

UNITED STATES DISTRICT COURT
Southern District of Indiana
Office of the Clerk

Room 105
U.S. Courthouse
Indianapolis, Indiana 46204

Laura A. Briggs, Clerk
(Voice) 317-229-3700
(FAX) 317-229-3704

November 1, 2009

NOTICE

TO: THE PUBLIC AND MEMBERS OF THE PRACTICING BAR FOR THE SOUTHERN DISTRICT OF INDIANA

Pursuant to 28 U.S.C. ' 2071 and Rule 83 of the *Federal Rules of Civil Procedure*, the United States District Court for the Southern District of Indiana hereby gives public notice of the following:

The Local Rules Advisory Committee for the Southern District of Indiana has recommended, and the District Court has authorized release for a period of **public comment through November 30, 2009**, the revision of certain Local Rules of the United States District Court for the Southern District of Indiana. The amendments, if adopted, will be **effective December 1, 2009**. Unless otherwise indicated, as seen in this Notice **redline** text is added and **struck** text is deleted. The proposed amendments are as follows:

A. Subparagraphs (c) (d) and (e) of **Local Rule 1.1 – Scope of the Rules** will be **amended** as follows:

(c) **Scope of Rules.** These Rules shall govern all proceedings in civil and criminal actions and proceedings before Magistrates **Judges**. No litigant shall be bound by any Local Rule or standing order which is not passed in accordance with ~~FED. R. CIV. P.~~ **Fed. R. Civ. P.** 83 and 28 U.S.C. §§ 2071 and 2077.

(d) **Relationship to Prior Rules; Actions Pending on Effective Date.** These Rules supersede all previous Rules promulgated by this ~~C~~**c**ourt or any Judge of this ~~C~~**c**ourt. They shall govern all applicable proceedings brought in this ~~C~~**c**ourt after they take effect. They also shall apply to all proceedings pending at the time they take effect, except to the extent that in the opinion of the ~~C~~**c**ourt the application thereof would not be feasible or would work injustice, in which event the former Rules shall govern.

(e) **Modification or Suspension of Rules.** In individual cases the ~~C~~**c**ourt, upon its own motion or the motion of any party, may suspend or modify any of these Rules if the interests of justice so require.

B. Local Rule 4.6 - Representation by Counsel in Certain Civil Actions Involving Indigent Litigants - will be amended as follows:

(a) **Civil Trial Assistance Panel.** A **Civil Trial Assistance Panel** ~~Civil Legal Assistance Panel~~ is maintained to assist the ~~C~~ourt with requests by indigent civil litigants for representation. Individual attorneys, law school legal clinics, and law firms willing to represent litigants who lack the resources to retain counsel ~~may shall~~ apply for membership on the panel. By applying, applicants indicate a willingness to accept requests for representation whenever reasonably possible.

(b) Requests for Representation.

(1) If the ~~C~~ourt determines that requesting counsel is warranted under 28 U.S.C. § 1915(e), 42 U.S.C. § 2000e-5(f), or any other applicable statute, the ~~C~~ourt may request a member of the **Civil Trial Assistance Panel** ~~Civil Legal Assistance Panel~~ to represent the party or may direct the ~~C~~lerk to make such request on the ~~C~~ourt's behalf.

(2) The ~~C~~ourt may request representation by a specific member of the panel or of the bar of this ~~C~~ourt who is particularly qualified. Otherwise, the ~~C~~lerk shall select an attorney from the panel at random.

(c) Appearance and Duration of Representation.

(1) The attorney whose representation has been requested by the ~~C~~ourt ~~shall~~ **should** file an appearance within **14** ~~fifteen (15)~~ days of receipt of the request, if accepted.

(2) The attorney may decline the ~~C~~ourt's request.

(3) If an attorney accepts a request for representation pursuant to part (b) of this Rule, the attorney may thereafter seek to withdraw from the action and terminate the attorney's representation.

(A) Except as noted in parts (B) and (C) below, the requested attorney shall first make the request for relief from the client, in writing. The request for relief shall expressly inform the client that the ~~C~~ourt may choose not to request replacement counsel.

(B) If the relief requested is due to personal incompatibility between the attorney and the client, or to the attorney's belief that the client is proceeding for improper purposes, or if the client rejects the attorney's relief request, the attorney may petition for leave to withdraw in accordance with Local Rule 83.7(b).

(C) If a replacement attorney has been arranged by the original attorney or by the client, the requirements of paragraphs (c)(2)(3)(A) and (c)(2)(3)(B) of this Rule shall be waived. The original counsel shall file a notice of withdrawal which includes the name, address and phone number of replacement counsel.

(4) The client may for good cause request the Court to discharge the requested attorney and may request a replacement attorney.

(5) The Court shall have discretion to grant or deny petitions to withdraw or requests for discharge.

(6) When a requested attorney is relieved by consent, granted leave to withdraw, or discharged, the Court shall have discretion whether to request a replacement.

(d) Duration of Appointment.

(1) If at any time it appears the client is able to afford private counsel, the requested attorney may seek leave to withdraw or may agree with the client to be employed in the case.

(2) The representation shall begin on the date the requested attorney enters an appearance and shall continue until he/she has been relieved, final judgment is entered and reasonable collection or enforcement efforts are made, or later, if mutually agreed to by the attorney and the client.

(e) Expenses and Compensation.

(1) Reimbursement for attorneys requested under this Rule shall be available from the Court in the amount of Five Hundred Dollars (\$500.00) 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 One Thousand Dollars (\$1000.00). Expenses paid under this Rule shall be payable upon petition supported by appropriate documentation at the conclusion of an action and only if not otherwise recoverable.

(2) Upon appropriate application, the Court may award attorney's fees to a prevailing party with requested counsel to the same extent as would be awarded to a party with privately retained attorney.

(3) Nothing in this rule prohibits an attorney accepting a request for representation from negotiating or entering a voluntary fee arrangement with the client.

Note: December 1, 2009, stylistic amendment. Technical amendment to (c)(1) for consistency in time counting format with the Federal Rules of Civil Procedure.

C. Local Rule 5.1 - General Format of Documents Presented for Filing - will be amended as follows:

(a) Electronic Filings.

(1) Format of Documents Submitted Electronically. Documents submitted via the Court's Electronic Case Filing System under Rule 5.4 must be in PDF (Portable Document Format). Whenever possible, documents shall 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. Documents that exist only in paper format may be scanned into PDF for electronic filing. Proposed Orders must not be scanned into PDF, and must always be converted to PDF directly from a word-processing application. Each PDF file may not exceed an electronic file size of 5 megabytes (MB). To electronically file a document or attachment that exceeds 5 MB, the document must first be divided into two or more smaller files (see CM/ECF Policies and Procedures Manual for more information). With regard to all documents converted from a word processing program, (a) the size of the type in the body of the text shall be no less than 12 point, and in footnotes no less than 10 point, and (b) the margins, left-hand, right-hand, top and bottom, shall each be 1 inch.

