



UNITED STATES DISTRICT COURT

Southern District of Indiana

Laura A. Briggs, Clerk
Alison M. Chestovich, Chief Deputy Clerk

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

104 U.S. Courthouse
921 Ohio Street
Terre Haute, IN 47807
(812) 231-1840

304 U.S. Courthouse
101 NW Martin Luther King Blvd.
Evansville, IN 47708
(812) 434-6410

Lee H. Hamilton Federal Building
& U.S. Courthouse
121 West Spring Street
New Albany, IN 47150
(812) 542-4510

April 17, 2017

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 May 17, 2017**, the revision of certain Local Rules of the United States District Court for the Southern District of Indiana. Unless otherwise indicated, as seen in this Notice redline text is added and struck text is deleted. The proposed revisions are as follows:

A. Subparagraph (c) of Local Rule 5-1- Format of Documents Presented for Filing - shall be amended as follows:

(c) Electronic Filings. Any document submitted via the court's electronic case filing (ECF) system must be:

- in .pdf format;
- converted to a .pdf file directly from a word processing program, unless it exists only in paper format (in which case it may be scanned to create a .pdf document);
- submitted as one or more .pdf files that do not exceed **10-35** megabytes each (consistent with the *CM/ECF Policies and Procedures Manual*); and
- otherwise prepared and filed in a manner consistent with the *CM/ECF Policies and Procedures Manual*.

B. Local Rule 5-3 – Eligibility, Registration, Passwords for Electronic Filing; Exemption from Electronic Filing - shall be amended as follows:

(a) Mandatory Electronic Filing. Unless exempted pursuant to (e) below, attorneys admitted to, and in good standing with, the court's bar (including those admitted *pro hac vice*) or authorized to represent the United States must use the court's ECF system to file documents.

(b) Registration. To register to use the ECF system, an attorney must complete the registration form adopted by the clerk. The form must require:

- (1)** the attorney's name, address, and telephone number;
- (2)** the attorney's e-mail address; and
- (3)** a declaration that the attorney is admitted to this court's bar.

(c) Change in Information; Compromise of Password. An attorney who has registered to use the ECF system must notify the clerk:

- (1)** in writing within 30 days after the attorney's address, telephone number, or e-mail address changes; and
- (2)** immediately upon learning that the attorney's password for the ECF system has been compromised.

(d) Consent to Electronic Service. By registering to use the ECF system, attorneys consent to electronic service of documents filed in cases maintained on the ECF system.

(e) Exemption from Participation. The court may exempt attorneys from using the ECF system in a particular case for good cause. An attorney must file a petition for ECF exemption and a CM/ECF technical requirements exemption questionnaire in each case in which the attorney seeks an exemption. (The CM/ECF technical requirements exemption questionnaire is available on the court's website, www.insd.uscourts.gov).

(f) Suspension of Electronic Filing. Only attorneys who are active and in good standing with the court's bar may utilize the ECF system. Upon receipt of a court order subjecting an attorney to suspension or disbarment, or notice that the attorney's license to practice law is inactive, the clerk will suspend the attorney's ECF rights, pending the attorney's reinstatement to active, good standing status.

(g) Electronic Filing by an Unrepresented Person - A person not represented by an attorney may file electronically only if allowed by court order. If authorized to file electronically, the person's act of filing using his/her assigned ECF log-in and password constitutes the person's signature on the document for purposes of the Federal Rules of Civil Procedure, including Rule 11, and these

local rules, and for any other purpose for which the unrepresented person's signature may be required in connection with the court's activities.

Note: Amended June 1, 2017, to clarify that attorneys in good standing with the court are required to file electronically, and provide a mechanism for permissive filing by pro se litigants.
Effective January 1, 2012, former Local Rule 5.7 became Local Rule 5-3.

C. Subparagraph (b)(3) of Local Rule 5-11 – Filing Under Seal – Civil Cases -shall be amended as follows:

(b) Filing Documents Under Seal - General Rule. The clerk may not maintain under seal any document unless authorized to do so by statute, rule, or court order. Once a document is sealed, the clerk may not, without a court order, allow anyone to see it other than:

(1) the court and its staff;

(2) the clerk's staff; and

(3) the attorneys who have appeared or been appointed on appeal, and any pro se party in the case in which the document has been filed.

D. Subparagraph (a) of Local Rule 16-1 – Pretrial Procedures - shall be amended as follows:

(a) Initial Pretrial Conference. In all cases not exempted under subsection ~~(f)(g)~~ of this rule, the court may order the parties to appear for an initial pretrial conference.

E. Subparagraph (c)(4) of Local Rule 83-7 – Appearance and Withdrawal of Appearance - shall be amended as follows:

(c) Withdrawal of Appearance.

(1) An attorney must file a written motion to withdraw his or her appearance.

(2) The motion must fix a date for the withdrawal and must contain satisfactory evidence that the attorney provided the client with written notice of his or her intent to withdraw at least 7 days before the withdrawal date.

(3) If an attorney's withdrawal will leave a party without counsel, the motion must also include the party's contact information, including a current address and telephone number.

~~(4) The requirements of subparagraphs (42) - (3) do not apply when another attorney has appeared and remains of record for that party. are waived when a notice of withdrawal is filed contemporaneously with another attorney's appearance for the client.~~

F. **Local Criminal Rule 13-1 - Sentencing Procedure** - shall be amended as follows:

(a) The sentencing hearing in each criminal case will be scheduled by the court in accordance with the following timetable, which commences with either the filing of a plea agreement, the entry of a guilty plea, or a verdict of guilty. In the event there is an intent on the part of the defendant to plead guilty, but no written plea agreement is filed, the parties shall file a petition to enter a plea of guilty.

