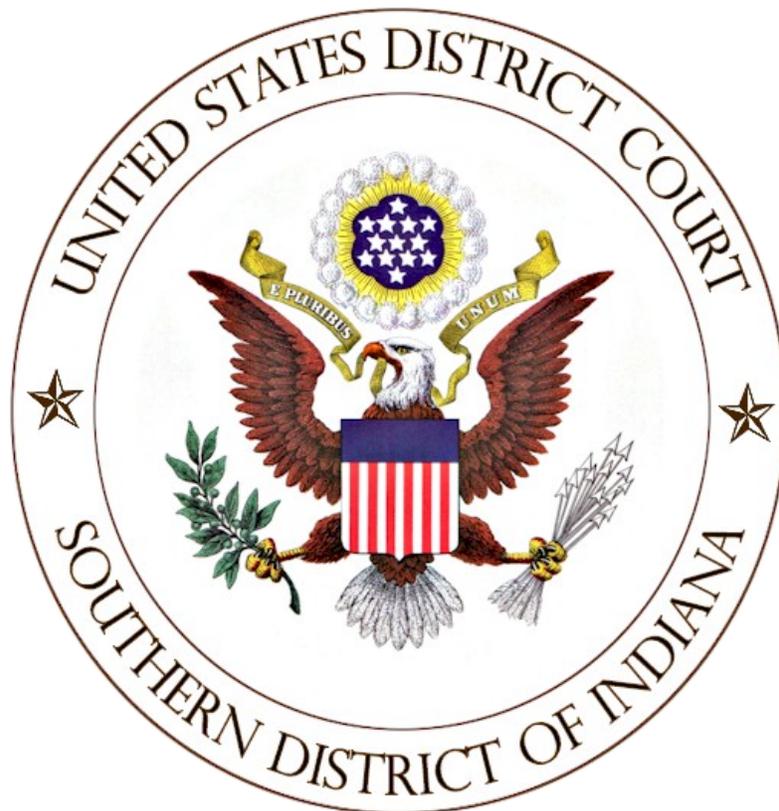


# ATTORNEY'S HANDBOOK

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

*Current as of July 20, 2009*



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## INTRODUCTION

This Handbook is provided as a supplement to the Local Rules of the Southern District of Indiana to assist attorneys and litigants in dealing with the administrative requirements of the Court and the Clerk's Office. Its scope is limited to civil matters. Every effort has been made to be accurate, but for definitive guidance on procedural matters you should refer to the applicable *Federal Rules of Civil Procedure* and/or the *Local Rules of the Southern District of Indiana*. Also, forms and examples of many of the documents mentioned in this Handbook are available for attorneys to view, copy and use at this Court's website — [www.insd.uscourts.gov](http://www.insd.uscourts.gov). In an effort to provide better service to the Bar and public, comments or suggestion on the contents of this Handbook are welcomed and may be submitted to the attention of the Clerk at any district office.

The Southern District of Indiana is one of two federal judicial districts in the State of Indiana. It was created pursuant to 28 U.S.C. § 94 and is divided into four Divisions— Evansville, Indianapolis, New Albany and Terre Haute. The Clerk maintains and staffs an office within each of these Divisions. The office addresses and the counties within each Division are as follows:

### **Evansville Division**

Voice (812) 434-6410  
Fax (812) 434-6418  
304 Federal Building  
101 Northwest MLK Boulevard  
Evansville, IN 47708

#### *Counties:*

Daviess, Dubois, Gibson, Martin, Perry, Pike, Posey,  
Spencer, Vanderburgh and Warrick

### **Indianapolis Division**

Voice (317) 229-3700  
Fax (317) 229-3959  
105 Birch Bayh Federal Building  
& U.S. Courthouse  
46 East Ohio Street  
Indianapolis, IN 46204

#### *Counties:*

Bartholomew, Boone, Brown, Clinton, Decatur,  
Delaware, Fayette, Fountain, Franklin, Hamilton,  
Hancock, Hendricks, Henry, Howard, Johnson,  
Madison, Marion, Monroe, Montgomery, Morgan,  
Randolph, Rush, Shelby, Tipton, Union, and  
Wayne

### **New Albany Division**

Voice (812) 542-4510  
Fax (812) 542-4515  
210 Federal Building  
121 West Spring Street  
New Albany, IN 47150

#### *Counties:*

Clark, Crawford, Dearborn, Floyd, Harrison,  
Jackson, Jefferson, Jennings, Lawrence, Ohio,  
Orange, Ripley, Scott, Switzerland and Washington

### **Terre Haute Division**

Voice (812) 234-9484  
Fax (812) 238-1831  
207 Federal Building  
30 N. Seventh Street  
Terre Haute, IN 47808

#### *Counties:*

Clay, Greene, Knox, Owen, Parke, Putnam,  
Sullivan, Vermillion and Vigo

## CLERK'S OFFICE STRUCTURE AND INFORMATION REQUESTS

The Clerk's Office is staffed by both operational and administrative staff. We are dedicated to serving the Judges, the Bar and the public in every appropriate manner to assist in the creation and maintenance of records and information pertinent to litigation in this District. Reliable and accessible records are the backbone of the courts. The majority of the Clerk's staff with whom attorneys and members of the public most often come into contact are "operational" personnel, in the sense that these deputy clerks maintain extensive "hands-on" contact with the case files.

Inquiries in the Indianapolis Division regarding the following specific areas should be directed to the telephone numbers below:

Court Services (general case information and new case filings)	(317) 229-3700
Administrative Matters (including personnel)	(317) 229-3702
Appeals (civil and criminal)	(317) 229-3933
Financial Matters	(317) 229-3918
Jury Administration	(317) 229-3712
Pro Se Matters	(317) 229-3950
Operations Supervisor	(317) 229-3710

In the outlying divisions, inquiries should be made directly to the appropriate Clerk's Office main phone number (Terre Haute: (812) 234-9484; Evansville: (812) 434-6410; New Albany (812) 542-4510).

The Chief Deputy Clerk has overall responsibility for the functioning of the Clerk's Office, and acts for the Clerk in the Clerk's absence. The telephone number for Jo McKnight, the Chief Deputy Clerk, is (317) 229-3703.

Jennifer Johnson is the Clerk's Office Operations Manager. She is in charge of the Clerk's operations staff in the Indianapolis Division (Court Services, Case Administration and Jury matters). Her telephone number is (317) 229-3710.

## *Courtroom Deputy Clerks*

Each judge has an assigned courtroom deputy clerk (CRD). The duties of the CRDs vary somewhat. However, in general, the CRDs manage and schedule the cases assigned to the judicial officers and conform and cause to be distributed all of the Court's orders and entries. It can be of great benefit to you to direct questions to the CRD concerning a particular judge's preference as to procedure, decorum, schedule and so forth.

In addition, inquiries regarding scheduling matters or the status of pending cases should be directed principally to the courtroom deputy for the assigned judicial officer. **Inquiries should not be directed to the chambers of a judicial officer.** The names and telephone numbers of the courtroom deputies for the judicial officers are as follows:

<u>Judicial Officer</u>	<u>Courtroom Deputy</u>	<u>Phone Number</u>
Chief Judge Hamilton	Wendy Carpentier	(317) 229-3724
Judge Barker	Pam Schneeman	(317) 229-3602
Judge McKinney	Ruth Olive	(317) 229-3723
Judge Young	Dana Shuler (Evansville cases) Philip Gordon (Indianapolis cases)	(812) 434-6414 (317) 229-3725
Judge Lawrence	Jennifer Ong	(317) 229-3615
Magistrate Judge Hussmann	Tina Doyle	(812) 434-6412
Magistrate Judge Baker	Amy Holtz	(317) 229-3707
Magistrate Judge Magnus-Stinson	Michelle Imel	(317) 229-3672
Magistrate Judge Lynch	Lakshmi Hasanadka	(317) 229-3631
Recalled Magistrate Judge Foster	Beverly Stockdale	(317) 229-3622
Part-Time Magistrate Judge Naville (New Albany criminal matters only)	New Albany Clerk's Office	(812) 542-4510
Part-Time Magistrate Judge McKee (Terre Haute criminal matters only)	Terre Haute Clerk's Office	(812)-234-9484

## *Pro Se Matters*

Members of the Court's staff are assigned to coordinate the flow of *pro se* litigation through the Court. These individuals are familiar with forms available for various specific proceedings, such as habeas corpus actions and the complaint forms prescribed in Local Rule 8.1 (complaints under 42 U.S.C. § 1983, 42 U.S.C. § 405(g), and any complaint alleging employment discrimination under a federal statute). Other than routine inquiries (such as whether something has been filed, *etc.*), questions concerning the status and development of a specific case in which one of the litigants is *pro se* should be directed to this staff at (317) 2293950.

