



UNITED STATES DISTRICT COURT

Southern District of Indiana

Roger A. G. Sharpe, 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 15, 2024

NOTICE

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

Pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure, and Rule 57 of the Federal Rules of Criminal 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 15, 2024**, 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. Local Rule 5-2 – Filing of Documents shall be **amended** as follows:

(a) **Electronic Filing.** Electronic filing of documents is generally required pursuant to Fed. R. Civ. P. 5(d)(3)(A).

(b) **Documents Exempt from Electronic Filing.** Any document that is exempt from electronic filing must be filed directly with the clerk and served on other parties in the case as required by those Federal Rules of Civil Procedure and these rules that apply to the service of non-electronic documents. Only the following documents are exempt from the electronic filing requirement of Fed. R. Civ. P. 5(d)(3)(A):

(1) documents filed by *pro se* litigants;

(2) exhibits in a format that does not readily permit electronic filing (such as video recordings, audio recordings, and large maps and charts);

(3) documents that are illegible when scanned into PDF format;

(4) documents filed in cases not maintained on the ECF system;
and

(5) any other documents that the court or these rules specifically allow to be filed directly with the clerk.

(c) Format for Video, Audio, and Similar Media Files. Video, audio, and similar files must be presented in MP4, WMV, MOV, or AVI format. In addition to case filings, this subsection applies to files submitted directly to chambers on the instruction of the judge.

(d) Case Initiating Documents. The initial pleading and accompanying documents, including the complaint and issuance of the summons, may be filed either in paper form or electronically through the court's ECF system. Case initiating documents must be served in the traditional manner on paper. All subsequent documents must be filed electronically except as provided in these rules or as ordered by the court.

(e) Document Filing by Non-Exempt Party. When a party who is not exempt from the electronic filing requirement files a document directly with the clerk, the party must:

(1) electronically file a notice of manual filing that explains why the document cannot be filed electronically;

(2) present the document to the clerk within 1 business day after filing the notice of manual filing; and

(3) present the clerk with a copy of the notice of manual filing when the party files the document with the clerk.

Note: Amended July 1, 2022, to specify audio and video file formats the court can accept. Amended July 1, 2024, to specify that the file formats also apply to files submitted directly to chambers.

B. Local Rule 7-1 – Motion Practice shall be amended as follows:

(a) Motions Must Be Filed Separately. Motions must be filed separately, but alternative motions may be filed in a single document if each is named in the title. A motion must not be contained within a brief, response, or reply to a previously filed motion, unless ordered by the court.

(b) Brief Required for Certain Motions. The following motions must also be accompanied by a supporting brief:

(1) a motion to dismiss, for judgment on the pleadings, or for more definite statement under Fed. R. Civ. P. 12.

(2) any motion made under Fed. R. Civ. P. 37.

(3) a motion for summary judgment under Fed. R. Civ. P. 56.

(4) a motion for a temporary restraining order under Fed. R. Civ. P. 65(b) and S.D. Ind. L.R. 65-2(b).

(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.

(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.

(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.

(4) *Extensions.* The court may extend response and reply deadlines, but only for good cause.

(5) *Summary Ruling on Failure to Respond.* The court may summarily rule on a motion if an opposing party does not file a response within the deadline.

(d) Routine or Uncontested Motions. A party filing a routine or uncontested motion must also file a suitable proposed order. The court may rule upon a routine or uncontested motion before the response deadline passes, unless:

(1) the motion indicates that an opposing party objects to it; or

(2) the court otherwise believes that a response will be filed.

(e) Page Limits.

(1) *Generally.* Supporting and response briefs (excluding tables of contents, tables of authorities, appendices, and certificates of service) may not exceed ~~35~~ 30 pages. Reply briefs may not exceed ~~20~~ 15 pages.

(2) *Permission to Exceed Limits.* The court may allow a party to file a brief exceeding these page limits for extraordinary and compelling reasons.

(3) **Supporting and Response Briefs Exceeding Limits.** If the court allows a party to file a brief or response exceeding 35 30 pages, the document must include:

- (A) a table of contents with page references;
- (B) a statement of issues; and
- (C) a table of authorities including
 - (i) all cases (alphabetically arranged), statutes, and other authorities cited in the brief; and
 - (ii) page numbers where the authorities are cited in the brief.

(f) **Copies of Authority.** Generally, copies of cited authorities may not be attached to court filings. However, a party must attach to the party's motion or brief a copy of any cited authority if it is not available on Westlaw or Lexis. Upon request, a party must provide copies of any cited authority that is only available through electronic means to the court or the other parties.

(g) Motions for Fees, Sanctions, and Disqualification.

