

SUMMARY OF CHANGES Draft LOCAL CIVIL RULES

This paper only highlights some of the significant changes proposed to the Local Civil Rules. The current rules should be compared side by side to the draft proposals. For ease of reference, the Local Civil Rules will now follow the Federal Rules of Civil Procedure numbering system.

Random requirements peppered throughout the current local rules have been **eliminated**, e.g.: LR 3.2 setting forth a 3 and ½ page outline of a required RICO case statement; LR 5.1 allowing option to use facsimile filing; LR 9.1 that habeas petitions and motions be only on forms furnished by the Clerk; LR 9.2 which adopted the Admiralty Rules of the WD of WA, because amendments to the Admiralty, Maritime Claims Rules and forfeiture statutes and rules in recent years make these Local Rules unnecessary; LR 10.1(i) that prisoner civil rights complaints be on a form furnished by the Clerk; LR 23.1 requiring the parties to suggest a cut-off date for filing motions for class certification; LR 38.1 reciting there is no fee for a jury demand; LR 39.1 trial briefs are limited to 20 pages; LR 40.2 stating that cases shall be set on the trial calendar; LR 44.1.1 requiring notice “in the pleadings” if law other than federal or Washington State law is relied upon; and LR 77.1 prohibiting photography, televising, broadcasting, and recording (this is covered by a General Order now).

If adopted, the Eastern District of Washington would now have four sets of Local Rules; these Local Civil Rules, the Local Magistrate Judge Rules, the Local Patent Rules, and the Local Criminal Rules.

LCivR 3 COMMENCING AN ACTION

To start a proceeding, you still need a Complaint, Civil Cover Sheet (Form JS-44) and properly completed summons forms for signature and seal by the Clerk of Court.

File them electronically according to the Court’s Administrative Procedures for Electronic Case Filing, which manual may be obtained from the Clerk of Court or found on the Court’s public website, www.waed.uscourts.gov.

LCivR 4 SUMMONS

Three reminders here: use waivers of service where appropriate, serve within 90 days after the complaint is filed and file proof of service.

LCivR 5 SERVING AND FILING PLEADINGS AND OTHER PAPERS

The “Notice of Electronic Filing” that is automatically generated by the Court’s Electronic Filing System constitutes service of the filed document on filing users. Serve other parties who are not filing users with a paper copy.

Each pleading, notice, or other document still needs a certificate of service explaining how service was accomplished.

For filings over 100 pages in length, the Court **may** request a courtesy paper copy be provided to the presiding judge. The courtesy paper copy shall be three-hole punched, clearly marked “Judge’s Courtesy Copy of Electronic Filing,” tabbed if applicable, and delivered to the Clerk of Court.

LCivR 7
PLEADINGS ALLOWED; FORM OF MOTIONS AND OTHER PAPERS

LCivR 7 is the most used rule; it explains how to file a motion, the limitations as to length, when responses and replies are due, how to note the motion for hearing with or without oral argument, and acceptable citations of authorities. If you are seeking an extension of time, you must now recite the opposing party’s position. The rule also specifies how to bring a motion on an expedited basis.

LCivR 10
FORM OF PLEADINGS

The format for pleadings hasn’t changed but there is a reminder that the pleadings and attachments must be sequentially paginated, “John Doe” pleading is disfavored and restricted to only a brief period of time. There is a reminder not to attach prior filed pleadings or exhibits, but rather to reference them in the record as ECF No. ____.

LCivR 12
DEFENSES AND OBJECTIONS: WHEN AND HOW PRESENTED; MOTION FOR JUDGMENT ON THE PLEADINGS; CONSOLIDATING MOTIONS; WAIVING DEFENSES; PRETRIAL HEARING

The United States requested that the filing of the administrative record in Social Security benefits proceedings be deemed the Commissioner’s answer of denial.

LCivR 16
PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

The Local Rules encourage alternative dispute resolution and now allow the presiding Judge to refer the case for mediation before any other magistrate judge, district judge, or a bankruptcy judge.

Attendance by a party and its representative with full settlement authority at the mediation is mandatory, unless the mediator permits otherwise.

Former LR 16.2(c)(2)(a) (sic) which provided for a registry of third party neutrals is **abolished** as well as the complicated and often, never used provisions regarding special mediation masters and subsequent agreements for settlement arbitration.

Except in the following categories of cases, the Court will issue a scheduling order to govern all procedures conducive to the just, speedy, and inexpensive resolution of the action:

- (A) Bankruptcy appeals;
- (B) Habeas corpus proceedings;
- (C) Proceedings by the United States to recover benefits payments;
- (D) Proceedings by the United States to recover student loans;
- (E) Proceedings to enforce judgments;
- (F) Proceedings to enforce an arbitration award;
- (G) Proceedings to enforce or quash discovery arising from another district under Rule 37;
- (H) Proceedings in which no defendant appears and judgment by default is sought; and
- (I) Proceedings for administrative inspections, warrants, summons, and subpoenas.