(2) Ex parte Filings. Ex parte documents shall be filed electronically in accordance with the guidelines set forth in Section 19 of the CM/ECF Policies and Procedures Manual. The Court's Electronic Case Filing System will not transmit a Notice of Electronic Filing to attorneys of record when an ex parte document is filed.

(3) Signature. Every electronically filed document shall clearly identify the name, address, and telephone number, and Internet e-mail address of the filing attorney. Any electronically filed document not signed by the filing attorney appearing of record (as required by Local Rule 5.11) and submitted electronically using the filing attorney's ECF Login and Password shall, upon discovery of such omission, be stricken from the record unless such omission is promptly corrected upon notice to said attorney.

(4) Electronic Copies and Electronic File-Stamps. When a document is filed electronically, the official record is the electronic recording of the document as stored by the Court. The Court's Electronic Case Filing System will generate a Notice of Electronic Filing, which will be transmitted by the Court via e-mail to the filer and all attorneys of record in the matter who are Filing Users. The Notice of Electronic Filing will contain a hyperlink to the filed document which constitutes service of the electronically filed document, thereby replacing conventional paper service. The Notice of Electronic Filing also serves as the Court's date-stamp and proof of filing. When filing electronically, it is not necessary to provide the Court with envelopes and postage or additional copies of the document, as the document will be served on all registered counsel via email.

(5) **Form of Orders.** The filing of a motion or petition requiring the entry of a routine or uncontested order by the Judge or the Clerk shall be accompanied by a suitable tendered form of order together with a service list of all parties or their counsel whose names and email addresses (or postal address, if appropriate) shall be typed in the lower left-hand corner of the tendered form of order. The tendered order must be converted to a separate PDF file directly from a word-processing application (as opposed to scanning) and must be submitted electronically as an attachment to the motion or petition.

(b) **Paper Filings.**

(1) **Form, Style and Size of Paper Filings.** In order that the paper files of the Clerk's office may be kept under the system commonly known as "flat filing," all papers presented to the Clerk or Judge for filing shall be flat and unfolded. All paper filings shall be on white paper of good quality, 8 ½" x 11" in size, and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, on single-sided paper, and double spaced, except for quoted material. Where the document is typed or printed, (a) the size of the type in the body of the text shall be no less than 12 point, and in footnotes no less than 10 point, and (b) the margins, left-hand, right-hand, top and bottom, shall each be 1 inch. Paper filings shall be either stapled in the top left corner or bound in a manner which permits the document to lie reasonably flat when open (*e.g.*, spiral bound), and shall be two-hole punched at the top (but not fastened)(the punches shall be 2 ¾" apart and appropriately centered). Should the nature of the filing be so unusual as to make these methods of fastening infeasible, a party may seek leave of the Court to use a different method. Such leave shall be sought prior to the submission of any filing fastened in any way not conforming to this Rule. The title of each filing must be set out on the first page. Each page shall be numbered consecutively. Any paper filing containing four or more exhibits shall include a separate index identifying and briefly describing each exhibit.

(2) **Signature.** Every paper filing shall clearly identify the name, address, and telephone number of the *pro se* litigant or attorney. Any paper filing not signed by at least one attorney appearing of record as required by Rule 11, *Federal Rules of Civil Procedure* shall, upon discovery of such omission, be stricken from the record unless such omission is promptly corrected upon notice to said attorney. A rubber stamp or facsimile signature on the original copy of such document shall not be used.

(3) **Number of Copies; Return of File-Stamped Copies.** An original of all papers filings ~~must shall~~ be submitted for filing unless ordered otherwise. If a party wishes to receive a file-stamped copy of a paper filing by return mail, the party ~~must shall~~ include an additional copy to be file-stamped, and a self-addressed envelope of adequate size and with adequate postage.

(4) **Form of Orders.** The filing of a motion or petition requiring the entry of a routine or uncontested order by the Judge or the Clerk shall be accompanied by a suitable tendered form of order together with sufficient copies thereof for service upon all parties or their counsel whose names and addresses shall be typed in the lower left-hand corner of the tendered form of order. Whenever the Clerk is required

to give notice, as provided by Rules 53(d)(1), 53(e)(1), 65.1 and 77(d) of the Federal Rules of Civil Procedure, or Local Rule 24.1, the party or parties requesting such notice shall furnish the Clerk with sufficient copies of the proposed notice to be given and the names and addresses of the parties or their counsel to whom such notice is to be given.

(c) Facsimile Filings

The Clerk is authorized to file papers received by facsimile transmission only upon specific authorization by a Judge of the Court granted upon a finding of compelling circumstances warranting such method of filing. Whenever facsimile filings are permitted, a substitute copy that complies with Local Rule 5.1(a) **must** ~~shall~~ be filed to replace the facsimile within **7** ~~seven (7)~~ days.

(d) Notice by Publication.

All notices required to be published in a case shall be delivered by the Clerk of the Court to the party originating such notice or his counsel, who shall have the responsibility for delivering such notice to the appropriate newspapers for publication.

Note: December 1, 2009, stylistic amendment. Technical amendment to make the word “papers” appearing in the first sentence of (b)(3) singular.

D. Local Rule 5.4 - Filing of Documents Electronically will be **amended** as follows:

The Court will accept for filing documents submitted, signed or verified by electronic means consistent with Local Rule 5.11 and the rules and procedures established by the Court. Filing of documents electronically in compliance with these rules and procedures ~~shall~~ constitutes filing with the Court for purposes of ~~FED. R. CIV. P.~~ **Fed. R. Civ. P. 5 (b)(2)(E) (e)**.

Notes: December 1, 2009, stylistic and technical amendment.

E. Local Rule 5.7 - Eligibility, Registration, and Passwords for Electronic Filing - will be **amended** as follows:

(a) **Eligibility.** Attorneys who are eligible to register as Filing Users of the Court’s Electronic Case Filing System include attorneys admitted to the bar of this Court, attorneys admitted pro hac vice to the bar of this Court, and attorneys authorized to represent the United States. Registration is in a form prescribed by the Clerk and requires the Filing User’s name, address, telephone number, Internet e-mail address, and a declaration that the attorney is admitted to the bar of this Court. Filing Users must notify the Clerk in writing within **28** ~~30~~ days of any change of address, electronic or otherwise.

