

Proposed Amendments to the Local Rules of Court of the U.S. District Court for the Middle District of Pennsylvania to become effective December 1, 2008

1. Proposed amendment to Local Rule 5.1:

LR 5.1 Size and Other Physical Characteristics of Papers and Other Documents.

Papers or other documents filed in this court, except original or true copies of exhibits, shall be on paper approximating eight and one-half (8½) inches by eleven (11) inches in size. Any paper or other document filed shall be sufficient as to format and other physical characteristics if it substantially complies with the following requirements:

(a) Prepared on white paper (except for covers, dividers, and similar sheets) of good quality with typed or printed matter six and one-half (6½) inches by nine and one-half (9½) inches.

(b) The first sheet **of any paper or other document that is not filed electronically** shall contain a three (3) inch space from the top of the paper for all court stampings, filing notices, etc.

(c) The lettering or typeface shall be clearly legible and shall not be smaller than 14 point word processing font or, if typewritten, shall not be smaller than pica. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. The font type and size used in footnotes shall be the same as that used in the body of the brief. Margins must be at least one inch on all four sides. Page numbers shall be placed in the margins, but no text may appear there.

(d) The lettering or typeface shall be on only one (1) side of a page.

(e) All papers and other documents filed in this court shall be securely fastened with a paper clip, binder clip or rubber band. The use of plastic strips, staples or other such fasteners is prohibited, with the exception that administrative and judicial records may be firmly bound.

(f) Exhibits to a brief or motion shall accompany the brief or motion, but shall not be attached to or bound with the brief or motion. Exhibits shall be secured separately, using either lettered or numbered separator pages to separate and identify each exhibit. Each exhibit also shall be identified by letter or number on the top right hand corner of the first page of the exhibit. Exhibits in support of a pleading or other paper shall accompany the pleading or other paper but shall not be physically bound thereto. In all instances where more than one exhibit is part of the same filing, there shall be a table of contents for the exhibits.

(g) A proposed order shall accompany each motion or other request for relief, but shall not be fastened together.

(h) Each motion and each brief shall be a separate document.

(i) Exceptions to the provisions of this rule may be made only upon motion and for good cause or in the case of papers filed ~~in litigation~~ **by a pro se litigant** ~~commenced in~~ *forma pauperis*.

Explanation: *The proposed amendment to LR 5.1(b) makes the requirement to provide*

a three inch space at the top of the first sheet of documents only applicable to documents not filed electronically. The three inch space at the top of a document is only needed for court date stamps when documents are filed on paper. The proposed amendment to paragraph (l) more effectively serves the court's policy underlying the rule by having it relate to cases involving pro se litigants rather than In forma pauperis litigants. Additionally, the words "in litigation" have been stricken because the rule should be intended to provide an exemption for only the actual pro se litigant, not any party in affected cases.

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2. Proposed amendment to Local Rule 7.10:

LR 7.10 Motions for Reconsideration or Reargument.

Any motion for reconsideration or reargument **must be accompanied by a supporting brief and shall be** filed within ten (10) days after the entry of the judgment, order or decree concerned. **The time constraints and assumptions set forth in Local Rules 7.6 and 7.7 shall apply to briefs in opposition to motions for reconsideration and reply briefs.**

***Explanation:** The proposed amendments to Local Rule 7.10 are to clarify the briefing schedules for motions for reconsideration.*

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3. Proposed amendment to Local Rule 16.3:

LR 16.3 Conferences of Attorneys.

(a) In each civil action, lead counsel for each party shall confer at least ten (10) days prior to the initial case management conference to consider the matters set forth on the court's case management form, as set forth in Appendix A to these rules, and shall thereafter file a concise joint case management statement consisting of the completed case management form. It shall be the duty of **counsel for** the plaintiff to take the initiative in holding such a conference and in assuring the completion and filing of the joint case management plan form. The filing of this form satisfies the requirement of a proposed discovery plan under Fed.R.Civ.P. 26(f). The joint case management form shall be filed five (5) days prior to the case management conference. The information in the case management form will not be deemed an admission by any party. ~~Health and Human Services cases (Social Security Appeals), prisoner, pro se parties and U.S. Government loan cases are exempted from the requirements of this rule.~~

(b) At least ten (10) calendar days prior to the final pretrial conference, lead counsel for each of the parties shall meet and confer for the purpose of attempting to enter into agreements with respect to the subjects referred to in Fed.R.Civ.P.16 and to discuss settlement of the action. It shall be the duty of **counsel for** the plaintiff to take the initiative in holding such a conference and initiating discussion concerning settlement and to report to the court at the final pretrial conference the results of efforts to arrive at settlement. At the conference all exhibits which any party intends to introduce at trial whether on the case in chief or in rebuttal shall be examined, numbered and listed. Only exhibits so listed shall be offered in evidence at the trial, except for good cause shown. Counsel shall attempt in good faith to agree as to the authenticity and admissibility of such exhibits insofar as possible and note an objection to any not so agreed upon. Counsel shall attempt in good

faith to agree insofar as possible upon a comprehensive written statement of all undisputed facts which statement shall be included in plaintiff's pretrial memorandum. Lists of potential witnesses with their addresses shall be exchanged.

Explanation: The proposed amendment to Local Rule 16.3 makes it clear that the duty to initiate the joint case management plan discussions and filing rests with counsel for the plaintiff. The stricken language in the rule, regarding exempted classes of cases, removes repetitive language already set forth under LR 16.1.