In Social Security benefits proceedings, once the administrative record has been filed, the parties shall promptly confer and file a “Stipulated Motion for Scheduling Order” outlining their proposed briefing schedule for cross-motions for summary judgment.

LCivR 17
PLAINTIFF AND DEFENDANT; CAPACITY; PUBLIC OFFICERS

Minors or incompetents still need the appointment of an independent guardian ad litem to represent their interests. Those settlements still need prior approval of the Court.

LCivR 25
SUBSTITUTION OF PARTIES

If a party dies, counsel shall file a statement noting the death within 14 days after discovery of such event. The Court may order substitution or dismissal according to Fed. R. Civ. P. 25(a).

LCivR 26
DUTY TO DISCLOSE; GENERAL PROVISIONS GOVERNING DISCOVERY

No discovery materials shall be filed until they are used in the proceeding or the court orders filing. Only those portions of discovery necessary to the disposition of motions shall be appended to the relevant filing. The initiating party shall have the responsibility for maintaining the discovery material and making it available as may be necessary during the proceedings.

LCivR 30
DEPOSITIONS BY ORAL EXAMINATION
[Reserved]

[Note: Unless, pursuant to Fed. R. Civ. P. 29 the parties have stipulated otherwise, no more than 10 depositions, each limited to 7 hours in one day, may be taken by the plaintiffs, defendants, or third-party defendants without leave of the Court. See Fed. R. Civ. P. 30(a)(2) and (d)(1).]

LCivR 33
INTERROGATORIES TO PARTIES

[Note: Unless, pursuant to Fed. R. Civ. P. 29, the parties have stipulated otherwise, no party may serve more than 25 interrogatories, including discrete subparts, on any other party, without leave of the Court. See Fed. R. Civ. P. 33(a)(1).]

LCivR 34
PRODUCING DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND TANGIBLE THINGS, OR ENTERING ONTO LAND, FOR INSPECTION AND OTHER PURPOSES

Unless, pursuant to Fed. R. Civ. P. 29, the parties have stipulated otherwise, no party may serve more than 30 requests on any other party, without leave of the Court.

LCivR 36
REQUESTS FOR ADMISSION

Requests for admission shall not be combined in the same document with any other form of discovery. The genuineness of multiple documents may be included in one request.

Unless, pursuant to Fed. R. Civ. P. 29, the parties have stipulated otherwise, no party may serve more than 15 requests on any other party, without leave of the Court.

LCivR 37
**FAILURE TO MAKE DISCLOSURES OR TO COOPERATE IN DISCOVERY;
SANCTIONS**

[Note: Motions to compel and for protective orders must include a certification that the movant has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without court action. Fed. R. Civ. P. 26(c), 37(a)(1). The parties are reminded that Fed. R. Civ. P. 37(a)(5) mandates the payment of reasonable expenses, including attorney fees, from the unsuccessful party, except in narrow circumstances.]

LCivR 38
RIGHT TO A JURY TRIAL; DEMAND

A party waives a jury trial unless its demand is properly served and filed according to Fed. R. Civ. P. 38 and 81(c).

In a removed action in which state law does not require an express demand for a jury trial, a party must **NOW** serve and file its demand within 30 days after it files a notice of removal or is served with a notice of removal filed by another party.

**LCivR 41
DISMISSAL OF ACTIONS**

If no action of record has occurred for 180 days, a Court imposed deadline has expired without compliance, or a defendant has not been served within 90 days after the complaint was filed (*see* LCivR 4(m)), the Court may enter an order to show cause, which allows the plaintiff not less than 14 days to explain why the case or defendant should not be dismissed.

A party proceeding pro se shall keep the Court and opposing parties advised as to his or her current mailing address and, if electronically filing or receiving notices electronically, his or her current email address. If mail directed to a pro se plaintiff is returned by the Postal Service, or if email is returned by the internet service provider, and if such plaintiff fails to notify the Court and opposing parties within 60 days thereafter of his or her current mailing or email address, the Court **now** may dismiss the action.

**LCivR 43
TAKING TESTIMONY**

Only one attorney per party shall examine or cross-examine any witness, except with the permission of the Court.

A party shall not be permitted to call more than two (2) expert witnesses on any issue, except with the permission of the Court.

**LCivR 48
NUMBER OF JURORS; VERDICT; POLLING**

The parties or their attorneys have 20 minutes from the time the party or attorney has been notified or attempted to be notified to return to Court for the verdict.

Neither counsel nor the parties shall contact or interview jurors or cause jurors to be contacted or interviewed after trial without first having been granted leave to do so by the Court.

**LCivR 54
JUDGMENT; COSTS**

A prevailing party must file a cost bill within 14 days after entry of judgment.

Unless a statute or court order provides otherwise, a motion for attorney's fees and any nontaxable expenses shall be filed within 14 days after the entry of judgment. The motion shall be treated as a non-dispositive motion and noted for hearing according to LCivR 7.