(b) **Registration.** Attorneys of record for pending cases assigned to the Electronic Case Filing System must register with the Clerk to obtain an ECF login and password for use when filing documents electronically. Attorneys who wish to be exempted from participation in the program may file a Petition for ECF Exemption and a CM/ECF Technical Requirements Questionnaire. The petition and questionnaire must be filed for each pending case on the Electronic Case Filing System. The petition will be reviewed by the Court in each case and granted only upon showing of good cause. The Court's ECF Registration Form and CM/ECF Technical Requirements Questionnaire are available on the Court's Internet website at www.insd.uscourts.gov.

Registration as a Filing User constitutes consent to electronic service of all documents as provided in these rules in accordance with the Federal Rules of Civil Procedure.

Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised.

Note: December 1, 2009, stylistic amendment. Technical amendment to (a) to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

F. Local Rule 5.11 - Signatures in Cases Filed Electronically - will be amended as follows:

The ECF log-in and password required to submit documents to the Electronic Case Filing System serve in part as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Civil Procedure (including ~~FED.R.CIV.P.~~ Fed. R. Civ. P. 11), the local rules of this Court, and any other purpose for which a signature is required in connection with proceedings before the Court. Electronically filed documents must include a signature block and must set forth the name, address, telephone number and e-mail of the Filing User. When converting case documents to PDF directly from a word processing application (as opposed to scanning), the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" and typed on the signature line where the Filing User's handwritten signature would otherwise appear. Documents requiring a signature other than that of a Filing User must bear an original handwritten signature and must be scanned into PDF for electronic filing.

Documents signed by an attorney, must be filed using that attorney's ECF log-in and password and may not be filed using a log-in and password belonging to another attorney. No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

Documents requiring signatures for two or more parties represented by different counsel must be electronically filed either by: (a) representing the consent of the other attorney(s) on the signature line where the other attorney's handwritten signature would otherwise appear; (b) identifying in the signature block attorneys whose signatures are required and by the submission of a notice of endorsement by the other attorneys no later

than ~~3 three~~ business days after filing; (c) submitting a scanned document containing all necessary signatures; or (d) in any other manner approved by the ~~C~~court.

Note: December 1, 2009, stylistic amendment.

G. Local Rule 5.14 - Retention of Documents in Cases Filed Electronically - will be **amended** as follows:

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until ~~2 two (2)~~ years after all time periods for appeals expire. On request of the ~~C~~court, the Filing User must provide original documents for review.

Note: December 1, 2009, stylistic amendment.

H. Local Rule 5.1.1 - Constitutional Challenge to a Statute – Notice – is **adopted** as follows:

Local Rule 5.1.1 - Constitutional Challenge to a Statute – Notice

A notice of constitutional challenge to a statute filed in accordance with Federal Rule of Civil Procedure 5.1 must be filed at the same time the parties tender their proposed case management plan if one is required or within 21 days of the filing drawing into question the constitutionality of a federal or state statute, whichever occurs later. The party filing the notice of constitutional challenge must serve the notice and paper on the Attorney General of the United States and the United States Attorney for the Southern District of Indiana if a federal statute is challenged--or on the Attorney General for the State if a state statute is challenged--either by certified or registered mail or by sending it to an electronic address designated by those officials for this purpose.

I. Subparagraphs (a) and (b) of Local Rule 6.1 - Extensions of Time - will be **amended** as follows:

(a) **Pleadings.** In any civil action in which all parties that have appeared are represented by counsel, a party wishing to obtain an initial extension of time not exceeding ~~28 thirty (30)~~ days within which to file a response to a pleading (as defined by Federal Rule of Civil Procedure 7(a)), must contact counsel for the opposing party and solicit opposing counsel's agreement to the extension. If agreement to an initial extension is obtained (or the party seeking the extension cannot with due diligence reach opposing counsel), and no deadlines established by the case management plan are affected by the initial extension, the extension will become effective upon filing a notice advising of the extension and including, if applicable, a recitation of all attempts to reach opposing counsel.

(b) **Written Discovery.** In any civil action in which all parties are represented by counsel, a party wishing to obtain an initial extension of time not exceeding ~~28 thirty (30)~~ days within which to respond to a written request for discovery or request for admission,

must contact counsel for the opposing party and solicit opposing counsel's agreement to the extension. If agreement to an extension is obtained and no deadlines established by the case management plan are affected by the initial extension, no further action is necessary for the extension to be effective. Either party may file with the court a notice of such extension. In the event the party seeking the initial extension cannot with due diligence reach opposing counsel, that party must file a notice advising of the extension, including a recitation of all attempts to reach opposing counsel.

Note: December 1, 2009, technical amendment to (a) and (b) to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

J. **Local Rule 7.1 - Motion Practice; Length, Form, and Schedule of Briefs; Attorneys' Conference; Notification of Settlement/Resolution of Pending Motions** - will be **amended** as follows:

(a) **Form of Motion and Brief.** A motion to dismiss, for judgment on the pleadings or for more definite statement under Rule 12 of the Fed. R. Civ. P., for summary judgment under Rule 56, or motions made pursuant to Rule 37 of the Fed. R. Civ. P. shall be accompanied by a separate supporting brief.

Each motion shall be separate; alternative motions filed together shall each be named in the caption on the face. A new motion shall not be incorporated within a brief, response, or reply to a previously filed motion, nor shall a brief, response, or reply be contained within any motion.

(b) **Response and Reply Deadlines.** Except for summary judgment motions, which are governed by L.R. 56.1, unless otherwise provided in these rules or by the Court, an adverse party ~~will shall~~ have ~~14 fifteen (15)~~ days after service of the initial brief in which to serve and file a response, and the moving party ~~will shall~~ have ~~7 seven (7)~~ days after service of the response in which to serve and file a reply. Time ~~will shall~~ be computed as provided in Rule 6, Fed. R. Civ. P. Local Rule 6.1 does not apply to the filing of briefs; therefore, extensions of time ~~will shall~~ be granted only by order of the assigned or presiding Judge or Magistrate ~~Judge~~ for good cause shown. Failure to file a response or reply within the time prescribed may subject the motion to summary ruling.

A non-dispositive motion or petition requiring the entry of a routine or uncontested order by the Judge or the ~~C~~lerk may be ruled upon prior to the passing of the standard ~~14 fifteen (15)~~ day response deadline, unless the motion indicates that the adverse party objects or the ~~C~~court otherwise has reason to believe a response may be forthcoming. The filing of a routine motion or petition ~~must shall~~ be accompanied by a suitable tendered form of order.

(c) **Page Limits.** Except by permission of the ~~C~~court, no brief or response shall exceed 35 pages in length (exclusive of any pages containing a table of contents, table of authorities, and appendices), and no reply shall exceed 20 pages. Permission to file a brief in excess of these page limitations will be granted only upon motion supported by extraordinary and compelling reasons.