Note that when filing a motion for summary judgment, counsel must comply with the duty imposed by *Timms v. Frank*, 953 F.2d 281 (7th Cir. 1992), to inform a *pro se* litigant in straightforward English of the nature of the motion, of the proper manner in which to respond and of the consequences of failing to respond.

## *Dockets Maintained and Numbering of Cases*

The Clerk maintains both a civil and a criminal docket. These dockets are kept electronically (*see the ECF Administrative Policies and Procedures for a discussion of the requirements for using the court's electronic management and case filing system (CM/ECF)*) and each case filed with the Court is given a permanent cause number designation. The cause number consists of alpha-numerical components in the following order:

- (1) the division in which the case was filed is represented numerically:

1 = Indianapolis	3 = Evansville
2 = Terre Haute	4 = New Albany
  
- (2) the year the case is filed is set forth using the last two digits of that year:  
07 = 2007
  
- (3) the category of the case is represented by two letters

cv = civil	mc = miscellaneous
cr = criminal	mj = magistrate criminal
  
- (4) a divisional chronological case reference number is assigned;
  
- (5) the initials of the District Judge to whom the case is assigned are also set forth

SEB = Judge Barker	DFH = Judge Hamilton
LJM = Judge McKinney	RLY = Judge Young
WTL = Judge Lawrence	
  
- (6) the initials of the Magistrate Judge to whom the case is assigned are set forth

TAB = Magistrate Baker	KPF = Magistrate Foster
WGH = Magistrate Hussman	JMS = Magistrate Magnus-Stinson
DML = Magistrate Lynch	MGN = Part-Time Magistrate Naville
	CNM = Part-Time Magistrate McKee

Thus, by way of illustration, the 70th civil action filed in the Indianapolis Division in 2007, if assigned to Judge Barker and Magistrate Judge Magnus Stinson, would be depicted as follows:  
**1:07-cv-70-SEB-JMS.**

The format used for cases presented as criminal cases is the same as for civil except that the "cv" is replaced by a "cr" or "mj," and each defendant in a multi-defendant criminal action is assigned a numerical designation. Thus, an example of a criminal action cause number in a 2007 multi-defendant criminal action assigned to Judge Hamilton and Magistrate Judge Foster pertaining specifically to the sixth designated defendant in the charge would be the following:  
**1:07-cr-521-DFH-KPF-06.**

Miscellaneous cases are used to track administrative and attorney disciplinary matters through the judicial system and, as of February 1, 2007, are assigned a separate **(mc)** cause number in the CM/ECF database. Miscellaneous matters may be directly or indirectly related to a civil or criminal case, such as: registration of judgments from another district; summons enforcement proceedings; motions to compel or quash discovery based on a foreign deposition; wiretaps and pen registers. Documents filed under a miscellaneous designation are reviewed for conformity with the Local and Federal Rules and are processed in the same manner as documents in a civil or criminal action.

A filing fee is assessed for each new miscellaneous matter, which can be accessed by clicking the following link: <http://www.insd.uscourts.gov/Forms/DCFeeSchedule.pdf>- or on the Court's website follow the link to "Court Information" and then select "Fee Schedule."

Magistrate **(mj)** cause numbers are assigned to criminal matters pursuant to statute and the Local Rules of this Court and do not have an assigned district judge. This case category includes matters such as applications for search or seizure warrants, appointments of counsel for grand jury targets, and preliminary criminal proceedings for matters pending in other districts (*e.g.*, defendants arrested in this district and having their initial appearance proceedings conducted in this district before being transferred to another district). Initiations of prosecutions (*e.g.*, complaints and affidavits filed before indictment or information) can be merged into a related criminal case. If and when formal charges are filed by indictment or information, a criminal **(cr)** cause number is assigned to the case.

## *Public Access to Case Information*

### **Electronic Dockets — CM/ECF**

On July 1, 2002, the Southern District of Indiana implemented a new electronic case filing and management system (**CM/ECF**) which is used for all pending civil cases filed on or after July 1, 2002 and all criminal and miscellaneous cases filed after February 1, 2007. Docket information is available through the CM/ECF system, as are most documents (in PDF form). A U.S. Courts PACER account is required to access information for these cases. To obtain a PACER account, please contact the PACER Service Center at: (800) 676-6856, or <http://pacer.psc.uscourts.gov/>.

### **Civil Cases Filed Prior to July 1, 2002, and Criminal and Miscellaneous Cases Filed Prior to February 1, 2007**

The Clerk still maintains the Court's older civil and criminal docket information in an electronic database, referred to as JAMS (Judicial Automated Management System). Routine information is available through this system and hard copies of docket sheets can be generated. The complete electronic docket for civil actions filed after January 1, 1991, is available. Computer terminals to access JAMS docket sheets are available in the Clerk's Office lobby in each Division.

Also, the public may access JAMS electronically via the Court's Internet Web page at: [http://www.insd.uscourts.gov/Search/case\\_search.htm](http://www.insd.uscourts.gov/Search/case_search.htm), or on the Court's website, follow the link to "Case Information" and then select "JAMS Case Search."

### **Electronic Filing**

In conjunction with the implementation of the electronic case filing and case management system (CM/ECF) on July 1, 2002, registered attorneys can file documents electronically via the Internet. However, documents initiating a lawsuit must be filed, fees paid, and summons issued and served in the traditional manner (on paper) rather than electronically (Local Rule 5.6).

Detailed information on electronic filing can be found in the "Administrative Policies and Procedures Manual" (<http://www.insd.uscourts.gov/CM-ECF/AdminManual.pdf>) or on the Court's website, select the "Attorneys" tab and then go to the "E-filing" section.)

## *Copy Requests*

### **a. Pending cases and civil cases closed within last three years**

Copies of filings in pending matters may be obtained by attorneys through the CM/ECF database once an attorney has obtained an authorized Pacer account. To obtain a PACER account, please contact the PACER Service Center at: (800) 676-6856, or [pacer.psc.uscourts.gov](http://pacer.psc.uscourts.gov).

For copies of filings which are unavailable to an attorney through use of a PACER account, the attorney should contact the appropriate divisional office for assistance (for Indianapolis Cases, contact the Court Services staff at (317) 229-3700, for Terre Haute cases, call (812) 234-9484; Evansville (812) 434-6410; New Albany (812) 542-4510). Large copy requests may be coordinated through an outside copy service or vendor at the discretion of the Clerk of Court.

### **b. Cases closed more than three years**

The physical files of cases closed more than three years are maintained by the Federal Records Center in Chicago, Illinois. A fee is assessed for retrieval of each of these files; requests must be made in writing to the Clerk and accompanied by a check or money order. A per-page copy charge is added to the retrieval fee. Ordinarily, the file is received from the Federal Records Center within two weeks after the request is mailed by the Clerk's Office to the Federal Records Center. Click the following link - <http://www.insd.uscourts.gov/Forms/DCFeeSchedule.pdf> - to obtain current fee information, or on the Court's website, follow the link to "Court Information" and then select "Fee Schedule."

## ***Normal Office Hours***

The Clerk's Office is open to the public between 8:30 a.m. and 5:00 p.m. daily except for Saturdays, Sundays and legal holidays.

The legal holidays prescribed by *Fed. R. Civ. P.* 6(a) are the following:

New Year's Day -- January 1

Birthday of Martin Luther King, Jr. -- 3rd Monday in January

Presidents' Day -- 3rd Monday in February

Memorial Day -- Last Monday in May

Independence Day -- July 4

Labor Day -- 1st Monday in September

Columbus Day -- 2nd Monday in October

Veterans' Day -- November 11

Thanksgiving Day -- 4th Thursday in November

Christmas Day -- December 25

When one of these legal holidays falls on Saturday or Sunday, the Clerk's Office is closed on the Friday immediately preceding or the Monday immediately following, respectively.

## ***Initial Case Filings***

Filings necessary to initiate a lawsuit must be made in hard copy form at the Clerk's Office. Those initial filings are then scanned into the CM/ECF database. Generally, all subsequent filings are made electronically through CM/ECF, with counsel of record receiving immediate electronic notice of same. When exigent circumstances exist and counsel need to file papers outside of normal working hours, advance contact should be made with the Operations Supervisor in the Clerk's Office during regular business hours. If the Operations Supervisor is unavailable, contact should be made with the Clerk of Court or Chief Deputy.

