



United States District Court  
**DISTRICT OF MINNESOTA**

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**2012 ADVISORY COMMITTEE’S PREFACE ON STYLISTIC AMENDMENTS**

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

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

**2012 ADVISORY COMMITTEE’S PREFACE ON LR FORMS 3-6**

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

In 2012, the Court implemented several changes to Forms 3 and 4. Revised Forms 3 and 4 incorporate the amendments to LR 16.2 and LR 26.1 that require the

parties to discuss at the 26(f) conference whether a protective order is necessary and the court to address any unresolved issues related to the protective order at the initial pretrial conference. Revised Forms 3 and 4 also require the parties to discuss the discovery of electronically stored information, a required element of the Fed. R. Civ. P. 26(f)(3)(C) discovery plan.

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

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

## **2005 PATENT ADVISORY COMMITTEE'S PREFACE**

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

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

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

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

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

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

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

1. Reducing the cost and burden of patent litigation in Minnesota without sacrificing fairness.
2. Promoting consistency and certainty in how patent cases are handled in Minnesota.
3. Addressing issues that are recurring in most patent cases and that all litigants and the Courts have some common interests in managing by rule, in particular disclosure, discovery, and claim construction issues.
4. Promoting the greatest and most accessible understanding of patent issues and technical issues by litigants, Courts, and juries.
5. Minimizing the discovery procedural disputes that often lead to the same outcome and could be resolved at less cost and burden, at least presumptively, by rule rather than by motion.
6. Discouraging expensive and/or burdensome litigation procedures that do not substantially contribute to the resolution of patent cases.

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

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

## **1996 ADVISORY COMMITTEE'S PREFACE**

After the 1991 Amendments to the Local Rules of the District of Minnesota, two important procedural events occurred that required a new look at the Local Rules. First, the Federal District Court for the District of Minnesota promulgated a Civil Justice Reform Act Implementation Plan ("CJRA Plan"), as required by the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-82. The CJRA Plan, which was promulgated on August 23, 1993, supplemented and to some extent supplanted the then-existing Local Rules. Second, the Supreme Court promulgated a set of amendments to the Federal Rules of Civil Procedure ("National Rules"). These amendments to the National Rules became effective on December 1, 1993. They made important changes in discovery and pretrial procedure, while giving leeway to district courts to use Local Rules to "opt out" or modify many of the new procedures.

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

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

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

subsection of a Local Rule was promulgated in 1991 and one subsection was promulgated in 1996, a date notation follows each subsection.

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

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

Mr. Clifford M. Greene, Chair	Mr. Jeffrey Keyes
Mr. Sidney Abramson <sup>1</sup>	Mr. George Koeck
Ms. Barbara Berens	The Honorable Richard H. Kyle
Mr. Tyrone Bujold	Mr. Larry Minton
Ms. Laurie Davison	The Honorable Franklin L. Noel
The Honorable David S. Doty	Mr. Thomas J. Radio
Mr. Francis E. Dosal (ex officio)	Mr. Robert Small
The Honorable Raymond L. Erickson	Ms. Janice M. Symchych
Mr. Mark Hallberg	Mr. Frank E. Villaume, III
Professor Eric Janus	Professor Roger C. Park, Reporter
Mr. Joshua J. Kanassatega	

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

## **1991 ADVISORY COMMITTEE'S PREFACE**

These Local Rules are promulgated pursuant to the enabling legislation in 28 U.S.C. § 2071 (1988), which gives district courts the authority to prescribe rules for the conduct of their business, providing such rules do not conflict with Acts of Congress or the rules of practice and procedure that the United States Supreme Court may promulgate for district courts under 28 U.S.C. § 2072 (1988). Federal Rule of Civil Procedure 83 (Rule 83) also authorizes district courts, by majority vote, to make rules that are consistent with the Federal Rules of Civil Procedure. Both § 2071 and Rule 83 provide for public notice and an opportunity to comment before the district courts finally

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<sup>1</sup>Sidney Abramson was a member of the Advisory Committee until his death on August 27, 1994.

adopt such rules. Compare 28 U.S.C. § 2071(e) (1988) (permitting public notice and comment after a district court adopts a rule, if the district court determines that the rule is needed immediately).