**LCivR 55
DEFAULT; DEFAULT JUDGMENT**

Obtaining a default judgment is still a two-step process: (1) a party must first file a motion for entry of default and obtain a Clerk's Order of Default, and (2) a party must then file a motion for default judgment.

LCivR 56
SUMMARY JUDGMENT

Nothing new here, standard summary judgment procedures, but these procedures don't apply to administrative record review cases, including Social Security benefits cases.

LCivR 67
DEPOSIT INTO COURT

Court ordered deposits of less than \$5,000 shall be deposited by the Clerk of Court directly into the United States Treasury and will earn no interest and incur no fees while on deposit.

Court ordered deposits of \$5,000 or more will be deposited by the Clerk of Court into an interest bearing U.S. Treasury account using the Court Registry Investment System, managed according to the policies and procedures of the Administrative Office of the United States Courts.

The Clerk is directed to deduct a fee from the income earned on the investment at the rates published by the Director of the Administrative Office of the United States Courts as approved by the Judicial Conference of the United States.

LCivR 79
RECORDS KEPT BY THE CLERK

At the conclusion of the trial or hearing, every exhibit marked for identification or introduced in evidence, including all depositions and transcripts, shall be returned to the party who produced them.

On request, a party or his attorney who has custody of any exhibits, has the responsibility to produce any and all such exhibits to this Court or the Court of Appeals and shall grant the reasonable request of any party to examine or reproduce such for use in the proceeding.

LCivR 83.1
COURTROOM PRACTICE AND CIVILITY

The local rules specify the acceptable manner of addressing the Court, questioning witnesses, making objections, handling exhibits, and the decorum expected in court. There is now a concise code of civility:

As a member of the bar of the United States District Court, Eastern District of Washington, I will abide by the following principles of professional conduct.

- (1) I will be courteous and guided by fundamental tenets of integrity and fairness.
- (2) I will endeavor to resolve differences through cooperation and negotiation.
- (3) I will be timely, honoring appointments, commitments and case schedules.
- (4) I will never design the timing, manner of service, and scheduling of hearings for the objective of oppressing or inconveniencing my opponent.
- (5) I will always conduct myself professionally, as if I were in the presence of a judge.

(6) I will be forthright, respectful and honest.

(7) As an officer of the court, I will uphold the honor and dignity of the court and of the profession of law, remembering that I have sworn to uphold the Constitution of the United States and its establishment of justice.

LCivR 83.2

BAR ADMISSION AND APPEARANCE IN A CASE

The wording of this rule has been cleaned up and the only significant amendment is that pro hac vice admissions for appearance and participation in a particular case no longer require that the associated attorney have an office in Washington State, as long as associated counsel is admitted to practice in this Court.

LCivR 83.5

BANKRUPTCY CASES, PROCEEDINGS AND APPEALS

This rule has been updated to comply with the current state of the law as follows:

(a) Referral of Bankruptcy Cases and Proceedings.

Pursuant to 28 U.S.C. § 157(a), this Court hereby refers to the bankruptcy judges of this district all cases under United States Code Title 11, and all proceedings arising under Title 11 or arising in or related to cases under Title 11. By reason of this referral, the bankruptcy judges of this district shall hear and determine such proceedings and enter appropriate orders and judgments. Absent consent of the parties, if the bankruptcy judge determines that entry of a final order or judgment would not be consistent with Article III of the United States Constitution, then the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the District Court.

(b) Jury Trials in Bankruptcy Court.

Pursuant to 28 U.S.C. § 157(e), bankruptcy judges of this district are specifically designated to conduct jury trials.

(c) Bankruptcy Appeals.

(1) Bankruptcy Appellate Panel.

(A) In General. Pursuant to 28 U.S.C. § 158 (b)(6), this Court hereby authorizes a bankruptcy appellate panel to hear and determine appeals from judgments, orders, and decrees by bankruptcy judges, and, with leave of the bankruptcy appellate panel, appeals from interlocutory orders and decrees entered by bankruptcy judges, subject to the limitation set forth in sub-paragraph (B).

(B) Consent Presumed. The bankruptcy appellate panel may hear and determine only those appeals in which all parties to the appeal consent. The consent of a party to allow an appeal to be heard and determined by the bankruptcy appellate panel shall be deemed to have been given unless written objection thereto is timely made in accordance with the Amended Order Establishing and Continuing the Bankruptcy Appellate Panel of the Ninth Circuit, which is incorporated herein by reference.

[Note: The Amended Order is set forth in the Appendix of Orders in the Litigant's Manual for Appeals Before the Bankruptcy Appellate Panel of the Ninth Circuit.]

(1) District Court. Bankruptcy appeals that come before this District Court shall be governed by and conform to Part VIII of the Federal Rules of Bankruptcy Procedure.

LCivR 83.6
NO ENTITY MAY APPEAR PRO SE

A corporation, including a limited liability corporation; a partnership, including a limited liability partnership; an unincorporated association; a trust; or any entity other than a natural person may not appear in any action or proceeding pro se.