A brief or response exceeding 35 pages in length (exclusive of any pages containing the table of contents, table of authorities, appendices and certificate of service) shall contain (a) a table of contents with page references; (b) a statement of issues; and (c) a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.

(d) **Citation to Authority.** Ordinarily, copies of cited authorities should not be appended to court filings. However, a party citing a decision, statute, or regulation that is not available on Westlaw or Lexis/Nexis shall attach a copy to the document filed with the Court. In addition, if a party cites a decision, statute, or regulation that is only available through electronic means (e.g. Lexis/Nexis, Westlaw or from the issuing court's website), upon request that party shall furnish a copy to the Court and other parties.

(e) **Attorneys' Conference.** The Court may deny any motion for the award of attorney's fees, except post-judgment attorney's fees, motion for sanctions under Rule 11, Fed. R. Civ. P. , and motion for attorney disqualification (except those motions brought by a person appearing pro se) unless counsel for the moving party files with the Court, at the time of filing the motion, a separate statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorney(s) on the matter(s) set forth in the motion. This statement shall recite, in addition, the date, time, and place of such conference and the names of all parties participating therein. If counsel for any party advises the Court in writing that opposing counsel has refused or delayed meeting and discussing the matters covered in this Rule, the Court may take such action as is appropriate to avoid unreasonable delay.

(f) **Notice of Settlement/Resolution.** The parties shall immediately notify the Court of any reasonably anticipated settlement of a case or the resolution of any pending motion.

Note: December 1, 2009, stylistic amendment. Technical amendment to (b) to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

K. Local Rule 10.1 – Form of Responsive Pleadings – will be adopted as follows:

Local Rule 10.1 – Form of Responsive Pleadings

Except in *pro se* cases, a responsive pleading under Fed.R.Civ.P. 7(a) must recite verbatim that paragraph of the pleading to which it is responsive, followed by the response.

Upon the request of any party, counsel for a party that has filed a pleading to which a responsive pleading is required will supply an electronic version, in an editable word processing format, of any pleading filed with the court.

L. **Local Rule 16.1 - Pretrial Procedures** – will be **amended** as follows:

(a) **Initial Pretrial Conference and Case Management Plan.** In any civil case, the assigned or presiding Judge may direct the Clerk to issue notice of a pretrial conference, directing the parties to prepare and to appear before the Court.

(1) In all cases not exempted pursuant to subsection (e) of this Rule, the Court shall order the parties to appear for an initial pretrial conference.

(2) Unless otherwise ordered or exempted by subsection (e) of this Rule, the parties shall confer and prepare a case management plan and file it no later than 90 days from the date the case was filed or removed.

(3) Counsel for plaintiff shall be responsible for conferring with opposing counsel and coordinating timely completion and filing of the case management plan. If plaintiff fails to do so, counsel for defendant shall appear at the initial pretrial conference with a proposed case management plan.

(4) If the parties cannot agree on all provisions of the case management plan the parties shall file a joint plan setting forth their respective positions in the disputed portions of the case management plan. The court shall enter a case management plan that the court deems most appropriate with or without additional input from the parties.

(b) **Format of Case Management Plan.** Counsel will shall complete the Uniform Case Management Plan in accordance with the instructions and form found on the Court's website: <http://www.insd.uscourts.gov/Attorney/default.htm>.
<http://www.insd.uscourts.gov><http://www.insd.uscourts.gov/judges.htm>
<http://www.insd.uscourts.gov/forms.htm>

(c) **Additional Conferences.** Counsel should expect that additional conferences may be set. At any such conference, counsel shall be prepared to address case management plan issues, settlement, trial readiness, and any other matters specifically directed by the Court. Prior to all court conferences, counsel shall confer to prepare for the conference.

(d) **Deadlines.** Deadlines established in any order or pretrial entry under this Rule shall not be altered except by agreement of the parties and the Court, or for good cause shown.

(e) **Exempted Cases.** Unless otherwise ordered by the court, the following types of cases will be exempted from the scheduling and planning requirements of Rule 16(b) of the ~~FED. R. CIV. P.~~ **Federal Rules of Civil Procedure.**

- (1) An action for review of an administrative record;
- (2) A petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;
- (3) An action brought by a person in custody of the United States, a State or a State subdivision;

- (4) An action to enforce or quash an administrative summons or subpoena;
- (5) An action by the United States to recover benefit payments;
- (6) An action by the United States to collect on a student loan guaranteed by the United States;
- (7) A proceeding ancillary to proceedings in another court; and
- (8) An action to enforce, vacate or modify an arbitration award.
- (9) Mortgage foreclosures in which the United States is a party ~~the Plaintiff~~; and
- (10) Civil forfeiture cases.

(f) **Sanctions.** Should a party fail to comply with any part of this Rule, the Court in its discretion may impose appropriate sanctions.

Commentary: The fundamental purpose of pretrial procedure as provided in Rule 16 of the ~~FED. R. CIV. P.~~ **Fed. R. Civ. P.** is to eliminate issues not genuinely in contest and to facilitate the trial of issues that must be tried. The normal pretrial requirements are set forth in Rule 16 of the ~~FED. R. CIV. P.~~ **Fed. R. Civ. P.** It is anticipated that the requirements will be followed in all respects unless any Judge of this Court shall vary the requirements and shall so advise counsel.

The objective of the case management plan is to promote the ends of justice by providing for the timely and efficient resolution of the case by trial, settlement or pretrial adjudication. In preparing the plan, counsel shall confer in good faith concerning the matters set forth above and any other matters tending to accomplish the objective of this Rule. The plan shall incorporate matters covered by the conference on which the parties have agreed as well as advise the Court of any substantial disagreements on such matters.

Note: December 1, 2009, stylistic and technical amendment.

M. Local Rule 23.1 - Designation of "Class Action" in the Caption - will be amended as follows:

(a) In any case sought to be maintained as a class action, the complaint shall bear next to its caption the legend "Complaint -- Class Action." The complaint shall also contain a reference to the portion or portions of Rule 23, ~~FED. R. CIV. P.~~ **Fed. R. Civ. P.** under which it is claimed that the suit is properly maintained as a class action.

(b) Within **90** ~~ninety (90)~~ days after the filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff **must** ~~shall~~ file a separate motion, or the Court **will** ~~shall~~ direct, that a determination be made under subdivision (c)(1) of Rule 23, *Federal Rules of Civil Procedure*, as to whether the case is to be maintained as a class action. In ruling upon such a motion, the Court may allow the action to be maintained as a class action, may disallow the action to be so maintained, or may order postponement of the determination pending discovery or other such preliminary procedures as are appropriate and necessary in the circumstances. Whenever possible, where it is held that the determination should be postponed, a date will be fixed by the Court for renewal of the motion.