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

Mr. Clifford M. Greene, Chair	Mr. Jeffrey Keyes
Mr. Sidney Abramson	Mr. George Koeck
The Honorable Donald D. Alsop	Mr. Douglas R. Peterson
Mr. Elam Baer	Ms. Denise Reilly
Mr. Glenn Baskfield	The Honorable Robert G. Renner
The Honorable David S. Doty	Mr. Daniel M. Scott
Mr. John B. Gordon	Ms. Janice M. Symchych
Mr. Mark Hallberg	Mr. Mark P. Wine
Mr. Eric Janus	

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

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

In revising the Local Rules for the District of Minnesota, the Advisory Committee considered the treatise and other materials provided by the Local Rules Project, a study of local district rules conducted under the auspices of the Committee on Rules of Practice and Procedure of the United States Judicial Conference (the Project). The Committee adopted the uniform numbering system recommended by the Project. Local Rules Project, Comm. on Rules of Practice and Procedure, Judicial Conference of the U.S., Treatise, item 2 (1989). This uniform system follows the one already used for the Federal Rules of Civil Procedure. For example, the new local rule which requires a formal motion for extending a pretrial schedule is numbered Local Rule 16.3, corresponding to the federal rule concerning pretrial scheduling, Rule 16, Federal Rules of Civil Procedure. The Project emphasized that renumbering local rules performs a variety of valuable functions. Uniform numbering will help the bar to locate local rules and related case law more easily, thereby assisting attorneys with multi-district practices. The system also facilitates incorporation of local rules into legal publications and computer research data bases. *Id.*

Following the uniform system, the Committee renumbered and adopted the following rules without significant additional change from the 1987 Local Rules for the District of Minnesota: 4.1 (formerly 18), 4.2 (formerly 10), 6.1 (formerly 2(C)), 7.1 (formerly 4), 16.1 (formerly 3 (A)), 16.2 (formerly 3 (C)), 17.1 (formerly 13), 39.1

(formerly 7), 39.2 (formerly 8), 40.1 (formerly 2(A-B)), 67.1 (formerly 12), 79.1 (formerly 11 (B)), 80.1 (formerly 14, with an addendum from Model Local Rule 80.1), 83.2 (formerly 9), 83.5 (formerly 1 (A-E)), 83.6 (formerly 1 (F)), 83.7 (formerly 1 (G)), 83.8, (formerly 1 (H)), 83.9 (formerly 17), 83.10 (based on a 1989 revised order regarding sentencing procedures), and 83.11 (formerly the Preface). The Committee renumbered and substantially revised the following 1987 Local Rules for the District of Minnesota: 5.5 (formerly 11), 7.2 (formerly 5), 9.3 (formerly 15), 26.1 (formerly a portion of 3(B)), and 33.1 (formerly a portion on 3(B)).

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

The Local Rules Project also identified possible inconsistencies between existing local rules of the Federal District Courts and the Federal Rules of Civil Procedure. *Treatise*, *supra* item 1, at 9-14; item 4. In recommending the retention or promulgation of particular local rules in light of the Project's suggestions about inconsistencies, the Advisory Committee adopted the view that the district courts have authority to supplement the Federal Rules of Civil Procedure with local rules establishing procedures and procedural limits not provided for in the national rules, as long as the local rules do not directly contradict the national rules. In cases in which particular local rules, such as the limit on the number of interrogatories, have served well in local practice, the Advisory Committee was reluctant to draw negative implications from the absence of specific limits in the national rules. Therefore, although the Advisory Committee took into account the views of the Local Rules Project that certain local rules were "possibly inconsistent" with the national rules, *id.* item 4, it often decided that no inconsistency existed and that the local rule should be retained. This view of the nature of local rule making is supported by the Supreme Court's decision in *Colgrove v. Battin*, 413 U.S. 149, 163-64 (1973). In *Colgrove*, the Court examined the validity of a local rule promulgated by the United States District Court for the District of Montana which permitted a six-member jury in civil trials. *Id.* at 149-50. The petitioner argued that the rule was invalid, relying in part upon implications the petitioner drew from Federal Rule of Civil Procedure 48, which provides that parties may stipulate to a jury of less than twelve. *Id.* at 151. The petitioner reasoned that because the federal rule specifically permitted parties to stipulate to a jury of less than twelve, by negative implication, the local district rule could not impose a mandatory number of less than twelve. The Supreme Court rejected this argument and upheld the local rule. *Id.* at 163-64; *cf.*

Keeton, *The Function of Local Rules and the Tension with Uniformity*, 50 U. Pitt. L. Rev. 853 (1989).

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

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