## GENERAL INFORMATION RELATED TO FEDERAL LAWSUITS

### *Requirements for Filing a Civil Lawsuit*

In order to initiate a lawsuit, hard copies of the necessary filings must be brought or mailed to the Clerk's Office. Local Rule 5.1 contains information on important aspects of making paper and electronic filings. Documents not conforming to these requirements will not be rejected by the Clerk, but the Court may order them stricken or order any defect corrected. Documents should not be delivered to chambers absent specific direction from the assigned judicial officer. A delivery to chambers is not deemed filed with the Clerk.

Items necessary for the filing of a civil lawsuit include:

1. Complaint;
2. Civil Cover sheet (signed and completed in full);
3. If represented by an attorney, an appearance of counsel; and
4. Filing fee or a request that the filing fee be waived. Click the following link - <http://www.insd.uscourts.gov/Forms/DCFeeSchedule.pdf>- to obtain current fee information, or on the Court's website, follow the link to "Court Information" and then select "Fee Schedule."

Elsewhere in this handbook you will find specific information regarding service of process and procedures for removing a case to this court.

Counsel and parties are strongly encouraged to present all new cases to the Clerk's Office before 4:30 p.m. for opening and processing. Initial pleadings presented after 4:30 will be "Filed" the day of presentment, but other processing may not be completed that day. File-marked copies of documents may not be available until the next day.

If Counsel are not registered as filing users with the Court's Electronic Case Filing System at the time they file a complaint, they should alert the Clerk's Office at that time and submit a completed ECF attorney registration form to become registered.

The preferred method of demanding a jury trial is to set forth the demand on a separate document. However, it may also be noted in a prominent place on the document setting forth the claim for relief Local Rule 38.1 mandates that "a notation shall be placed on the front page of the pleading, immediately following the title of the pleading, stating "Demand for Jury Trial" or an equivalent statement. In addition, the attorney must check the designated box on the Civil Cover Sheet.

When papers are presented for filing, the Clerk retains only the original of each pleading or document. Each such pleading or document must be **signed by the attorney(s) of record**. Paper documents, such as case initiating documents, which are unsigned or contain only a rubber

stamp, facsimile, or typewritten signature, that are tendered for filing will not be refused, but the court may strike the documents. If possible, an attorney who failed to sign a document when required will be notified and will be expected to promptly cure the defect pursuant to the requirements of *Fed. R. Civ. P. 11* (Note that the "signature" requirement for electronically filed documents is specifically covered in Local Rule 5.11).

A litigant without sufficient funds to prepay the filing fee may request the waiver of such requirement on forms available from the Clerk. If the request is granted, the Court will direct the issuance and service of process and may establish a schedule for payment of the filing fee. At the conclusion of an action in which prepayment of the filing fee was waived, the court may direct that the non-prevailing party pay any remaining portion of the filing fee still due.

Cross-references:     28 U.S.C. §§ 1914(b), 1915(a)  
                          *Fed. R. Civ. P.* 8(a)  
                          *Fed. R. Civ. P.* 11  
                          Local Rule 5.1  
                          Local Rule 5.11  
                          Local Rule 38.1

## *Procedure for Filing Notice of Removal*

When a civil case is removed from a state court to this court, some of the basic requirements for filing an original civil lawsuit apply, *e.g.*, a filing fee must be paid and a civil cover sheet completed. Click the following link - <http://www.insd.uscourts.gov/Forms/DCFeeSchedule.pdf> - to obtain current fee information, or on the Court's website, follow the link to "Court Information" and then select "Fee Schedule."

In addition, the following guidelines should be observed:

- 1) The caption of the notice of removal must be the same as the caption of the original complaint filed in the state court. All parties must be listed in the caption of the case. The use of "*et al.*" is not sufficient.
- 2) Copies of all state court papers, excluding discovery matters, should be attached to or included with the notice of removal. *Fed. R. Civ. P. 5.2* should be consulted regarding the applicability of that rule's redaction requirements to the state court filings.
- 3) Copies of the notice of removal must be served on all parties and on the state court clerk.

Counsel filing a notice of removal should be alert to the requirements of Local Rule 81.1, which requires in certain circumstances that the party filing the notice of removal certify that the amount of damages at issue satisfies the jurisdictional amount of 28 U.S.C. § 1332(a). In those circumstances the plaintiff is required to amend the complaint to comply with the jurisdictional amount requirements within thirty (30) days, if the case is not remanded.

Cross-references:    28 U.S.C. § 1332(a)  
                              *Fed. R. Civ. P. 5.2*  
                              Local Rule 81.1

## *Service of Process*

The party asserting a claim for relief, whether through a complaint, a counter-claim or a cross-claim, bears the responsibility for properly notifying any adverse parties of the existence and nature of that claim. The traditional method by which this notice has been delivered is via a summons, although other methods are available in some circumstances.

At the time an action is commenced, the filing party may submit an original summons with the required number of copies needed for service. The original and all copies of the summons are signed and sealed by a deputy clerk. The deputy clerk keeps one copy for the Court's file and returns the original and remaining copies to the attorney or *pro se* litigant. Thereafter, the party initiating the claim for relief must complete the service of summons in compliance with the methods described in *Fed. R. Civ. P. 4*. **The Court does not serve the summons.**

Alternatively, the party may utilize the notice and waiver provisions provided for in *Fed. R. Civ. P. 4(d)*. Regardless of which method is selected, the party on whom the burden rests has 120 days from the filing of the complaint (or cross-claim or counterclaim) in which to serve process on the adverse parties. *See Fed. R. Civ. P. 4(m)*.

Cross-references: *Fed. R. Civ. P. 4*

## *Entry and Withdrawal of Appearance*

The appearance and withdrawal of counsel are governed by Local Rule 83.7, and an appearance form is available on the Court's website. The Clerk will accept, in lieu of an appearance on the prescribed form, an appearance comparable in format.

Any change of name or address, including e-mail address, should be communicated in writing to the Clerk's Office. If the attorney is counsel of record in a pending case, notice of the change must also be filed in the case and served upon all parties.

Cross-reference:       Local Rule 83.7

## *Amendment of Complaints and Amendment of Other Pleadings*

Pursuant to *Fed. R. Civ. P.* 15(a),

- (1) A party may amend its pleading once as a matter of course:
  - (A) before being served with a responsive pleading; or
  - (B) within 20 days after serving the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar; and
- (2) A party may amend its pleading only with the opposing party's written consent or the court's leave.

Notwithstanding the first of the foregoing statements, a new party may be brought into a case only with leave of court. *See, e.g., Moore v. State of Indiana*, 999 F. 2d 1125, 1128 (7<sup>th</sup> Circuit 1993).

When an amended complaint (or other amended pleading) is submitted but not filed as of right under *Fed. R. Civ. P.* 15(a) or pursuant to court order, the following procedures should be observed:

1. A motion for leave to file an amended complaint should be electronically filed as the main document with the proposed amended complaint and a proposed Order granting the motion submitted as attachments to the motion.
2. If an order granting the motion is entered, the Clerk will file the amended complaint and assign it a docket number.

Cross-Reference:     *Fed. R. Civ. P.* 15  
                          Local Rule 15.1

## *Consent to Magistrate Judge*

Each United States Magistrate Judge of this Court is authorized to perform the duties prescribed by 28 U.S.C. § 636(a)(1) and (2), and may exercise all the powers and duties conferred upon United States Magistrate Judges by statutes of the United States. Parties may consent to have a full-time Magistrate Judge conduct any or all proceedings in a jury or nonjury civil matter, including trial of the matter and entry of judgment.

The Court encourages attorneys and litigants to make full use of the Magistrate Judges, each of whom is highly experienced and well qualified to handle all aspects of civil litigation. Our Magistrate Judges are exceptionally well qualified to serve as trial judges. Collectively, they have presided over hundreds of jury and court trials. Consent to have a Magistrate Judge conduct the proceedings does not preclude the originally assigned District Judge from conducting any or all proceedings in the case, including trial; however, in practice it is very rare that a matter is returned to the District Judge once the parties consent to proceed before a Magistrate Judge.

Consents pursuant to 28 U.S.C. § 636(c) must be made on the record and be unequivocal. The preferable procedure is for a written consent to be signed and filed by either the party or the party's counsel. Forms for notice of consent and other related matters are available on the Court's website. Parties may file a joint consent or may file separate consents. There is no time limit within which a consent must be filed. The consent of all parties is required in order to trigger the provisions of § 636(c), although the consents need not be filed simultaneously. Ordinarily, the case will be referred to the Magistrate Judge assigned to the case at the time the notice of consent filings are complete.

