



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 27, 2018

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 29, 2018**, 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 7-1 - Motion Practice** - shall be **amended** as follows:

* * *

(c) Response and Reply Deadlines.

(1) Summary Judgment Motions. Summary judgment motions are subject to the deadlines in S.D. Ind. L.R. 56-1.

~~(1)~~(2) Rule 12(b), (e), or (f) Motions. A party must file any response brief to a motion based on Rule 12(b), (e), or (f) within 21 days after the motion is served unless that party is entitled to and first files an amended pleading as a matter of course under Rule 15(a)(1). If a response to a motion to dismiss is filed, any reply is due within 7 days after service of the response.

~~(2)~~ (3) *Other Motions.*

(A) *Responses.* Any response is due within 14 days after service of the motion.

(B) *Replies.* Any reply is due within 7 days after service of the response.

* * *

Local Rules Advisory Committee Comments Re: 2018 Amendment

A 2009 change to Fed. R. Civ. P. 15(a) permits 21 days to amend a pleading in response to 12(b), (e), and (f) motions in cases where a required responsive pleading has not yet been served. The change to Rule 15(a) encourages parties to amend the initial pleading in light of the motion, thereby mooted the Rule 12 motion. The amendment to Local Rule 7-1(c) provides consistency with Fed. R. Civ. P. 15(a) by allowing 21 days to respond to Rule 12(b), (e), and (f) motions.

- B. **New Local Rule 10-1 - Names of Parties - Pseudonym Litigant - shall state as follows:**

Local Rule 10-1 - Names of Parties – Pseudonym Litigant

(a) If a litigant seeks to proceed under a pseudonym, at the time of filing its initial pleading, the party must file under seal, but not serve, a Notice of intention to seek leave to proceed under such pseudonym and disclose the litigant's true name. This notice will be maintained under seal.

(b) Contemporaneously with the Notice, the litigant must file a motion to proceed under the pseudonym.

(c) If the motion is denied, the litigant has 7 days to file the complaint in their true name or the matter will be dismissed without prejudice.

Local Rules Advisory Committee Comments Re: 2018 Amendment

Recognizing that there is a strong presumption in favor of openness in court proceedings, this rule is adopted to provide procedural guidance to litigants who seek to proceed anonymously. The court has an independent duty to determine whether the potential harm to a litigant exceeds the presumption that judicial proceedings are open to the public, such that the litigant should be permitted to proceed under a pseudonym. See *Doe v. City of Chicago*, 360 F.3d 667, 669 (7th Cir. 2004) (Courts may consider a number of factors in making such a determination.); see also *Doe v. Indiana Black Expo, Inc.*, 923 F. Supp. 137, 139-40 (S.D. Ind. 1996) (Hamilton, J). This rule provides a vehicle for a litigant's identity to be disclosed to the court and to the opposing party but not to the public at large pending the outcome of the court's determination of whether the litigant is entitled to proceed anonymously.

C. **Local Rule 40-1 - Assignment of Cases** - shall be **amended** as follows:

(a) **Assignment According to Court Order.** The clerk must assign cases to judicial officers according to the method that the court orders from time to time.

(b) **Assignment Sequence Is Confidential.** No one in the clerk's office may reveal to any person, other than a judge, the sequence in which cases are assigned.

(c) **Punishment for Tampering with Assignments.** The court may punish a person for contempt if the person causes or attempts to cause a court employee to:

- (1) reveal the sequence in which cases are assigned; or
- (2) assign a case inconsistent with the court's order.

(d) **Notice of Related Action.** A party must file a notice of related action:

(1) upon filing an appeal from a bankruptcy case, if another appeal arising out of the same case (including from an adversary proceeding) has already been filed; or

(2) as soon as it appears that the party's case and another pending case:

(A) arise out of the same transaction or occurrence;

(B) involve the same property; or

(C) involve the validity or infringement of the same patent, trademark, or copyright.

(e) **Transfer of Related Cases.** When the court determines that two cases are related, the case filed later may, in the court's discretion, be transferred to the judicial officer handling the earlier-filed case.

(f) **Reassignment of Cases.** The court may reassign cases among judicial officers if workload and the speedy administration of justice so require. If it is necessary to reassign a case for reasons other than workload, the chief judge will refer the case to the clerk and the clerk must reassign the case using a system similar to that used when cases are first filed.

(g) **Remands for New Trials.** The clerk must assign cases remanded for a new trial under Seventh Circuit Rule 36 by random lot unless:

- (1) the remand order directs otherwise; or

(2) within 15 days after the mandate for a new trial is docketed, all parties in the case file a request that the judge previously assigned to the case retry it.

(h) Direct Assignment of Cases. Certain case types will be directly assigned as follows:

(1) Habeas petitions brought under 28 U.S.C. §2255 are assigned to the judge of the underlying criminal case;

(2) Any cases for which assignment is mandated by statute or rule will be assigned accordingly.

