's Prior Art Statement.

(A) Within _____ days of its receipt of defendant's prior art statement, plaintiff must serve a prior art statement, responding specifically to each allegation of invalidity set out in defendant's prior art statement, including its position on why the prior art or other statutory reference does not invalidate the asserted patent claims.

(B) Plaintiff may amend its prior art statement only by leave of the Court for good cause shown.

(3) Form of Prior Art Statements. A prior art statement may be submitted in the form of expert reports. If a prior art statement is submitted in the form of expert reports, the deadlines in paragraph (f) govern and are not extended by any different expert discovery deadlines.

(g) Expert Discovery.

(1) The parties anticipate that they [will/will not] require expert witnesses at the time of trial.

(A) The plaintiff anticipates calling _____(number) experts in the fields of: _____.

(B) The defendant anticipates calling _____ (number) experts in the fields of: _____.

(2) The parties propose that the Court establish the following plan for expert discovery:

(A) Identification of experts.

(i) Each party must identify to the opposing party the experts who will provide a report concerning the issues on which that party has the burden of persuasion no later than 15 days after the Court issues the claim construction order;

(ii) If the Court states that it will not issue a claim construction order, the parties must identify experts who will provide a report concerning the issues on which that party has the burden of persuasion by the close of fact discovery; or

(iii) Alternate recommended date: _____.

(B) Initial expert reports. Initial expert reports must be prepared in accordance with Fed. R. Civ. P. 26(a)(2)(B) and address the issues on which that party has the burden of persuasion.

(i) The parties must exchange their initial expert reports no later than 30 days after the Court issues the claim construction order;

(ii) If the Court states that it will not issue a claim construction order, the parties must exchange their initial expert reports no later than 30 days after the close of fact discovery; or

(iii) Alternate recommended date: _____.

(C) Rebuttal expert reports. Rebuttal expert reports must be prepared in accordance with Fed. R. Civ. P. 26(a)(2)(B).

(i) Rebuttal expert reports must be exchanged no later than within 30 days after the initial expert reports are exchanged; or

(ii) Alternate recommended date: _____.

(D) All expert discovery must be completed by _____.

(h) Other Discovery Issues.

(1) Decision on Waiver and Discovery of Privileged Documents. Defendant may postpone the waiver of any applicable attorney-client privilege on topics relevant to claims of willful infringement, if any, until _____, provided that all relevant privileged documents are produced no later than _____. All additional discovery regarding the waiver will take place after _____ and must be completed by _____.

(2) Proposal to Conduct Discovery in Phases. The parties have met and discussed whether any discovery should be conducted in phases to reduce expenses or make discovery more effective and present the following joint/ individual proposals:

(3) Protective Order. The parties have discussed whether they believe that a protective order is necessary to govern discovery and jointly submit a [proposed protective order/report identifying areas of disagreement].

(The parties are encouraged, though not required, to use Form 5 as a template for a proposed protective order.)

(4) Discovery of Electronically Stored Information. The parties have discussed issues about disclosure or discovery of electronically stored information as required by Fed. R. Civ. P. 26(f), including the form or forms in which it should be produced, and inform the Court of the following agreements or issues:

(5) Claims of Privilege or Protection. The parties have discussed issues about claims of privilege or of protection as trial-preparation materials as required by Fed. R. Civ. P. 26(f), including whether the parties agree to a procedure to assert these claims after production and request the Court to include the following agreement in the scheduling order:

(i) Discovery Definitions.

In responding to discovery requests, each party must construe broadly terms of art used in the patent field (e.g., "prior art", "best mode", "on sale"), and read them as requesting discovery relating to the issue as opposed to a particular definition of the term used. Compliance with this provision is not satisfied by the respondent including a specific definition of the term of art in its response, and limiting its response to that definition.

(j) Proposed Motion Schedule.

The parties propose the following deadlines for filing motions:

(1) Motions seeking to join other parties must be filed and served by_____.

(2) Motions seeking to amend the pleadings must be filed and served by _____.

(3) All other non-dispositive motions must be filed and served by _____.

(4) All dispositive motions must be filed and served by _____.

(k) Trial-Ready Date.

(1) The parties agree that the case will be ready for trial on or after_____.

(2) The parties propose that the final pretrial conference be held on or before_____.

(l) Settlement.

(1) The parties will discuss settlement before the initial pretrial conference, by the plaintiff making a written demand for settlement and each defendant making a written response/offer to plaintiff's demand.

(2) The parties propose that a settlement conference be scheduled to take place before _____.

(3) The parties have discussed whether alternative dispute resolution will be helpful to the resolution of this case and recommend the following:

(m)Trial by Magistrate Judge.

The parties [have/have not] agreed to consent to jurisdiction by the Magistrate Judge under 28 U.S.C. § 636(c). (If the parties agree to consent, file the consent with the Rule 26(f) Report.)

(n) Patent Procedure Tutorial.

The parties [agree/do not] agree the video “An Introduction to the Patent System,” distributed by the Federal Judicial Center, should be shown to the jurors in connection with its preliminary jury instructions.

DATE: _____ _____
Plaintiff’s Counsel
License #
Address
Phone #

DATE: _____ _____
Defendant’s Counsel
License #
Address
Phone #