The consent procedure should not be confused with the issuance of an Order of Reference to a magistrate judge pertaining to specific motions or issues or for particular types of action pursuant to 28 U.S.C. § 636(b)(1)(A) and (B).

Cross-references:     28 U.S.C. § 636  
                              *Fed. R. Civ. P.* 73  
                              Local Rule 72.1

## **PRETRIAL PROCEDURES, INCLUDING MOTIONS PRACTICE**

### *General Pretrial Procedures Information*

Counsel should refer to Local Rule 16.1 and the court's website page - [http://www.insd.uscourts.gov/Attorney/attorney\\_main.htm](http://www.insd.uscourts.gov/Attorney/attorney_main.htm) - for the details regarding pretrial procedures and the filing of case management plans. The court now uses a Uniform Case Management Plan, which is available on the court's website, as noted above, or by calling the Clerk's Office. Questions concerning any specifics of case management can be referred to the appropriate courtroom deputy clerk.

The Court relies on Local Rule 16.1 to facilitate the orderly and efficient management of cases. One of its principal policies is that counsel can and should conduct many phases of litigation without the direct involvement or supervision of the Court, thereby giving greater flexibility to the attorneys and their clients, as well as conserving judicial resources.

Very often the Court, in consonance with the case management plan in a particular case, will set a case for trial only one time. This deadline places significant responsibilities on counsel to adhere diligently to pretrial schedules.

The case management plan requires counsel to confer (preferably in person) and give thoughtful consideration to the merits and the amount of damages at issue in a case at the initial stages, rather than waiting until immediately before trial. The current case management plan provides a choice of four alternative "Tracks" for a trial date and certain pretrial deadlines. An early conference allows the attorneys and parties to consider a realistic time frame and to recommend to the Court the appropriate "Track" for resolution of the dispute. The purposes of the plan cannot be fulfilled by merely exchanging a document in which the parties simply fill in blanks for deadlines without any reasoned consideration of the difficulty of the issues in the case and the schedules of the parties.

Cross-references:    Local Rule 16.1

## *Emergency Matters; Motions Judge*

### **a. Requests for Temporary Restraining Order or Preliminary Injunction**

Requests for preliminary injunction or temporary restraining order are governed by *Fed. R. Civ. P. 65 and Local Rule 65.2*. The Court will only consider a request for preliminary injunction or for a temporary restraining order when the moving party files a **separate motion** for such relief. A motion for temporary restraining order must comply with all requirements of *Federal Rule of Civil Procedure 65(b)*, and must be filed with a supporting brief.

Such motions are presented to the Court immediately upon filing. The Court, however, expects that every reasonable effort has been made to reach an accord with opposing counsel on the issues advanced in the motions before relief in the form of these extraordinary remedies is sought. Once such a request is made, counsel should coordinate the scheduling and other aspects of a hearing or conference with the assigned Judge's courtroom deputy clerk.

### **b. Emergency Matters and Motions Judge**

Jurisdiction over any specific action is vested in the Court, not in individual judges. Nonetheless, civil, criminal and miscellaneous cases are assigned to particular judicial officers to facilitate their orderly process and resolution. When the assigned judge is not available to act on a matter requiring an immediate ruling, a Motions Judge is available in each Division for that purpose. The Clerk of the Court maintains a current Motions Judge calendar, and will work with the assigned Judicial Officer and his or her staff to determine if referral to the Motions Judge is appropriate.

Cross-references:     *Fed. R. Civ. P. 65*  
                              Local Rule 65.2

## *Motions Practice*

### **a. In General**

Counsel should be aware of the Local Rules regarding motions practice (Local Rule 56.1 for summary judgment motions, Local Rule 65.2 for preliminary injunctions and temporary restraining orders, and Local Rule 7.1 for other motions), including the requirement of filing a separate supporting brief, and the requirements of Local Rule 5.1. When a party filing a motion has contacted the opposing parties, a practice which is encouraged, and there is no objection to the relief sought in the motion, that fact should be recited in the motion.

With the advent of electronic docketing, the clear identification in the title of motions and supporting documents is essential for accurate docketing. Several aspects of motions practice are particularly crucial and thus should be carefully observed:

1. Each motion, unless submitted in the alternative, must be on a separate document.
2. Supporting briefs must be designated as supporting or opposing a specific (named) motion or petition.
3. Documents already part of the Court's file should be discussed by reference to their court assigned document number or attachment letter rather than re-submitted with a motion or brief.
4. Notwithstanding the precision of labeling shown below, brevity and clarity in labeling and composing documents for filing are highly valued.

For example, a motion and supporting brief could be entitled:

CROSS-CLAIM DEFENDANT XYZ's RESPONSE  
TO CROSS-CLAIM PLAINTIFF ABC'S  
MOTION FOR JUDGMENT ON THE PLEADINGS

CROSS-CLAIM DEFENDANT XYZ's  
BRIEF IN SUPPORT OF OPPOSITION TO CROSS-CLAIM  
PLAINTIFF ABC'S MOTION FOR JUDGMENT ON THE PLEADINGS

DEFENDANT'S MOTION TO DISMISS OR,  
IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO DISMISS OR,  
IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

## **b Ripeness of Motions for Ruling and Requests for Oral Arguments**

A motion will be deemed ripe for ruling upon the passage of the applicable time for response and reply as provided in Local Rule 56.1 for motions for summary judgment and Local Rule 7.1 for other motions.

A request for oral argument or an evidentiary hearing on a motion should be submitted separate from the motion itself. Any such request should include a statement of the specific purpose or reason for the request and an estimate of the time reasonably required for the Court to devote to the argument or hearing. Generally, the Court does not hold oral arguments on motions.

## **c. Local Rule 56.1 - Motions for Summary Judgment**

The requirements and operation of Local Rule 56.1 are of vital importance to both the Court and counsel. Local Rule 56.1 establishes the briefing period for a summary judgment motion--an adverse party has thirty (30) days after service of the initial brief in which to serve and file an answer brief and the moving party has fifteen (15) days after service of the answer brief in which to serve and file a reply brief. Local Rule 56.1 also prescribes specific additional steps which are to be followed. Note that collateral motions, such as motions to strike, are strongly discouraged (see Notes to Local Rule 56.1).

Failure to comply with the Local Rule requirements for factual assertions can have significant effect:

For purposes of deciding the motion for summary judgment, the Court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts: are specifically controverted in the opposing party's "Statement of Material Facts in Dispute" by admissible evidence; are shown not to be supported by admissible evidence; or, alone, or in conjunction with other admissible evidence, allow reasonable inferences to be drawn in the opposing party's favor which preclude summary judgment. The Court will also assume for purposes of deciding the motion that any facts asserted by the opposing party are true to the extent they are supported by admissible evidence. The parties may stipulate to facts in the summary judgment process, and may state that their stipulations are entered only for the purpose of the motion for summary judgment and are not intended to be otherwise binding.

Local Rule 56.1(e).

Cross-references: Local Rules 5.1, 7.1, 56.1, and 65.2

## COURTROOM PROCEDURES

Each judicial officer has specific, individual requirements of decorum and procedure in the courtroom. Several of the Judges and Magistrate Judges have published their courtroom procedures (<http://www.insd.uscourts.gov/Judges/default.htm>.) or on the Court's website, click the "Attorneys" button, and select the link "Judge Biographies, Courtroom Procedures" under the heading "Judges & Courtroom Procedures." In general, all Judges and Magistrate Judges require the following:

1. Punctuality;
2. Pre-marked exhibits (exhibit and witness lists should be provided to court, court reporter and the courtroom deputy clerk);
3. Advance notice, if possible, of all objections to witnesses and exhibits;
4. Witnesses present and ready to testify;
5. Your own presentation devices, such as easels, x-ray viewers, etc. However, please note the availability in Indianapolis, New Albany and Evansville of video evidence presentation systems ("VEPS"), which may be used in the courtroom, to present evidence in various media forms. A more limited VEPS system is available in Terre Haute.

For more information regarding the VEPS available for presentation of evidence to a witness, jury or the bench, click the following link: [http://www.insd.uscourts.gov/Publications/veps\\_4-08.pdf](http://www.insd.uscourts.gov/Publications/veps_4-08.pdf) or on the Court's website, follow the link to the "Attorneys" page, and look under "Judges & Courtrooms". Also, please confer with the assigned CRD before the scheduled proceeding to ensure that your presentation will be handled in the most efficient, effective, and productive manner. Any specific questions concerning the handling of exhibits, witnesses, jury, *etc.*, should be posed to the Courtroom Deputy Clerk.