Note: December 1, 2009, stylistic amendment.

- N. **Local Rule 26.1 – Form of Certain Discovery Documents** – will be **amended** as follows:

Local Rule 26.1 – Form of ~~Certain~~ Discovery Documents

The party propounding written interrogatories pursuant to Rule 33 of the ~~FED. R. CIV. P.~~ **Fed. R. Civ. P.**, requests for production of documents or things pursuant to Rule 34, ~~FED. R. CIV. P.~~ **Fed. R. Civ. P.**, or requests for admission pursuant to Rule 36, ~~FED. R. CIV. P.~~ **Fed. R. Civ. P.**, **must** ~~shall~~ number each such interrogatory or request sequentially. The party answering, responding or objecting to such interrogatories or requests **must** ~~shall~~ quote each such interrogatory or request in full immediately preceding the statement of any answer, response or objection thereto, and **must** ~~shall~~ number each such response to correspond with the number assigned to the request.

Upon request, the propounding party **must supply the interrogatories or requests in an editable word processing format.**

Note: December 1, 2009, stylistic amendment, addition of second paragraph, and re-titling.

- O. **Local Rule 30.1 – Conduct of Depositions** – will be **amended** as follows:

Local Rule 30.1 – Conduct **and Scheduling of Depositions**

(a) **Assertion of Claim of Privilege.** If a claim of privilege has been asserted as basis for an instruction not to answer, the attorney seeking disclosure **will** ~~shall~~ have reasonable latitude during the deposition to question the deponent to establish relevant information concerning the legal appropriateness of the assertion of the privilege, including (i) the applicability of the privilege being asserted, (ii) circumstances that may result in the privilege having been waived, and (iii) circumstances that may overcome a claim of qualified privilege.

(b) **Private Conference with Deponent.** An attorney for a deponent **will** ~~shall~~ not **engage in** ~~initiate~~ a private conference with the deponent regarding a pending question except for the purpose of determining whether a claim of privilege should be asserted.

(c) **Scheduling of Depositions.** Pursuant to the Standards for Professional Conduct within the Seventh Federal Judicial Circuit, Lawyers Duty to Other Counsel, paragraph 14, the attorneys will make a good faith effort to schedule depositions in a manner which avoids scheduling conflicts. Unless agreed by counsel or otherwise ordered by the court, no deposition will be scheduled on less than fourteen (14) days notice.

Notes: December 1, 2009, stylistic amendment and re-titling. New subparagraph (c) reflective of the Northern District of Indiana's Local Rule 30.1.

P. Local Rule 40.1 - Assignment of Cases - will be **amended** as follows:

(a) The caseload of the Court shall be distributed among the Judges and Magistrate Judges as provided by order of the Court. All cases, as they are filed, shall be assigned to appropriate judicial officers in accordance with the method prescribed by the Court from time to time.

(b) No Clerk, Deputy Clerk, or other employee in the Clerk's office shall reveal to any person, other than the Judges, the order of assignment of cases until after they have been filed and assigned or assign any case otherwise than as herein provided or as ordered by the District Court.

(c) No person shall directly or indirectly cause or procure or attempt to cause or procure any Clerk, Deputy Clerk or other Court attaché to reveal to any person, other than the Judges of the Court, the order of assignment of cases until after they have been filed and assigned as provided above. No person shall directly or indirectly cause or procure or attempt to cause or procure any Clerk, Deputy Clerk or other Court attaché to assign any case otherwise than as herein provided or as ordered by the District Court. Any person violating this subparagraph may be punished for contempt of Court.

(d) At the time of filing and at any time thereafter when it becomes known, counsel shall file a notice of related action when it appears that any case:

1. grows out of the same transaction or occurrence,
2. involves the same property, or
3. involves the validity or infringement of a patent, trademark or copyright, as is involved in a pending case.

(e) Upon filing an appeal from any bankruptcy proceeding, counsel shall file a notice of related action if there have been any other appeals filed, whether arising out of an adversary action or otherwise, stemming from that same underlying bankruptcy proceeding.

(f) Related cases shall be transferred from one Judge to another Judge, or from one Magistrate Judge to another Magistrate Judge, when it is determined that a later numbered case is related to a pending, earlier numbered case assigned to another Judge or Magistrate Judge.

(g) When required by considerations of workload, in the interest of the expeditious administration of justice, the Court may reassign cases among the Judges or Magistrate Judges.

(h) Whenever it becomes necessary to reassign any case for reasons other than workload, the Chief Judge shall refer the case to the Clerk for reassignment. When reassigning cases pursuant to the provisions of this subparagraph, the Clerk shall employ a similar random lot system as used for all cases when first filed.

(i) Unless the remand order directs otherwise, following the docketing of a mandate for a new trial pursuant to Seventh Circuit Rule 36 and allowing ~~14 fifteen (15)~~ days thereafter within which all parties may file their request that the Judge previously assigned to the case retry the case, the ~~C~~lerk ~~will shall~~ reassign the case to another Judge selected by random lot.

Note: December 1, 2009, stylistic amendment. Technical amendment to (i) to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

Q. Local Rule 40.3 - Calendar of Cases - will be **amended** as follows:

All trials ~~will shall~~ commence within ~~6 to 18 six to eighteen~~ months after filing of the complaint unless the ~~C~~court determines that, because of the complexity of the case, staging provided by the case management plan, or the demands of the ~~C~~court's docket, the trial cannot reasonably be held within such time.

Note: December 1, 2009, stylistic amendment.

R. Local Rule 41.1 - Dismissal of Actions for Failure to Prosecute - will be **amended** as follows:

Civil cases in which no action has been taken for a period of ~~6 six (6)~~ months may be dismissed for want of prosecution with judgment for costs after ~~28 thirty (30)~~ days' notice given by the assigned ~~J~~udicial ~~O~~fficer or the ~~C~~lerk to the attorneys of record (or, in the case of a *pro se* party, to the party) unless, for good cause shown, the ~~C~~court orders otherwise.

Note: December 1, 2009, stylistic amendment. Technical amendment to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

S. Local Rule 42.1 - Juror Costs - will be **amended** as follows:

Whenever any civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, juror costs, including marshal's fees, mileage and per diem, ~~will shall~~ be assessed as agreed by the parties, or equally against the parties and/or their counsel, or otherwise assessed as directed by the ~~C~~court, unless the ~~C~~lerk's office is notified at least ~~1 one (1)~~ full business day prior to the day on which the action is scheduled for trial in time to advise the jurors that it will not be necessary for them to attend.