D. Local Rule 76-1 - Designating Additional Items For Record on Appeal - Rule deleted effective

Notes: Local Rule 76-1 was rendered moot by an amendment to Seventh Circuit Rule 10.

~~An appellant designating items for the record on appeal under Circuit Rule 10(a) must serve a proposed joint designation on the appellee with the notice of appeal. The parties must then confer and, if they agree, prepare a joint designation, highlighting those entries on the court's docket sheet if it is practical to do so. The joint designation must be filed with the clerk within 14 days after the notice of appeal is filed. If the parties cannot reach agreement on a joint designation, each party must submit a separate designation within 14 days after filing the notice of appeal.~~

E. Local Criminal Rule 8-1 - Reassignment of Related Criminal Cases - shall be amended as follows:

~~When a pending indictment or information is superseded by an indictment or information charging one or more of the defendants charged in the pending indictment or information and charging one or more of the offenses charged in the original indictment or information growing out of one or more occurrences which gave rise to the original charge, the superseding indictment or information shall be assigned to the same Judge to whom the first case is assigned. When two or more indictments or criminal informations are filed against the same person or persons, corporation or corporations, charging like offenses or violations of the same statute, each of such cases shall be assigned to the Judge to whom the first of such cases is assigned. Further, when an indictment or information is pending against a defendant, all subsequent indictments or informations against the same defendant which may be returned or filed shall be assigned to the same Judge.~~

(a) Conditions for Reassignment. A criminal case may be reassigned to another judge if it is found to be related to a lower-numbered criminal case assigned to that judge and each of the following criteria is met:

(1) all defendants in each of the cases are the same, or if the defendants are not all the same but at least one is the same, the cases are based upon the same set of facts, events or offenses;

(2) the handling of both cases by the same judge is likely to result in an overall saving of judicial resources; and

(3) neither case has progressed to the point where reassigning a case would likely delay substantially the proceedings in either case, or the Court finds that the assignment of the cases to the same judge would promote consistency in resolution of the cases or otherwise be in the interest of justice.

(b) Motion to Reassign. A motion for reassignment based on relatedness may be filed by any party to a case. The motion must be filed with, and will be decided by the judge to whom the lowest numbered case of the claimed related set is assigned for trial or other final disposition. If the set includes both felony cases, and one or more misdemeanors assigned to a magistrate judge, then the motion must be filed with, and will be decided by the district judge assigned to the lowest numbered felony case in the set. Copies of the motion must be served on all parties and on the judges for all of the affected cases. The motion must:

(1) set forth the points of commonality of the cases in sufficient detail to indicate that the cases are related within the meaning of subsection (a), and

(2) indicate the extent to which the conditions required by subsection (a) will be met if the cases are found to be related.

Any objection to the motion must be filed within 7 days of the filing of the motion.

(c) Order. The judge must enter an order finding whether or not the cases are related, and, if they are, whether the higher numbered case or cases should be reassigned to that judge. Where the judge finds that reassignment should occur, the Clerk of Court must reassign the higher numbered case or cases to the judge deciding the motion and to whom the lowest numbered case is assigned. A copy of any finding on relatedness and whether or not reassignment should take place must be sent to each of the judges before whom any of the higher numbered cases are pending.

(d) Scope of Reassignment Order. An order under this rule reassigning cases as related does not constitute a joinder order under Fed. R. Crim. P. 13.

F. Subparagraph (c)(7) of Local Criminal Rule 49.1-2 – Filing Under Seal – shall be amended as follows:

* * *

(c) No Separate Motion Necessary. The following documents may be filed under seal without motion or further order of the court, provided counsel has a good faith belief that sealing is required to ensure the safety, privacy or cooperation of a person or entity, or to otherwise protect a substantial public interest:

(1) charging instruments (e.g., complaint, information, indictment) and accompanying documents (prior to the initial appearance of the defendant as set forth above in subsection (a));

(2) warrant-type applications (e.g., arrest warrants, search warrants, pen registers, trap and trace devices, tracking orders, cell site orders, and wiretaps under 18 U.S.C. §§ 2516 and 2703);

(3) motions for tax return information pursuant to 26 U.S.C. § 6103;

(4) documents filed in grand jury proceedings;

(5) documents filed in juvenile proceedings;

(6) plea agreements that reference a defendant's cooperation and related documents, whether filed by the government or the defendant;

(7) motions for sentence variance filed pursuant to Fed. R. Crim. P. 35(b), 18 U.S.C. § 3553(e), or U.S.S.G. § 5K1.1, and supporting or related documents, such as including motions for temporary custody and sentencing memoranda;

(8) motions for competency evaluation and related documents, filed under the provisions of Fed. R. Crim. P. 12.2 and 18 U.S.C. § 4241.

With the exception of charging documents addressed in subsection (c)(1), such documents shall remain under seal subject to further order of the court.

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Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before **May 29, 2018**, and should be sent to:

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