## JUDGMENTS AND RELATED MATTERS

### *Effective Date and Form of Judgment*

A judgment is not final for purposes of *Fed. R. Civ. P.* 58 and 79 until it is entered on the docket by the Clerk. Appellate timetables and the accrual of post-judgment interest run from that date.

A partial final judgment may be entered pursuant to *Fed. R. Civ. P.* 54(b) only when the specific criteria of that Rule are present and where the Court expressly directs the entry of a partial final judgment. Otherwise, a ruling which resolves less than all the claims against all the parties generally remains interlocutory.

Cross-references:     *Fed. R. Civ. P.* 54(b), 58, 79

## Default Judgment

A default may be entered when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed (*See, Fed. R. Civ. P. 12*) following service. **Proof of adequate service must be on file with the Clerk.** It may also be entered where a defendant has waived service of summons under *Fed. R. Civ. P. 4(d)* but has not responded within the applicable time period under that Rule. Before a default judgment can be entered, an entry of default must be made against the party by the Clerk. It should be noted, however, that attorney fees and special damages can only be awarded by the Court.

### Entry of Default

The first step in securing a default is to file an Application for Entry of Default along with an affidavit setting forth the relevant dates of filing and service in order to show entitlement to an entry of default. *Fed. R. Civ. P. 55(a)*. The party seeking an entry of default should also tender an appropriate entry for the Clerk's signature. A default judgment may be pursued after the Clerk has entered the default of a party in the record.

### Default Judgment

**By the Clerk.** When seeking a default judgment for a sum certain or for a sum which can by computation be made certain (*e.g.*, suit on a note, on open account), such request should be supported by an affidavit setting forth that the party to be defaulted is not an infant, an incompetent person, nor in military service; that the default is for failure to appear; and that the disbursements, if any, sought to be taxed as costs have been or must be made in the action.

**By the Court.** In all other cases where a default judgment is sought, the party seeking the judgment must apply to the court for the specific relief requested. *Fed. R. Civ. P. 55(b)(2)*.

Cross-references: *Fed. R. Civ. P. 4* (Service of Process)  
*Fed. R. Civ. P. 12* (Time to answer or defend),  
*Fed. R. Civ. P. 55* (Default)

## *Bill of Costs*

The Bill of Costs form is available from the Clerk's Office and on the Court's website on the "Forms" page or click the following link (<http://www.insd.uscourts.gov/Forms/ao133.pdf>). Parties are encouraged to utilize this form.

A Bill of Costs is prepared by the prevailing party. The Bill of Costs should reflect all taxable costs incurred by that party, including the filing fee if the plaintiff is the prevailing party. Costs can only be taxed when there is a judgment. Costs cannot be taxed in a settled case unless it is a specific element of the settlement. Do not include attorney fees in a Bill of Costs to the Clerk. Attorney fees must be requested by separate petition and supporting brief. Also, only costs associated with proceedings in the District Court can be taxed by the District Court Clerk. Costs associated with an appeal are taxed by the Clerk of the Court of Appeals pursuant to *Fed. R. App. P.* 39.

**SPECIAL NOTE: Attach to your Bill of Costs an itemization and documentation (receipts, invoices, etc.) for requested costs in each category.**

Please note that "taxing" costs consists only of signing and sealing a filed Bill of Costs and docketing it in the case record. Generally, the Clerk will tax any costs substantiated by itemization and affidavit of counsel. If the opposing party has objections as to a particular item, those objections should be made in writing to the Court and filed with the Clerk. The Clerk is not responsible for collecting or assisting in the collection of these costs. Conformed copies are distributed to the parties of record.

Local Rule 54.1 provides that parties have a period of fourteen (14) days from the entry of a final judgment in which to file and serve a Bill of Costs and a motion for the assessment of attorney fees. The Court prefers that any Bill of Costs be filed on AO form 133, which is available from the Clerk and on the Court's web site.

Cross-Reference:     28 U.S.C. § 1920  
                          *Fed. R. Civ. P.* 54(d)  
                          Local Rule 54.1

## *Collection of Judgment*

The procedure for executions and proceedings supplemental in the District Court adopts the remedies and procedures governed by the Indiana Trial Rules, except where those remedies or procedures conflict with federal statute.

### **a. Writ of Execution**

The first step toward collection of a judgment is the issuance of a writ of execution. The writ is completed by counsel and issued by the Clerk consistent with the following procedures:

- (a) Prepare writ of execution - (obtain blank writs and Marshal 285 instruction sheets from Clerk's Office).
- (b) Contact Marshal's Office for return date for inclusion on writ.
- (c) File Praecipe for writ of execution with District Court.
- (d) Obtain writ directed to U.S. Marshal for service and execution.

### **b. Proceedings Supplemental to Judgment**

If a writ of execution is returned unsatisfied, or if there are no assets on which execution can be had, the judgment creditor may request proceedings supplemental to judgment to discover and attach assets, income or other property to satisfy the judgment. The motion for proceedings supplemental shall be automatically referred to the Magistrate Judge originally assigned to the cause. All documents relating to proceedings supplemental shall be filed under the same cause number as the original action.

A judgment obtained in another district and registered in this district (referred to as a "foreign judgment") is assigned a miscellaneous number and shall be subject to the filing fee applicable to miscellaneous matters. Commencement of proceedings supplemental on a foreign judgment registered in this district will remain in the miscellaneous case and with the motions Judge previously assigned at the time the judgment was registered. No additional fee is required for the proceedings supplemental.

### **c. Judgment Obtained in this District**

- (1) A writ of execution ordinarily will be issued and returned unsatisfied; however, if the motion for proceedings supplemental states "that the plaintiff has no cause to believe that levy of execution against the defendant will satisfy the judgment," a writ does not have to be issued prior to proceeding supplemental.

- (2) The motion for proceedings supplemental must be filed under the same cause number as the original action.

**d. Judgment Obtained in Another District** (*Foreign Judgment*)

A judgment for registration in another district, pursuant to 28 U.S.C. § 1963, is "a judgment in an action for the recovery of money or property now or hereafter entered in any district which has become final by appeal or expiration of time for appeal . . . ."

To commence an action for proceedings supplemental based on a judgment entered in another district, the judgment creditor should obtain a certification of judgment for registration in another district (Form AO 451) with a certified copy of the judgment attached. This step is taken through the Court in which the judgment was entered.

Then, in this District Court, the foreign judgment is registered by being docketed as a miscellaneous case, along with the filing fee. This is the point at which a writ of execution will issue. Note: Click the following link - <http://www.insd.uscourts.gov/Forms/DCFeeSchedule.pdf> - to obtain current fee information, or on the Court's website, follow the link to "Court Information" and then select "Fee Schedule."

If the judgment creditor seeks to commence proceedings supplemental in this District based on the registered foreign judgment, the motion is presented and treated as a new civil case, the filing fee is paid, and all papers in the miscellaneous file are transferred to the civil file.

## APPEALS

### *General*

Most appeals from a decision of the District Court proceed to the U.S. Court of Appeals for the Seventh Circuit in Chicago. To initiate an appeal, a Notice of Appeal is filed with the Clerk of the District Court. Pursuant to Appellate Rule 10(a), the Clerk notifies all parties that a notice of appeal has been filed.

**A notice of appeal should be accompanied by the following:**

**1. Docketing Statement (filed with the District Court Clerk); and**

**2. Filing fee.** (Click the following link - <http://www.insd.uscourts.gov/Forms/DCFeeSchedule.pdf> - to obtain current fee information, or on the Court's website, follow the link to "Court Information" and then select "Fee Schedule."

A notice of appeal must conform to the requirements of Appellate Rule 3(c). It should be signed and dated and must include the names of all parties seeking to appeal. The use of "et al.," "plaintiffs" or similar abbreviations will not be effective or sufficient for anyone not actually named. It must also include a designation of the judgment, order or part thereof from which the appeal is taken.

Upon the filing of a notice of appeal, a "**short record**" on appeal is immediately forwarded to the Court of Appeals. The short record consists of a copy of the docket, the notice of appeal, the appellant's docketing statement and the judgment or order from which an appeal is being taken, including any explanatory Entry.

To expedite the processing of each appeal, attorneys should familiarize themselves with Circuit Rules 3, 10, 11 and 45. Appellate Rule 4(a) governs the time within which a notice of appeal must be filed.

Inquiries regarding the status of a case on appeal ordinarily cannot be answered by the District Court staff because we do not have immediate access to such information. The Court of Appeals maintains its own website ([www.ca7.uscourts.gov](http://www.ca7.uscourts.gov)), from which certain docket information may be accessed. The website also contains a Practitioner's Handbook which contains helpful and important information.