Note: December 1, 2009, stylistic amendment.

T. Local Rule 56.1 - Summary Judgment Procedure - will be **amended** as follows:

(a) **Requirements for Moving Party.** A party filing a motion for summary judgment pursuant to Fed. R. Civ. P. 56 shall serve and file a supporting brief and any

evidence not already in the record upon which the party relies. The brief must include a section labeled “Statement of Material Facts Not in Dispute” containing the facts potentially determinative of the motion as to which the moving party contends there is no genuine issue. These asserted material facts shall be supported by appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence either already in the record or contained in an appendix to the brief. Such citation shall be by page or paragraph number or similar specific reference, if possible; this citation form applies to all briefs filed under this rule.

(b) **Requirements for Non-Movant.** No later than ~~28~~ 30 days after service of the motion, a party opposing the motion ~~will~~ ~~shall~~ serve and file a supporting brief and any evidence not already in the record upon which the party relies. The brief shall include a section labeled “Statement of Material Facts in Dispute” which responds to the movant’s asserted material facts by identifying the potentially determinative facts and factual disputes which the nonmoving party contends demonstrate that there is a dispute of fact precluding summary judgment. These facts shall be supported by appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence either already in the record or contained in an appendix to the brief.

(c) **Reply Brief.** A party filing a motion for summary judgment may file a reply brief no later than ~~14~~ 15 days after service of the opposing party’s submissions.

(d) **Surreply.** If, in reply, the moving party relies upon evidence not previously cited or objects to the admissibility of the non-moving party’s evidence, the non-moving party may file a surreply brief limited to such new evidence and objections, no later than ~~7~~ seven days after service of the reply brief.

(e) **Effect of Factual Assertions.** 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. The court has no independent duty to search and consider any part of the record not specifically cited in the manner described in sections (a) and (b) above.

(f) **Collateral Motions.** Collateral motions in the summary judgment process, such as motions to strike, are disfavored. Any dispute regarding the admissibility or effect of evidence should be addressed in the briefs.

(g) **Oral Argument or Hearing.** All motions for summary judgment will be considered as submitted for ruling without oral argument or hearing unless a request for such is granted under Local Rule 7.5 or the **C**ourt otherwise directs.

(h) **Notice Requirement for Pro Se Cases.** A party moving for summary judgment against an unrepresented party must file and serve a notice that:

(1) briefly and plainly states that a fact stated in the moving party's Statement of Material Facts and supported by admissible evidence will be accepted by the **C**ourt as true unless the opposing party cites specific admissible evidence contradicting that statement of material fact; and

(2) sets forth the full text of Fed. R. Civ. P. 56 and S.D. Ind. L.R. 56.1; and

(3) otherwise complies with applicable case law regarding required notice to pro se litigants opposing summary judgment motions.

(i) **Compliance.** The **C**ourt may, in the interests of justice or for good cause, excuse failure to comply strictly with the terms of this rule.

Note: December 1, 2009, stylistic amendment. Technical amendment to (b) and (c) to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

U. **Local Rule 66.1 - Receiverships** - will be **amended** as follows:

(a) **Proceedings to Which This Rule is Applicable.** This Rule is promulgated, pursuant to Rule 66 of the ~~FED. R. CIV. P.~~ **Fed. R. Civ. P.** for the administration of estates, other than the estates in bankruptcy, by receivers or by other officers appointed by the **C**ourt.

(b) **Inventory and Appraisal.** Unless the **C**ourt otherwise orders, a receiver or similar officer, as soon as practicable after his/her appointment and not later than **28** ~~thirty (30)~~ days after he/she has taken possession of the estate, **will shall** file an inventory and an appraisal of all the property and assets in his/her possession or in the possession of others who hold possession as his/her agent, and in a separate schedule, an inventory of the property and assets of the estate not reduced to possession by him/her but claimed and held by others.

(c) **Periodic Reports.** Within **28** ~~thirty (30)~~ days after the filing of inventory, and at regular intervals of **3** ~~three (3)~~ months thereafter until discharged, unless the **C**ourt otherwise directs, the receiver or other similar officer **will shall** file reports of his/her receipts and expenditures and of his/her acts and transactions in an official capacity.

(d) **Compensation of Receiver, Attorneys and Other Officers.** In the exercise of its discretion, the **C**ourt shall determine and fix the compensation of receivers or similar officers and their counsel and the compensation of all others who may have been appointed by the **C**ourt to aid in the administration of the estate, and such allowances or

compensation shall be made only on petition therefore and on such notice, if any, to creditors, and other interested persons as the Court may direct.

(e) **Administration Generally.** In all other respects the receiver or similar officer shall administer the estate as nearly as may be in accordance with the practice in the administration of estates in bankruptcy, except as otherwise ordered by the Court.

Note: December 1, 2009, stylistic amendment. Technical amendment to (b) and (c) to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

- V. The text of **Local Rule 72.1 – Authority of United States Magistrate Judges** – will be **deleted** in its entirety and replaced as follows:

L.R. 72.1 - Authority of United States Magistrate Judges

This rule applies to all United States Magistrate Judges, including full-time magistrate judges, part-time magistrate judges and magistrate judges recalled pursuant to 28 U.S.C. §636(h).

Magistrate judges of this district are judicial officers of the court and are authorized and specially designated to perform all duties authorized to be performed by United States magistrate judges by the United States Code and any rule governing proceedings in this court.

The cases in which each magistrate judge is authorized to perform the duties enumerated in these rules are those cases assigned to the magistrate judge by rule or order of this court, or by order or special designation of any district judge of this court.

- W. **Local Rule 76.1 - Designation of Additional Items to Be Included in Record on Appeal** - will be **amended** as follows:

If an appellant wishes to designate items to be included in the record on appeal pursuant to Circuit Rule 10(a), it ~~must shall~~ serve a proposed joint designation on the appellee with the notice of appeal. The parties ~~will shall~~ confer and, if they agree, ~~will shall~~ prepare a joint designation, highlighting those entries on the Court's docket sheet, if practicable, and file it with the clerk of the district court within ~~14 ten~~ 14 days of the filing of the notice of appeal. If the parties are unable to reach agreement on a joint designation, each party may submit a separate designation within ~~14 ten~~ 14 days of the filing of the notice of appeal.

Note: December 1, 2009, stylistic amendment. Technical amendment to rule to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

X. Local Rule 79.1 - Custody of Files and Exhibits - will be **amended** as follows:

(a) **Custody During Pendency of Action.** After being marked for identification, models, diagrams, exhibits and material offered or admitted in evidence in any cause pending or tried in this ~~C~~ourt shall be placed in the custody of the ~~C~~lerk, unless otherwise ordered by the ~~C~~court, and shall not be withdrawn until after the time for appeal has run or the case is disposed of otherwise. Such items shall not be withdrawn until the final mandate of the reviewing ~~C~~court is filed in the office of the ~~C~~lerk and until the case is disposed of as to all issues, unless otherwise ordered.

