Summary of proposed changes to Civil Local Rules of Practice

LR 1A 9-1: Inspection, Conduct in Courtroom and Environs, and Forfeiture.

As currently written, this rule prohibits cellular phones in the Courthouse without prior permission. In that this is no longer our policy, the proposal is to delete this language from this rule.

LR IA 10-7. Ethical Standards, Disbarment, Suspension and Discipline.

The rule has been slightly modified to reflect *In re Kramer's*, 282 F.3d 721 (9th Cir. 2002), holding that in reciprocal, as opposed to direct, discipline cases *the respondent attorney* carries the burden to prove by clear and convincing evidence that reciprocal discipline would be inappropriate. *Id.* at 724, 725.

LR 5-1. Proof of Service.

The revisions are intended to highlight the importance of service and to provide the court or an affected party with an effective means to seek relief from decisions made where service did not occur or occurred in a defective fashion.

Proposed LR 5-3. Filing of Documents by Electronic Means.
Proposed LR 5-4. Service of Documents by Electronic Means.

Proposed LR 5-3 and LR 5-4 authorize electronic filing and service of documents. These changes are required for us to accept electronic filing and to serve documents electronically.

LR 7-4. Limitation on Length of Briefs and Points and Authorities; Requirement for Index and Table of Authorities.

"An index" was changed to "a table of contents."

LR 10-2. Caption, Title of Court, and Name of Case

Case number changed to reflect new case number format under CM/ECF.

LR 10-3. Exhibits.

The amended rule imposes a page limit on exhibits attached to documents that are submitted or filed by non-electronic means, such as courtesy copies or pro per filings. If the page limit exceeds 100, then the exhibits are to be submitted in a separately bound appendix.

LR 10-6. Certificate as to Interested Parties.

The change is based upon the language of Canon 3C(1)(c) of the Code of Conduct for

United States Judges and 28 U.S.C. § 455(b)(4) which require judges to disqualify themselves from a case when (1) they have a financial interest in the subject matter in controversy or in a party to the proceeding, or (2) they have any other interest that could be substantially affected by the outcome of the proceeding.

LR 15-1. Amended Pleadings.

The Clerk's office will no longer detach and file amended pleading. Amending party will be required to file and serve the amended pleading after the court has filed its order granting permission to amend.

Proposed LR 16-6. Early Neutral Evaluation.

Incorporates most of the language from Special Order 102 (Early Neutral Evaluation Program). Language indicating ½ half of the cases would be assigned to the Early Neutral Evaluation Program and the remaining cases referred to a control group was removed from the proposed rule. Additional minor stylistic corrections and formatting changes to conform with the current appearance of the Local Rules were also made.

Proposed LR 22-1. Interpleader Actions.
Proposed LR 22-2. Scheduling Conferences for Interpleader Actions.
LR 26-1. Discovery Plans and Mandatory Disclosures.

Local Rules 22-1 and 22-2 set up a new procedure for case management of interpleader cases. Local Rule 26-1(f) directs parties to follow Local Rules 22-1 and 22-2 in all interpleader actions rather than following the general case management procedures in Local Rule 26-1 (a) - (d).

New language adopted in section (d) to place the onus on counsel for the plaintiff to initiate the scheduling of the Fed. R. Civ. P. 26(f) meeting so that the local rule is clear at to which party has this responsibility.

LR 26-4. Extension of Schedules Deadlines.

Kept "20 days prior" time frame but modified the language of the rule to require the request to extend discovery be received by the court no later than 20 days before the discovery cutoff date.

LR 54-13. Method of Taxation of Costs.

Proposed change clarifies that, in the absence of an objection to the bill of costs, the Clerk will tax costs as requested.

LR 54-16. Motions for Attorney's Fees.

The U.S. Attorney's office has received numerous motions for attorneys' fees that do not comply with LR 54-16. In particular, the motions do not contain any basis for the award of fees, a detailed description of the services rendered for the fees, and other similar, serious failures. Because of these failures, new subparagraph (d) was added, which provides that a "failure to provide the information required by LR 54-16(b) and (c) in a motion for attorney's fees constitutes a consent to the denial of the motion."

LR 67-2. Investment of Funds.

Made changes to reflect that all funds on deposit in the Registry Account are invested in an interest bearing account established by the clerk.

LR 78-1. Submission of Motions to the Court.