If at some point the appellant requests dismissal of an appeal, please provide the District Clerk with a copy of the dismissal or call the District Court's Appeals Deputy with that information. Depending on what record preparation has already occurred, it could avoid unnecessary expense, time and effort in preparation of the record.

Counsel should keep in mind that documents under seal in the District Court are not necessarily kept under seal at the Court of Appeals. The Seventh Circuit Operating Procedures give more detail and may be accessed at the Court of Appeals' website.

### *Designation of Record*

Local Rule 76.1 provides a mechanism for separate or joint designations of items to be included in the record on appeal pursuant to Circuit Rule 10(a). Counsel should closely review the Circuit Rules so that any designation filed in the District Court is compliant with Circuit guidelines.

The Court of Appeals will inform the District Court when the complete record should be sent to the Court of Appeals. Usually, a request for the record on appeal will be sent to the District Court three to four weeks before oral argument.

### *Transcript*

Counsel is responsible for making arrangements with the court reporter for the preparation and filing of transcripts. The procedure for requesting a transcript is covered in the "Miscellaneous" section of this Handbook — under "Court Reporters and Transcripts."

### *Withdrawal of Record on Appeal*

In most instances, the parts of the record which an attorney may need to refer to in preparing appellate briefs and submissions are available electronically through CM/ECF for viewing and copying. In those instances where an attorney needs access to a hard copy of the record, the attorney should contact the Appeals Deputy at (317) 229-3933 to arrange for withdrawal of appeal records from the Indianapolis Division. Attorneys should call the appropriate divisional office for divisional case appeals (Terre Haute: (812) 234-9484; Evansville: (812) 434-6410; New Albany (812) 542-4510). At least five days' notice should be provided to the Appeals Deputy and the record must be returned not later than 10 days from the date of withdrawal. Original trial exhibits may not be removed from the Clerk's custody, but may be reviewed at the Clerk's Office.

A party not represented by counsel may examine the record during the normal office hours or under other arrangements upon order of the Court.

Cross-references:     *Fed. R. App. P.* 3, 4(a)  
                              Local Rule 76.1

## OTHER COURT MATTERS

### *Bar Admission*

Admission to the Bar of this District Court is governed by Local Rule 83.5(b). An attorney may be admitted based upon his or her admission to practice before the Supreme Court of the United States or the highest court of any state, upon the Court's being satisfied with the attorney's private and professional character, upon the admittee's taking of the prescribed oath or affirmation, and upon the tendering of the fee for admission.

Public admission ceremonies are held in conjunction with those of the State of Indiana. They presently occur twice each year. An attorney may also seek admission on an individual basis, in which case the necessary arrangements may be made by contacting Dan Habing at (317) 229-3700 in Indianapolis, Susan Doninger, Deputy-in-Charge, in Evansville at (812) 434-6410, or any deputy clerk in New Albany at (812) 542-4510 or Terre Haute at (812) 234-9484.

Whether admitted as part of a public bar admission ceremony or individually, a fee is payable at the time of an attorney's admission. Click the following link - <http://www.insd.uscourts.gov/Forms/DCFeeSchedule.pdf> - to obtain current fee information, or on the Court's website, follow the link to "Court Information" and then select "Fee Schedule." Following the taking of the oath, the Clerk will issue the admittee a certificate of admission.

The Court has adopted the Seventh Circuit's *Standards of Professional Conduct* with respect to the conduct of attorneys – click the following link <http://www.insd.uscourts.gov/Publications/StdProfConduct.pdf>, or on the Court's website, follow the button for "Attorneys" — the Standards are in the "Rules & Procedures" section. Admission to its Bar constitutes an acknowledgment both of counsel's familiarity with these standards and an agreement to abide by them.

Admission *pro hac vice* may be sought upon written motion accompanied by the required fee, and supported by the movant's affidavit that he or she is admitted to practice before the highest court of the jurisdiction in which he or she customarily practices and is not currently under suspension or other disciplinary action with respect to his or her practice.

Attorneys admitted to practice are entitled to use the U.S. Court's Library, located in Room 445 of the Courthouse in Indianapolis. The Library's hours are from 8:30 a.m. to 4:30 p.m. Monday-Friday. Sonja Simpson is the librarian and may be contacted at (317) 229-3925.

A certificate of good standing as a member of the Bar is available upon request and payment of the required fee.

Cross-references:      Local Rule 83.5

## *Attorney Discipline*

The Court has adopted the *Indiana Rules of Professional Conduct*, as formulated by the Indiana Supreme Court, as the standards for professional conduct of attorneys. Click the following link - <http://www.insd.uscourts.gov/Publications/IndianaRulesProfConduct.pdf> - or on the Court's website, follow the button for "Attorneys" — the Rules are in the "Rules & Procedures" section).

Attorney discipline is governed by the Court's *Local Rules of Disciplinary Enforcement*. In general, the Court adheres to a reciprocal discipline policy with the State of Indiana. If an attorney is disciplined by the Indiana Supreme Court, the District Court, upon receiving notification by the Supreme Court, will issue an order directing the attorney to show cause why the same discipline should not be imposed by this Court. If there is no response, the Court ordinarily imposes discipline identical to that imposed by the Indiana Supreme Court. It may, however, enter any other appropriate order. If a disciplinary issue arises within the context of practice before this Court, the matter may be investigated and formal disciplinary proceedings initiated in this Court, or the matter may be referred to the appropriate state disciplinary entity.

Cross-references:     Local Rule 83.5  
                              *Local Rules of Disciplinary Enforcement*

## *Civil Legal Assistance Panel*

In response to situations where counsel is not available to litigants through traditional means, the Court has created a Civil Legal Assistance Panel. Attorneys within each Division may notify the Clerk in writing of their willingness to serve on this panel. Although the term, "appointment of counsel" is often used in this context, in reality the Court requests the voluntary assistance of counsel to serve on behalf of a previously unrepresented party. This typically occurs after a case has passed through the preliminary stages and the Court finds reason to believe that the litigant in search of counsel has a potentially viable case. Recovery of attorney fees in certain cases is available by statute if the litigant is the prevailing party, *see e.g.*, 42 U.S.C. § 1988.

Local Rule 4.6 sets out detailed procedures for the request and appointment of counsel in civil cases. The Court's requests are generally, but not always, made of attorneys who have indicated a willingness to serve on the Civil Legal Assistance Panel. Attorneys will be contacted by a court representative if their representation is requested. Nothing in Local Rule 4.6 prohibits an attorney accepting a request for representation from negotiating or entering a voluntary fee arrangement with the litigant.

Appearances in response to a request to appear under Local Rule 4.6 are not funded through the Criminal Justice Act or from any other public funds. However, Local Rule 4.6 provides that reimbursement up to \$500.00 is available for itemized copy, mail, telephone, travel, and expert witness expenses. At the discretion of the assigned Judge on a case-by-case basis, reimbursement of itemized expenses may be made up to \$1000.00. Reimbursements for deposition or other discovery expenses are generally not available, absent specific prior authorization from the Court.

When an attorney who has been requested to appear under Local Rule 4.6 is unable to continue representation of the client, counsel must withdraw in a manner consistent with the procedures of Local Rule 4.6. The Court acknowledges the sacrifice made by attorneys who agree to serve on the Civil Legal Assistance Panel, and the Clerk will make every effort to cooperate with them. The Court also applauds the Bar's demonstrated, strong commitment to providing competent legal services to those unable to pay for these services. Thus requested appearance under Local Rule 4.6 is viewed as a service to the Court and the public. An application for membership in the Civil Legal Assistance Panel is available on the District Court's website and from the Clerk's Office in each Division. Participation in the civil legal assistance panel is encouraged.

Cross-references:     28 U.S.C. § 1915(e)  
                              Local Rule 4.6, Local Rule 83.7

## *Custodian of Files/Exhibits*

### **Court Files**

The Clerk is the custodian of the Court's files. Leave of Court is required to remove any record not on appeal.

### **Exhibits**

**Non-trial exhibits.** Exhibits filed in support of a motion or other document should be electronically filed as attachments to that document and should contain only those excerpts of the referenced documents that are directly germane to the issues raised in the document, as required by Local Rule 5.10. When filing electronically, each supporting exhibit or attachment must be created as a separate PDF document and a clear, brief description of each exhibit must be entered during the filing process (Example: Exhibit A — Map of Indianapolis, Exhibit B — Excerpts from Deposition of Jane Doe). If possible, documents should be converted to PDF directly from a word processing program (*e.g.*, Microsoft Word® or Corel WordPerfect®), rather than created from the scanned image of a paper document.