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4. Proposed amendment to LR.8.3:

LR 16.8.3 Compensation and Expenses of Mediators

(a) ~~The services of the mediator's~~ preparation time and the first six hours of mediation services shall be provided *pro bono*. After six hours of mediation, the parties and the mediator shall agree to one of the following courses of action:

(1) to terminate the mediation; (2) to continue the mediation

with the mediator providing his or her services on a pro bono basis; or (3) to continue the mediation with the mediator providing his or her services at the mediator's regular hourly rate for professional services rendered to the mediator's typical clientele or, in the absence of a standard hourly rate, at the rate of \$200.00 per hour.

If the parties and the mediator are unable to agree on a course of action, the mediation shall be terminated. If the parties and the mediator select option (3), all terms and conditions of the mediator's fee agreement must be set forth in writing. The parties shall pay the mediator directly. The court assumes no responsibility for the supervision or enforcement of the parties' agreement to pay for mediation services.

(b) An individual certified as a mediator shall not be called upon more than three times in a calendar year to serve as a mediator without prior approval of the mediator.

(c) Except as provided herein, a mediator shall not accept anything of value from any source for services provided under the court-annexed mediation program.

***Explanation:** The proposed amendments to LR 16.8.3 are intended to address the concerns of the mediators over the amount of pro bono time expended in a mediation under the court annexed program. The proposed rule would limit the mediator's time commitment to one full day of pro bono mediation service per assignment.*

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5. Proposed amendment to Local Rule 26.1:

LR 26.1 Duty to Investigate and Disclose.

(a) Prior to the conference of attorneys required by Local Rule 16.3, counsel for the parties shall inquire into the computerized information-management systems used by their clients so that they are knowledgeable about the operation of those systems, including how information is stored and how it can be retrieved. At the same time, counsel shall inform their clients of the need to preserve information stored in computerized information-management systems so that information relevant to the claims or defenses in the case is not in any way destroyed.

(b) In making the disclosures required by Fed. R. Civ. P. 26(a)(1), the parties must disclose information and files stored within their computerized information-management systems to the same extent they would be required to disclose information, files or documents stored by any other means.

(c) During the conference of attorneys required by Local Rule 16.3(a), in addition to those matters described in that rule, counsel shall discuss and seek to reach agreement on the following:

(1) Computer-based information in general. Counsel shall attempt to agree on steps the parties will take to segregate and preserve computer-based information in order to avoid accusations of spoliation. Counsel shall also attempt to agree on the steps the parties will take to comply with the decisions and rules requiring the preservation of potentially relevant information after litigation has commenced.

(2) E-mail information. Counsel shall attempt to agree on the scope of e-mail discovery and e-mail search protocol.

(3) Deleted information. Counsel shall attempt to agree on whether deleted information still exists, the extent to which restoration of deleted information is needed, and who will bear the costs of restoration.

(4) Back-up and archival data. Counsel shall attempt to agree on whether back-up and archival data exists, the extent to which back-up and archival data is needed, and who will bear the cost of obtaining such data.

(5) Costs. Counsel shall discuss the anticipated scope, cost, and time required for disclosure or production of data beyond what is reasonably available to the parties in the ordinary course of business, and shall attempt to agree on the allocation of costs.

(6) Format and media. Counsel shall discuss and attempt to agree on the format and media to be used in the production of electronic information.

~~**(7) Privileged material.** Counsel shall attempt to reach an agreement regarding what will happen in the event privileged electronic material or information is inadvertently disclosed.~~

(d) In the event the parties cannot agree on the matters described in subparagraph (c), counsel shall note the issue of disagreement in Section 10 ("Other Matters") of the joint

case management plan so that the court may, if appropriate, address the matter during the case-management conference.

Explanation: *The December 2006 amendments to the Federal Rules of Civil Procedure addressed the issue of inadvertent disclosure of information. Those amendments eliminate the usefulness of LR 26.1(7). Consequently, paragraph (7) has been deleted. Fed.R.Civ.P. 26(b)(5)(B) now provides:*

If information in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

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(d) In the event the parties cannot agree on the matters described in subparagraph (c), counsel shall note the issue of disagreement in Section 10 (“Other Matters”) of the joint case management plan so that the court may, if appropriate, address the matter during the case-management conference.

6. Proposed amendment to Local Rule 83.8.1.1:

LR 83.8.1.1 Procedure.

A person seeking admission under this rule shall file a petition, **on a form provided by the clerk, with the court** setting forth the basis for admission. **The petitioner must have a sponsor who is a member in good standing of the Bar of this Court. A sponsor’s certificate must be included with the petition for admission and the sponsor must be present at the swearing in ceremony to move for admission.** The clerk of court shall receive and maintain all papers submitted by persons seeking admission under this rule. The court may grant admission by oral or written order and by notifying the clerk of the court. A fee shall be charged for admission under this rule. Petition forms shall be available from the clerk.

***Explanation:** The proposed amendment to Local Rule 83.8.1.1 inserts language in the rule to support the Middle District Court requirement that an attorney who wishes to seek general admission must name a sponsor and have that sponsor present at the admission ceremony to move for admission. Although this requirement has not previously been set forth in the local rules, the attorney admissions form for the Middle District has always included a requirement to have a sponsor who is a member in good standing of the Bar of this Court and requires that sponsor to be present to move for admission. The form also provides that the petitioner must submit a “Sponsor’s Certificate”, signed by the sponsor attesting to the petitioner’s moral character. Language has also been inserted in the rule to support that requirement.*

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