(1) **Reasonable Efforts to Resolve Dispute.** The court may not grant the following motions unless the movant's attorney files with the motion a statement showing that the attorney made reasonable efforts to confer with opposing counsel and resolve the matters raised in the motion:

- (A) motion for attorney's fees (other than post-judgment).
- (B) motion for sanctions under Fed. R. Civ. P. 11.
- (C) motion to disqualify an attorney (other than one brought by a *pro se* party).

(2) **Statement Regarding Efforts.** The statement required by subdivision (g)(1) must include:

- (A) the date, time, and place of all conferences; and
- (B) the names of all conference participants.

(3) **Refusal or Delay of Conference.** The court may take action appropriate to avoid unreasonable delay if any party's attorney advises the court in writing that any opposing counsel has refused to meet or otherwise delayed efforts to resolve the matters raised in the motion.

(h) Notice of Settlement or Resolution. The parties must immediately notify the court if they reasonably anticipate settling their case or resolving a pending motion.

Note: Amended July 1, 2024, to reduce briefing page limits.

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.

This Notice requirement is not satisfied by indicating that a case is related on the Civil Cover Sheet.

(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 87 – Representation of Indigent Litigants shall be amended as follows:

(g) Expenses Incurred by Recruited Counsel. The litigant shall bear the cost of any expenses of the litigation to the extent reasonably feasible in light of the litigant’s financial condition. Recruited counsel is not required to advance the payment of such expenses. However, it is permissible for recruited counsel, or the firm with which counsel is affiliated, to advance part or all of the payment of any such expenses without requiring that the litigant remain ultimately liable for such expenses, except out of the proceeds of any recovery.

(1) Eligibility for ~~Prepayment or~~ Reimbursement of Expenses.

Recruited counsel may move for the ~~prepayment or~~ reimbursement of expenses up to One Thousand Dollars (\$1,000) incurred in the ~~preparation and presentation of the~~ litigation. Any request for funds in excess of One Thousand Dollars (\$1,000.00) – in total for the case - must be approved by the assigned judge before the expense is incurred.

(2) No Vested Right to Reimbursement ~~or Prepayment.~~ Neither the litigant nor recruited counsel has a vested right to ~~prepayment or~~ reimbursement, and the availability of funds may limit such payments.

(3) Procedures for Requesting ~~Prepayment or~~ Reimbursement and Authority to Incur Expense. The Procedures for requesting ~~prepayment or~~ reimbursement of expenses and the authority to incur expenses are set out in a [General Order](#) of the court.

Note: Amended July 1, 2024 to eliminate provision for prepayment of expenses.

E. Local Criminal Rule 12-2 – Assignment of Related Cases shall be amended as follows:

(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) the cases share one or more common defendant(s), or 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 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) – Conditions for Reassignment of Cases Involving Pending Supervised Release Violations. If a defendant in an open criminal case has a supervised release violation pending in another criminal case, the case in which the supervised release violation is pending may be reassigned to the judge presiding over the criminal case. The reassignment will occur by order of the court in the case having the pending supervised release violation.

(d)(e) 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.

Note: Amended July 1, 2023, to permit more flexibility in the reassignment of criminal cases. Amended July 1, 2024 to adopt a procedure for certain cases involving supervised release violations.

F. Local Criminal Rule 32-2 – Sentencing Procedure shall be amended as follows:

(a) The sentencing hearing in each criminal case will be scheduled by the court following the filing of a petition to enter a plea of guilty, plea agreement, the entry of a guilty plea, or a verdict of guilty.

(b) If the defendant is a cooperator, the probation office will exclude, as a matter of course, any cooperator information from the Presentence Investigation Report ("PSR"). The probation office will also exclude from the PSR information related to "Substantial Assistance" under United States Sentencing Guidelines ("U.S.S.G.") § 5K1.1 and information or narrative related to "Safety Valve" eligibility under U.S.S.G. § 5C1.2(a)(1)-(5). A reference to U.S.S.G. § 2D1.1(b)(18) may be made in order to accurately calculate the sentencing guideline range.

~~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.~~

(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. In lieu of such submission, a party may notify the probation officer that its version of the facts is adequately captured in another specific document(s) already available to the probation officer. Before or at the time of providing such submission or notification to the probation officer, a party must provide the submission or notification to the other party.

(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 Cooperator 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. 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.

(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 or corrections they may have as to any material information, sentencing classifications, sentencing guideline calculations, and policy statements contained in or omitted from the Report.

(f) After receiving counsels' objections or corrections, 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.

(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 or corrections 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 or corrections.

(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.

(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: ~~July 1, 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.—~~

Note: Amended July 1, 2024 to require exclusion of cooperator information from the presentence investigation report.

Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before **May 15, 2024**, and should be sent to:

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