Individual PDF files may not exceed an electronic file size of **5 megabytes**, pursuant to Local Rule 5.1. To electronically file an exhibit or attachment that exceeds 5MB, the document must first be broken down into two or more smaller files. For example, if Exhibit A is a 6MB PDF file, it should be divided into 2 equal parts prior to electronic filing. Each component part of the exhibit should then be filed as an attachment to the main document and described appropriately as "Exhibit A – (brief description of exhibit) (part 1 of 2)" and "Exhibit A – (brief description of exhibit) (part 2 of 2)."

Where an individual exhibit or attachment cannot be included in an electronic filing because it cannot be converted to electronic format, the filer must electronically file a Notice of Manual Filing in place of the exhibit. The Notice of Manual Filing should clearly state what the exhibit is and why it cannot be filed electronically. The exhibit must then be filed and served in the traditional manner used for paper filings, accompanied by a paper copy of the Notice of Manual Filing that was electronically filed in its place. A model form of the Notice of Manual Filing is provided in the Court's Electronic Case Filing Administrative Policies and Procedures Manual (<http://www.insd.uscourts.gov/CM-ECF/AdminManual.pdf>.)

**Trial exhibits.** Unless the Court directs otherwise, after an item is offered for identification as an exhibit or demonstrative evidence, it remains in the custody of the Clerk until the action is closed, whether or not it actually becomes a trial exhibit. A case is closed on the date the final judgment or the mandate from the Court of Appeals (in the case of an affirmance) is docketed, whichever occurs later.

Unless other arrangements are made, the party who offered an exhibit has ninety (90) days after the case is closed to retrieve it from the Clerk. An appropriate receipt is given to the Clerk and filed at the time of retrieval. If an exhibit is not retrieved in accordance with this procedure, the Clerk will issue notice to the offering party. If the exhibit remains unclaimed for another thirty (30) days, it may be sold or otherwise disposed of as the Court orders. The proceeds from any such sale are deposited with the registry of the Court.

Weapons and exhibits consisting of contraband are not retained by the Clerk. Items of this nature are released to the investigating agency at the conclusion of trial or otherwise handled as the Court directs.

Cross-Reference:     Local Rule 79.1  
                          Local Rule 5.1

## *Bankruptcy Matters in District Court*

Matters arising under Title 11 of the United States Code are subject to an automatic reference to the Bankruptcy Court. This reference has been made pursuant to 28 U.S.C. § 157(a). The Bankruptcy Court has its own Clerk, Clerk's Office and staff. In addition, it has its own website, located at <http://www.insb.uscourts.gov>.

### **a. Appeals**

The District Court's jurisdiction over appeals from decisions of the Bankruptcy Court is created by 28 U.S.C. § 158(a).

The notice of appeal of a ruling of a Bankruptcy Judge must be filed in the Bankruptcy Court, along with the filing fee payable to the Bankruptcy Clerk. The Bankruptcy Clerk will transmit the record to the District Court, where it will be assigned to a judge by random draw, and given a District Court case number.

Motions for stay pending appeal of Bankruptcy Court orders are filed with the Bankruptcy Court and then transmitted to the District Court Clerk, who assigns the motion a civil case number. When an appeal is later transmitted to the District Court, it is assigned the same case number as the previously filed motion for stay.

A motion for leave to appeal an interlocutory order or decree of the Bankruptcy Court is also filed with the Bankruptcy Court and, if granted, the record will be transmitted to the District Court Clerk, who assigns the motion a civil cause number.

A notice of related action must be filed if there have been any other appeals previously filed, whether arising out of an adversary action or otherwise, stemming from that same underlying bankruptcy proceeding. This is the case even if there is no factual overlap in the appeals.

### **b. Withdrawal of Reference**

In matters in which a statute provides for trial before a District Judge, counsel may request that the case be heard in District Court. If such action occurs, the following procedures apply:

1. The application or motion should be filed with the Bankruptcy Court, which in turn will transmit it to the District Court.
2. A cause number will be assigned and a District Judge will be chosen by random draw to rule on the application.

3. If the District Court grants the motion to withdraw the reference, the case will be heard in District Court in the usual manner.

For more specific instructions regarding the Bankruptcy Court, please refer to its website or contact the Clerk of the Bankruptcy Court at 229-3800.

Cross-references: 28 U.S.C. §§ 157, 158  
*Fed. R. Bankr. P.* 5011, 8001, 8003, 8005  
Local Rule 40.1(e)

## FINANCIAL MATTERS

### *Fees and Costs Payable to the Clerk*

A schedule of fees is available at this Court's website. Click the following link - <http://www.insd.uscourts.gov/Forms/DCFeeSchedule.pdf>- to obtain current fee information, or on the Court's website, follow the link to "Court Information" and then select "Fee Schedule." Fees are generally set by statute or by the Judicial Conference of the United States, but in some cases are set by each District Court.

Any fee or cost payable to the Clerk may be tendered through cash, check (including personal check), money order or credit card (VISA or MasterCard only). When a negotiable instrument is used, the payee should be: "Clerk, U.S. District Court." Questions should be directed to the financial deputy at (317) 229-3918.

### *Post Judgment Interest Rates*

Interest on judgments entered in the District Court is determined pursuant to 28 U.S.C. § 1961(a).

This statute provides that interest is "calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.

Current and past rates are available from the financial section at (317) 229-3918 or on the internet at: <http://www.federalreserve.gov/releases/H15/current> (Note: from the web site, utilize the "1-Year" weekly average interest rate under "Treasury Constant Maturities." The correct rate to use is for the "Week Ending" the previous Friday, effective the following Monday for that upcoming week. The weekly average 1-year constant maturity yield rate changes are posted to this web page every Monday after 4:00 p.m. EST. (If Monday falls on a holiday, then it is posted on Tuesday.)

Cross-references:      28 U.S.C. § 1961(a).  
                              *Fed. R. Civ. P. 55*

## *Investment and Withdrawal of Funds Placed in the Court's Registry Account; Registry Fees*

### **a. Investment and Payment of Funds**

Money paid into the Court is governed by 28 U.S.C. § 2041.

Money paid out by the Court is governed by 28 U.S.C. § 2042.

Pursuant to Rule 67 of the Federal Rules of Civil Procedure, the Clerk maintains a Registry Account. Parties depositing money into the Court may petition the Court for an Order of Investment directing the Clerk to hold the funds during the pendency of an action. Any such petition, together with a proposed order, should specify:

- (1) the exact amount to be invested;
- (2) a statement that the deposit should be made in an interest bearing account;
- (3) a statement that upon closing the account the Clerk will deduct a fee not to exceed 10% of earned income (see Section b. below);
- (4) the term of investment, if applicable.

For guidance in preparation of petition and proposed order, you may contact the Court's Financial Manager, Richard Krall, at (317) 229-3918.

The Clerk is not required to invest the following types of funds:

- ( 1 ) cash bail;
- ( 2 ) cost bonds, other cash bonds such as removal, admiralty, and injunction bonds;
- ( 3 ) civil garnishments;
- ( 4 ) proceeds from sales of property;
- ( 5 ) escrows from land condemnation;
- ( 6 ) admiralty sales proceeds;
- ( 7 ) supplemental rules for certain admiralty and maritime claims; and
- ( 8 ) any monies believed to be disbursed from the Registry within 30 days from receipt.

**b. Registry Fees.** Funds on deposit in the interest-bearing Registry Account are assessed a fee not to exceed ten (10) percent of the interest income earned regardless of the nature of the case underlying the investment. This fee is established by the Judicial Conference of the United States under the authority of 28 U.S.C. §§ 1913, 1914 and 1930 and is collected by the Clerk when funds are disbursed by order of the Court.

## *Security for Costs*

The Court may order any party to file an original bond for costs or additional security for costs in such an amount and so conditioned as may be designated.

a. In lieu of the filing of a bond, the party required to file the bond may deposit with the Clerk the amount of the bond in cash. This amount will be held by the Clerk until subject to whatever order or use the Court makes. That deposit may be used by the Clerk to pay all fees, costs and disbursements which the parties making the deposit ultimately are required to pay.

b. A bond or other commercial assurance in any case, except in bankruptcy or criminal cases or as otherwise prescribed by law, is sufficient if executed by the surety or sureties only.

Except as otherwise provided by law, every bond or undertaking must (1) be secured by the deposit of cash or negotiable securities issued by the United States of America in the amount of the bond or undertaking, (2) be secured by the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury or (3) be secured by the undertaking or guaranty of two individuals, residents of Indiana, each of whom owns real property within such district worth double the amount of the bond or undertaking over all his/her debts and liabilities and over all obligations assumed by him/her on other bonds or undertakings and exclusive of all legal exceptions. A husband and wife may act as sureties on a bond, but they are considered as only one surety on jointly owned property.