(b) **Removal After Disposition of Action.** Subject to the provisions of subsections (a) and (d) hereof, unless otherwise ordered, all models, diagrams, exhibits or material placed in the custody of the ~~C~~lerk ~~must shall~~ be removed from the ~~C~~lerk's office by the party offering them in evidence within ~~90 ninety (90)~~ days after the case is decided. In all cases in which an appeal is taken these items ~~must shall~~ be removed within ~~28 thirty (30)~~ days after the mandate of the reviewing ~~C~~court is filed in the ~~C~~lerk's office and the case is disposed of as to all issues, unless otherwise ordered. At the time of removal a detailed receipt ~~will shall~~ be given to the ~~C~~lerk and filed in the cause. No motion or order is required as a prerequisite to the removal of an exhibit pursuant to this Rule.

(c) **Neglect to Remove.** Unless otherwise ordered by the ~~C~~court, if the parties or their attorneys ~~shall~~ neglect to remove models, diagrams, exhibits or material within ~~28 thirty (30)~~ days after notice from the ~~C~~lerk, the same ~~will shall~~ be sold by the United States Marshal at public or private sale or otherwise disposed of as the ~~C~~court may direct. If sold, the proceeds, less the expense of sale, ~~will shall~~ be paid into the registry of the ~~C~~court.

(d) **Contraband Exhibits.** Contraband exhibits, such as controlled substances, money, and weapons, shall be released to the investigative agency at the conclusion of the trial and not placed in the custody of the ~~C~~lerk. A receipt shall be issued when such contraband exhibits are released.

(e) **Withdrawal of Original Records and Papers.** Except as provided above with respect to the disposition of models and exhibits, no person shall withdraw any original pleading, paper, record, model or exhibit from the custody of the ~~C~~lerk or other officer of the ~~C~~court having custody thereof except upon order of a Judge of this ~~C~~court.

Note: December 1, 2009, stylistic amendment. Technical amendment to (b) and (c) to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

Y. Local Rule 81.1 - Amendment of Complaint Following Removal of Certain Diversity Cases - will be **amended** as follows:

In any petition seeking the removal to this ~~C~~court of any action in which unspecified monetary damages are sought for alleged personal injury or death and removal is premised in part or in whole on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a), the petitioner ~~must shall~~ certify that the amount of damages at issue satisfies the jurisdictional amount requirement and, unless the case is remanded, the plaintiff ~~must~~

~~shall~~, within ~~28 thirty (30)~~ days following such removal, amend the complaint to comply with the jurisdictional amount requirements.

Note: December 1, 2009, stylistic amendment. Technical amendment to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

Z. Subparagraphs (b) and (c) of **Local Rule 83.7 - Appearance and Withdrawal of Appearance** - will be **amended** as follows:

(b) **Removed and Transferred Cases.** Any attorney of record whose name does not appear on this ~~C~~ourt's docket following the removal of a case from state court, must file a Notice of Appearance or a copy of his/her appearance as previously filed in state court.

Within ~~21 20~~ days of removal or transfer of a case to this ~~C~~ourt, any attorney of record who is not admitted to practice before this ~~C~~ourt must either comply with this ~~C~~ourt's admission policy, as set forth in Local Rule 83.5, or withdraw his/her appearance, as permitted under section (c) of this rule.

(c) **Withdrawal of Appearance.** Counsel desiring to withdraw his/her appearance in any action ~~must shall~~ file a motion requesting leave to do so. Such petition ~~must shall~~ fix a date for such withdrawal, and petitioning counsel ~~must shall~~ file with the ~~C~~ourt satisfactory evidence of written notice to his/her client at least ~~7 five (5)~~ days in advance of such withdrawal date.

A withdrawal of appearance when accompanied by the appearance of other counsel ~~will shall~~ constitute a waiver of the provisions of paragraph (c) of this Rule.

Note: December 1, 2009, stylistic amendment. Technical amendment to (b) and (c) to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

AA. **Local Rule 83.8 – Reference of Cases to and Rulemaking Authority of Bankruptcy Judges** – will be **amended** as follows:

Pursuant to 28 U.S.C. § 157(a), all cases and all proceedings arising under Title 11 of the United States Code, or arising in or related to a case under Title 11 of the United States Code, are referred to the ~~B~~ankruptcy ~~J~~udges of this ~~D~~istrict. ~~This reference includes all matters removed pursuant to 28 U.S.C. §§ 1441(a) or 1452.~~ All papers filed in any such case or proceeding, including the original petition, ~~must shall~~ be filed with the ~~C~~lerk of the ~~B~~ankruptcy ~~C~~ourt and ~~shall~~ be captioned "United States Bankruptcy Court for the Southern District of Indiana. "

Note: December 1, 2009, stylistic amendment. Technical amendment to clarify that the notices of removal related to certain bankruptcy proceedings are appropriately filed with the bankruptcy clerk.

BB. Local Criminal Rule 6.1 - Petitions Under 28 U.S.C. Section 2254 or 2255 in Cases Involving a Sentence of Capital Punishment - will be amended as follows:

(a) **Applicability.** This Rule shall govern the procedures for a petition filed pursuant to 28 U.S.C. §§ 2254 or 2255, in which a prisoner seeks relief from a judgment imposing a sentence of death. The provisions of this Rule may, where appropriate, be determined to be applicable in any collateral challenge not authorized by §§ 2254 or 2255. The application of this Rule may be modified by the Judge to whom the petition is assigned.

(b) **Clerk to Maintain the Records of status of cases; Request to Attorney General of Indiana.** The Clerk shall request from the Indiana Attorney General, insofar as reasonably available, information pertaining to the movement of cases through the Indiana courts in which a prisoner is under sentence of death from an Indiana Court and as to which the judgment of conviction and sentence have been affirmed by the Supreme Court of Indiana. This information shall include the following: defendant's name, court imposing sentence, date of affirmance on direct appeal by the Supreme Court of Indiana, date that denial of postconviction relief petition was affirmed by the Supreme Court of Indiana, and the execution date, if any.

(c) **Clerk to Maintain the Records of status of cases; Request to United States Attorney.** The Clerk shall request from the United States Attorney, insofar as reasonably available, information pertaining to the movement of cases through the Federal courts in which a prisoner within the district is under sentence of death from a Federal court and as to which the judgment of conviction and sentence are final. This information shall include the following: defendant's name, court imposing sentence, date of affirmance on direct appeal by a Court of Appeals and the United States Supreme Court, date that denial of any postconviction relief petition was affirmed by a Court of Appeals or Supreme Court, and the execution date, if any.