(b) ~~If the defendant is a cooperator and is petitioning to plead guilty, counsel for the defendant must file, under seal in the individual defendant's case, a Motion to Exclude Cooperator Information, which specifically references the Presentence Investigation Report ("PSR"). If the defendant is potentially eligible for relief from a mandatory minimum sentence, by way of the "Safety Valve" provision of 18 U.S.C. § 3553(f) (United States Sentencing Guidelines ("U.S.S.G.")§ 5C1.2(a)(1)-(5)), counsel may also request, in the same motion, that narrative concerning the Defendant's qualification for the Safety Valve reduction be excluded from the PSR, and request that only a reference to U.S.S.G. § 2D1.1(b)(17) be made (in order to accurately calculate the sentencing guideline range). Defense counsel should file such motion contemporaneously with the actions in subsection (a) above. In the event of a guilty verdict, defense counsel will have 14 days within which to file the Motion to Exclude Cooperator Information, and Safety Valve narrative, from the presentence report.~~

(b)(c) Within 14 days after the commencement of one of the actions in subsection (a) above, counsel for the government and counsel for the defendant must 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.

(e)(d) The Presentence Investigation Report, including guideline computations, will be completed and disclosed to the parties as early as feasible. ~~If a Motion to Exclude Cooperation Information is granted, information regarding cooperation will be kept confidential and excluded from the presentence report.~~ The presentence report will be deemed to have been disclosed when the document is electronically served upon counsel through the court's CM/ECF system or, if an attorney is not registered to receive electronic service, 3 days after a notice of the report's availability is mailed to the attorney.

The probation office will also mail a disclosure letter to the defendant advising that the presentence report has been made available to both parties. The sentence recommendation provided to the court by the probation office will not be disclosed except to the court.

(d)(e) Within 14 days following disclosure of the presentence report, unless the court determines otherwise, all counsel must 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)(f) After receiving counsels' objections, if any, the probation officer will 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)(g) The probation officer will submit the Presentence Investigation Report to the sentencing judge immediately after the receipt and processing of objections but no later than 7 days before the sentencing date. The probation officer will notify the 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 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 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)(h) Any party objecting to the Presentence Investigation Report, the guidelines, computations, or commentary will 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 court regarding disputed factors or facts. The 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)(i) The presentence report will be disclosed to the defendant's counsel and the government's counsel by the probation officer. Defense counsel will be responsible for making the necessary arrangements for review of the report by defendants within the schedules set out by the sentencing court. The unauthorized disclosure of the information contained in the presentence report, statements, and other attachments may be considered a contempt and punished

accordingly. The presentence report will 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.

Notes: March 30, 2017, amendment inserting (b) and technical amendment of (d) to clarify the means to request that cooperator information be excluded from a presentence investigation report. The amendment comes, in part, based on the actions of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, which is examining means to control the use of court documents to identify, threaten, and harm cooperators. August 7, 2015, amendment to (a) clarifies that the filing of a plea agreement can trigger the scheduling provisions of the rule. It also clarifies that if no plea agreement is filed, a petition to enter a plea of guilty must be filed. January 1, 2011, amendment to allow electronic service of presentence report and reflect previously adopted practice of defense counsel providing report to defendant rather than probation officer. December 1, 2009, stylistic amendment and technical amendment to (b) to achieve consistency in time counting format with the Federal Rules of Civil Procedure.

G. Subparagraph (b)(3) of Local Criminal Rule 49.1-12 - Filing Under Seal - shall be amended as follows:

(b) Filing Documents Under Seal - General Rule. Unless authorized in subsection (c), other rule, statute or court order, the clerk may not maintain under seal any document. Once a document is sealed, the clerk may not, without a court order, allow anyone to see it other than:

(1) the court and its staff;

(2) the clerk's staff; and

(3) the attorney(s) who has/have appeared or been appointed on appeal in the individual defendant's case to which the document pertains.

H. S.D. Indiana - Appendix A - Notice Regarding Right to Respond to and Submit Evidence in Opposition to Motion for Summary Judgement shall be **amended** to mirror the proposed rule change to Subparagraph (c) of Local Rule 5-1- Format of Documents Presented for Filing.

S.D. Indiana – Appendix A

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA

_____,)
Plaintiff,)
v.) Case No.
_____,)
Defendant.)

NOTICE REGARDING RIGHT TO RESPOND TO AND SUBMIT EVIDENCE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

[Moving party(ies)] has/have filed a motion seeking summary judgment. This means that the [moving party(ies)] seek(s) to have some part or all of this lawsuit decided against you without a trial. This motion is based on the evidence presented in the affidavits and documents attached to or referenced in the motion for summary judgment or based on the argument that you are unable to offer admissible evidence in support of your claim. * * * *

(c) Electronic Filings. Any document submitted via the court's electronic case filing (ECF) system must be:

- in .pdf format;
- converted to a .pdf file directly from a word processing program, unless it exists only in paper format (in which case it may be scanned to create a .pdf document);
- submitted as one or more .pdf files that do not exceed 1035 megabytes each (consistent with the *CM/ECF Policies and Procedures Manual*); and
- otherwise prepared and filed in a manner consistent with the *CM/ECF Policies and Procedures Manual*.

* * * *

Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before **May 17, 2017**, 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