In the case of a bond or undertaking executed by individual sureties, each surety is to attach his/her affidavit of justification, giving his full name, occupation, residence and business addresses and showing that he is qualified as an individual surety as outlined above.

Members of the Bar, administrative officers or employees of the Court, the Marshal and his deputies or assistants may not act as surety in any proceeding in the Court.

If costs are awarded by the Court, the reasonable premium or expense paid on all bonds or other security given by the prevailing party may be taxed as part of the costs.

## MISCELLANEOUS COURT MATTERS

### *Transfer and Reassignment of Cases*

**a. Related Cases--Transfer** - Cases may be transferred from one judge to another judge when it is determined that a later-numbered case is related to a pending earlier-numbered case assigned to another judge. Local Rule 40.1(d) defines a related case as one growing out of the same transaction or occurrence, involving the same property or involving the validity or infringement of a patent, trademark or copyright already involved in pending litigation. All counsel in a case have a continuing duty to promptly file a "notice of related action" when there is reason to believe a related action exists.

The filing of a notice of related case does not automatically cause the Court to consolidate or reassign the cases identified in the notice. Upon the filing of a notice of related case(s), the Clerk will bring such cases to the attention of the judge who has been assigned to each case. The judge assigned to the earliest filed case determines whether he or she will accept reassignment of the later filed related case(s).

**b. Consolidated Cases** - *Fed. R. Civ. P.* 42(a) permits the consolidation of actions involving a common question of law or fact. This may be for trial or for any other purpose, including discovery.

Cases which are consolidated may be merged into a single case or may retain their separate identities. Effective management will dictate how this aspect is handled, just as it will dictate whether consolidated cases are transferred to a single judge.

**c. Reassignment of a Case after Remand or Disqualification** - Ordinarily, reversal on appeal following a trial results in the application of Circuit Rule 36. That is, the case is reassigned to a different Judge for retrial. Two exceptions to this exist where (1) the remand order directs that Circuit Rule 36 not apply, or (2) all parties agree that there not be a reassignment. If the first exception is not applicable, the Clerk will reassign the action to a different Judge fifteen (15) days after receipt of the mandate from the Court of Appeals unless all parties agree that there need not be a reassignment and file a request that the Judge previously assigned to the case retry the case within that time.

When reassigning a case pursuant to Circuit Rule 36, the Clerk employs a similar random lot system as used for all cases when they are first filed. This system is also used when a judge recuses or disqualifies himself or herself from a case or when it is necessary for other reasons to reassign a case.

Cross-references:     28 U.S.C. § 137  
                              *Fed. R. Civ. P.* 42(a)  
                              Circuit Rule 36  
                              Local Rule 40.1(h)

## *Motion to Quash or Enforced Discovery Process in Foreign (out-of-District) Litigation*

When an objection to a notice of deposition or subpoena to produce documentary evidence has been issued for a deposition to be taken within the Southern District of Indiana in connection with litigation pending in another District, an objection is lodged within the Southern District will be assigned to the Clerk's miscellaneous docket and presented to the Court for ruling.

A similar procedure is followed with respect to an application to enforce such a notice or subpoena.

The filing fee for opening a miscellaneous case will be collected at the time an objection to a notice of deposition or subpoena is filed. Click the following link - <http://www.insd.uscourts.gov/Forms/DCFeeSchedule.pdf> - to obtain current fee information, or on the Court's website, follow the link to "Court Information" and then select "Fee Schedule."

Cross-references:     *Fed. R. Civ. P. 45*

## Civil Legal Assistance Organizations

Following is a list of organizations that may assist individuals who cannot afford to hire an attorney.

<p>Legal Services Organizations of Indiana:</p> <p>151 N. Delaware Street, Suite 1800 Indianapolis, Indiana 46204 (317) 631-9410</p> <p>101 Court Street, Suite 101 Evansville, Indiana 47708 (812) 426-1295</p> <p>3303 Plaza Drive, Suite 5 New Albany, Indiana 47150 (812) 945-4123</p>	<p>Lawyers Referral Program Indianapolis Bar Association 107 N. Pennsylvania St., Suite 200 Indianapolis, Indiana 46204 (317) 269-2222</p>
<p>Legal Aid Society of Evansville, Inc. 1 N.W. Martin Luther King Jr Blvd., Suite 105 Evansville, IN 47708 (812) 435-5173</p>	<p>Inmate Legal Assistance Clinic c/o Indiana University School of Law Bloomington, Indiana 47405</p>
<p>Neighborhood Christian Legal Clinic Mapelton-Fall Creek Branch 401 East 34th Street Indianapolis, Indiana 46205 (317) 941-5051</p>	<p>Legal Aid Society 416 W. Mohammad Ali Blvd., Suite 300 Louisville, KY 40202 (502) 584-1254</p>
<p>Indiana Civil Liberties Union Price Building 1031 East Washington Indianapolis, Indiana 46202 (317) 635-4059</p>	<p>Terre Haute Bar Association, Attn: President 506 Ohio Street, Suite 7 P.O. Box 124 Terre Haute, IN 47808 (812) 234-8800</p>

## *Court Reporters and Transcripts*

### **Court Reporters**

Court reporter **Judy Faris Mason** is assigned to court reporting primarily in the Evansville Division. Her telephone number is (812) 459-9805.

The District Judges permanently assigned to the Indianapolis Division share a pool of court reporters, whose duties include trials wherever in the district those judges may conduct proceedings. Fred Pratt is the coordinator of this pool, and general inquiries should be directed to him. The roster of this pool is the following:

Laura Howie-Walters (coordinator)	(317) 632-3422
Fred Pratt	(317) 916-8209
Cathy Jones	(317) 423-0436
Jean Knepley	(317) 686-0197

The above pool also supplies court reporting services for the Magistrate Judges assigned to the Indianapolis Division whenever possible. Proceedings conducted before Magistrate Judges may also be recorded by electronic sound device or through contract with an independent court reporting service.

If counsel desires to have a particular proceeding reported which may not ordinarily be reported (such as a hearing on a motion for proceedings supplemental), the courtroom deputy of the judicial officer who will preside should be contacted well in advance and informed of this request well in advance of the hearing.

### **Transcripts**

Prior to the commencement of protracted and/or technical trials, attorneys should supply the court reporter with copies of witness and exhibit lists and a glossary of technical terms which may be utilized during the course of the proceeding.

When delivering oral arguments which include case or statutory cites, complete and full citations should be provided, including case name, source, volume, and page number.

Requests for daily copy transcript service should be made to Judy Mason (Evansville Cases) or Laura Howie-Walters (other divisions), the coordinator of court reporters, at least two weeks prior to the commencement of the trial or hearing.

When ordering a transcript, attorneys should make initial, direct telephone contact with the court reporter. If requested for purposes of an appeal, the court reporter will indicate the amount of the requested advance deposit, which should then accompany the completed 7th Circuit Transcript Information Sheet.

Within five business days of the filing by the court reporter of the official transcript with the Clerk's Office, each party is to inform the Court of any intention to redact personal data identifiers from the electronic transcript of the proceedings, by filing a notice of redaction with the Clerk. If no notice of redaction is filed, the Court will assume redaction of personal data identifiers from the transcript is not necessary. The official transcript will not be made available to the general public until 90 days from the date of its filing with the Clerk.

Within twenty-one calendar days of the filing of the transcript by the court reporter, parties who have provided notice of their intent to redact shall submit to the court reporter a statement indicating the location within the transcript of personal data identifiers that should be redacted. Such personal data identifiers include: Social Security numbers; financial account numbers; names of minor children; dates of birth; and home addresses. During the twenty-one day period, or longer if the court so orders, parties may move for additional redactions to the transcript. The court reporter shall redact the personal data identifiers from the electronic transcript before the transcript becomes available to the general public.

## *Alternative Dispute Resolution*

In this district, the Judges most often utilize the Magistrate Judges as settlement facilitators. The assigned Magistrate Judge may schedule a settlement conference involving the parties and their counsel at one or more strategic times during the course of pretrial proceedings in a civil action. The Magistrate Judges act in much the same way as a mediator might when cases in state court are referred to mediation. In addition, the Court has adopted Local Rules of Alternative Dispute Resolution, which provide for mediation by qualified mediators outside the court, if the parties elect to pursue the same. Those Local Rules - <http://www.insd.uscourts.gov/Publications/LocalRules.pdf> - also point out that the parties are free to pursue other dispute resolution methods which may be available to assist the parties in reaching a final outcome.