This rules states that motions are submitted to the chambers by the Clerk's office. As this will no longer be the case management practice under CM/ECF, proposal is to delete this rule.

PROPOSED CHANGES TO CIVIL RULES OF PRACTICE

LR 1A 9-1: Inspection, Conduct in Courtroom and Environs, and Forfeiture.

(a) All persons entering any United States Federal Building and Courthouse in this district and all items carried by such persons shall be subject to appropriate screening and checking by any United States Marshal or Security Officer of the General Services Administration. Entrance to the United States Federal Building and Courthouse will be denied any person who refuses to cooperate in such screening or checking.

(b) Except as provided in LR IA 9-1(c) or otherwise directed by the court, all forms, means, or manner of taking photographs, tape recordings, broadcasting or televising are prohibited in:

(1) All public areas of the C. Clifton Young Federal Building and United States Courthouse, 300 Booth Street, Reno, Nevada, on floors one through five, inclusive;

(2) All public areas of the Bruce R. Thompson United States Courthouse and Federal Building, 400 South Virginia Street, Reno, Nevada, on floors one through ten, inclusive;

(3) All public areas of the Foley Federal Building and United States Courthouse, 300 Las Vegas Boulevard South, Las Vegas, Nevada, on floors one through four, inclusive;

(4) All public areas of the Lloyd D. George United States Courthouse, 333 Las Vegas Boulevard South, Las Vegas, Nevada, on floors one through eight, inclusive; and

(5) When the court is conducting judicial proceedings in facilities other than a United States Federal Building and Courthouse, all courtrooms, chambers and court-related offices as well as such adjacent public areas as the court may designate.

(c) LR IA 9-1(b) shall not apply:

(1) To the first floor lobby areas of the United States Federal Buildings and Courthouses in this district, provided that no photographing, tape recording, broadcasting or televising shall occur in the southwest corridor leading to the loading dock in the Foley Federal Building, in the southeast corridor leading to the loading dock in the C. Clifton Young Federal Building, or within eight feet (8_) of the elevators and court security systems in any of the Federal Courthouses in the district;

(2) To the interiors of judicial offices;

(3) To cameras, tape recorders, broadcasting or television equipment being taken to non-judicial offices for official business in a United States Federal Building and Courthouse, provided prior authorization is obtained from the United States Marshal;

(4) To recordings by a court reporter or recorder where such recordings are for use as a court record only; and

(5) To portable dictating equipment used by members of the bar when inspecting court records in the clerk's office. Such equipment shall not be used in courtrooms.

~~(d) No person shall carry or possess pagers, cellular telephones, two-way radios or other transmitting devices in any United States Federal Building and Courthouse in this district without express prior approval of the United States Marshal or a United States circuit judge, district judge, bankruptcy judge, or magistrate judge.~~

(~~c~~d) All cameras, recording, reproducing and transmitting equipment~~, pagers, cellular telephones, two-way radios or other transmitting devices~~ brought into prohibited areas without the requisite prior approval are subject to impound by the United States Marshal.

(~~f~~e) Except as otherwise provided by special order of the court, no person shall carry or possess firearms or deadly weapons in any United States courthouse in this district. The United States Marshal, any deputy marshal, and officers of the Federal Protective Service shall be exempt from this provision.

Commentary Note re LR IA 9-1:

As currently written, this rule prohibits cellular phones in the Courthouse without prior permission. In that this is no longer our policy, the proposal is to delete this language from this rule.

LR IA 10-7. Ethical Standards, Disbarment, Suspension and Discipline.

(a) Model Rules. An attorney admitted to practice pursuant to any of these rules shall adhere to the standards of conduct prescribed by the Model Rules of Professional Conduct as adopted and amended from time to time by the Supreme Court of Nevada, except as such may be modified by this court. Any attorney who violates these standards of conduct may be disbarred, suspended from practice before this court for a definite time, reprimanded or subjected to such other discipline as the court deems proper. This subsection does not restrict the court's contempt power.

(b) Reciprocal discipline.