(d) **Notice of Intention to File Initial Petition.** Whenever it is determined that a prisoner under sentence of death will file an initial petition for relief in this Court, either counsel or the prisoner may file with the Clerk a "Notice of Intention to File Initial Petition for a Writ of Habeas Corpus." Each such Notice shall be on the form set out in Appendix A to this Rule or in substantially similar terms. Forms shall be available from the Clerk. The failure to submit such a Notice shall not preclude the filing of a petition.

(e) **Action by Court Upon Filing of Notice.** The Clerk shall forward copies of the Notice, together with copies of any motions or requests submitted therewith, and any rulings thereon, to the following: (i) the Indiana Attorney General if the prisoner is in state custody or the United States Attorney if the prisoner is in Federal custody; (ii) the United States Marshal for the Southern District of Indiana; and (iii) the Warden or Superintendent of the institution where the prisoner is confined.

(f) **Appointment of Counsel.** Motions or requests for the appointment of counsel shall be presented to, and counsel appointed by, the Judge to whom such action is assigned.

(g) **Additional Required Materials.** Within ~~14 ten~~(10) days of filing the notice or petition, Petitioner or Movant ~~must shall~~ file a legible copy of the materials listed below. If a required document is not filed, the petitioner or movant ~~must shall~~ state the reason for the omission. The required documents are:

(1) listing of prior petitions, with docket numbers, filed in any state or federal court challenging the conviction and sentence challenged in the current petition; and

(2) a copy of, or a citation to, each state or federal court opinion, memorandum decision, order, transcript of oral statement of reasons, or judgment involving an issue presented in the petition.

(h) **Motions for Stay of Execution.**

(1) The movant shall attach to the motion for stay a legible copy of the documents listed in section (g) of this Rule, unless the documents have already been filed with the ~~C~~court. If the movant asserts that time does not permit the filing of a written motion, he or she shall deliver to the ~~C~~clerk a legible copy of the listed documents as soon as possible. If a required document is not filed, the movant shall state the reason for the omission.

(2) Parties shall file motions with the ~~C~~clerk during the normal business hours of the ~~C~~clerk's ~~O~~ffice. The motion shall contain a brief account of the prior actions of any ~~C~~court or Judge to which the motion or a substantially similar or related petition for relief has been submitted.

(3) The ~~C~~clerk shall adopt procedures for filing of emergency motions or applications pursuant to this Rule when the ~~C~~clerk's ~~O~~ffice is closed.

(4) The ~~C~~clerk shall maintain a separate list of all cases within the scope of this Rule.

Note: December 1, 2009, stylistic amendment. Technical amendment to (g) to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

CC. Local Criminal Rule 13.1 - Sentencing Procedure - will be **amended** as follows:

(a) The sentencing hearing in each criminal case shall be scheduled by the ~~C~~court in accordance with the following timetable, which commences with either the filing of a petition to enter a plea of guilty, the entry of a guilty plea, or a verdict of guilty.

(b) Within ~~14 ten~~(10) days after a verdict of guilty, or a guilty plea is entered by a defendant or a Petition to Enter a Plea of Guilty is filed with the ~~C~~clerk of ~~C~~court, counsel for the government and counsel for the defendant ~~must shall~~ submit in writing their respective versions of the facts pertaining to the instant offense to the probation officer of the court for inclusion in the Presentence Investigation Report.

(c) The Presentence Investigation Report, including guideline computations, ~~will shall~~ be completed and disclosed to the parties as early as feasible. The presentence report ~~will shall~~ be deemed to have been disclosed upon the occurrence of any of the following events or with the following times: (1) when a copy of the document is physically presented to the attorneys and the defendant; (2) one day after the report's availability for inspection is orally communicated by the probation office to the parties; or (3) three days after a notice of the report's availability is mailed to the attorneys for the parties. The sentence recommendation provided to the court by the probation office ~~will shall~~ not be disclosed except to the court.

(d) Within ~~14 fourteen~~ (14) days following disclosure of the presentence report, unless the court determines otherwise, all counsel ~~must shall~~ file in writing with the probation officer and serve on each other all objections they may have as to any material information, sentencing classifications, sentencing guideline calculations, and policy statements contained in or omitted from the Report.

(e) After receiving counsels' objections, if any, the probation officer shall conduct any further investigation and make any necessary revisions to the Presentence Investigation Report. The officer may require counsel for both parties to meet with the officer in person or by telephone to discuss unresolved factual and legal issues. It is the obligation of an objecting party to seek administrative resolution of disputed factors or facts through consultation with opposing counsel and the probation officer prior to the sentencing hearing.

(f) The probation officer ~~will shall~~ submit the Presentence Investigation Report to the sentencing judge immediately after the receipt and processing of objections but no later than ~~7 seven~~ (7) days before the sentencing date. The probation officer ~~will shall~~ notify the ~~C~~court immediately if additional time is necessary to investigate and resolve disputed issues raised by the attorneys and the defendant during the review period. The Report ~~will shall~~ be accompanied by an addendum setting forth any objections any counsel may have asserted that have not been resolved, together with the officer's comments thereon. The probation officer ~~will shall~~ certify that the contents of the Report, including any revisions thereof, have been disclosed to the defendant and to counsel for the defendant and counsel for the government, and that the addendum fairly summarizes any remaining objections.

(g) Any party objecting to the Presentence Investigation Report, the guidelines, computations, or commentary shall have a reasonable opportunity, usually at the sentencing hearing, but in any event in advance of imposition of the sentence, to present evidence or argument to the ~~C~~court regarding disputed factors or facts. The ~~C~~court may consider any reliable information presented by the probation officer, the defendant, or the government. The manner and form of such presentations are committed to the discretion of each sentencing judge on a case by case basis.

(h) The presentence report will normally be disclosed to the defendant and his or her counsel and to government's counsel by the probation officer. The probation officer shall be responsible for making the necessary arrangements for review of the report by detained defendants within the schedules set out by the sentencing court.

The unauthorized copying or disclosure of the information contained in the presentence report, statements, and other attachments may be considered a contempt and punished accordingly. The presentence report shall be filed under seal with the Clerk of Court and retained as part of the case file for whatever further judicial purposes may occur or be necessary.

Note: December 1, 2009, stylistic amendment. Technical amendment to (b) to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

Comments concerning the proposed rule amendment are welcome. Comments must be submitted in writing on, or via email, or before **November 30, 2009**, and should be sent to:

Local Rule Comments
Office of the Clerk
105 U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204
Or via email: LocalRules@insd.uscourts.gov