(1) ~~Should an attorney admitted to practice pursuant to any of these rules be convicted of a felony in any court, or disbarred or suspended from practice by any court of the United States, the Supreme Court of Nevada, or the highest court of another state, commonwealth, territory, or the District of Columbia, an order shall be entered requiring the attorney to show cause why this court should not enter an order suspending the attorney from practice before this court.~~ Upon receipt of reliable information that a member of the Bar of this Court or any attorney appearing pro hac vice (a) has been suspended or disbarred from the practice of law by the order of any United States Court, or by the Bar, Supreme Court of Nevada, or other governing authority of any State, territory or possession, or the District of Columbia, or (b) has resigned from the Bar of any United States Court or of any State, territory or possession, or the District of Columbia while an investigation or proceedings for suspension or disbarment was pending, or (c) has been convicted of a crime, the elements or underlying facts of which may affect the attorney's fitness to practice law, this Court shall issue an Order to Show Cause why this Court should not impose an order of suspension or disbarment.

If the attorney files a response stating that imposition of an order of suspension or disbarment from this Court is not contested, or if the attorney does not respond to the Order to Show Cause within the time specified, then the Court shall issue an order of suspension or disbarment. The Chief Judge shall file the order.

If the attorney files a written response to the Order to Show Cause within the time specified stating that the entry of an order of suspension or disbarment is contested, then the Chief Judge or other district judge who may be assigned shall determine whether an order of suspension or disbarment shall be entered. Where an attorney has been suspended or disbarred by another Bar, or has resigned from another Bar while disciplinary proceedings were pending, the attorney in the response to the Order to Show Cause, must set forth facts establishing one or more of the following by clear and convincing evidence: (a) the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (b) there was such an infirmity of proof establishing the misconduct as to give rise to a clear conviction that the Court should not accept as final the other jurisdiction's conclusion(s) on that subject; (c) imposition of like discipline would result in a grave injustice; or (d) other substantial reasons exist so as to justify not accepting the other jurisdiction's

conclusion(s). In addition, at the time the response is filed, the attorney must produce a certified copy of the entire record from the other jurisdiction or bear the burden of persuading the Court that less than the entire record will suffice.

(2) Should an attorney admitted to practice pursuant to any of these rules be transferred to disability inactive status on the grounds of incompetency or disability by any court of the United States, the Supreme Court of Nevada, or the highest court of another state, commonwealth, territory, or the District of Columbia, an order shall be entered requiring the attorney to show cause why this court should not enter an order placing the attorney on disability inactive status.

(3) An attorney who is the subject of an order of disbarment, suspension or transfer to disability inactive status may petition for reinstatement to practice before this court or for modification of such order as may be supported by good cause and the interests of justice.

(c) Upon receipt by the clerk of a certified copy of an order or judgment of suspension, disbarment, transfer to disability inactive status, or of a judicial declaration of incompetency or conviction of a felony or a crime of moral turpitude concerning a member of the bar of this court, or any other attorney admitted to practice before this court, the clerk shall bring such order to the attention of the court which shall enter the order provided for in subsections (b)(1) or (2) of this rule.

(d) The clerk shall distribute copies of any order of suspension, disbarment, transfer to disability inactive status or other disciplinary order entered pursuant to this rule to the attorney affected, to all the judges in this district, to the clerk of the Nevada Supreme Court, to the Nevada State Bar Counsel and to the American Bar Association's National Disciplinary Data Bank.

(e) On being subjected to professional disciplinary action or convicted of a felony or a crime of moral turpitude in Nevada or in another jurisdiction, an attorney admitted to practice pursuant to any of these rules shall immediately inform the clerk in writing of the action.

(f) Any attorney who, before admission to practice before this court, or during any period of disbarment, suspension or transfer to disability inactive status from such practice, exercises any of the privileges of an attorney admitted to practice before this court, or who pretends to be entitled to do so, is guilty of contempt of court and subject to appropriate punishment.

Commentary Note re LR IA 10-7:

In re Kramer, 282 F.3d 721 (9th Cir. 2002), approvingly cited the reciprocal disciplinary provision of the U.S. District Court for the Central District of California and the district court's procedure as consonant with the Ninth Circuit's attorney discipline/due process precedent, *id.* at 724 n.1. In *Kramer*, the Ninth Circuit upheld the Central District of California's reciprocal discipline of an attorney. Previously, the District Court had treated a state court's disciplinary proceeding against the respondent attorney as conclusively binding on it. *Kramer*, 282 F.3d at

723. Accordingly, it had not provided Kramer with any notice or opportunity to be heard, and had not independently reviewed the state court's disciplinary record. *Id*. Kramer had successfully challenged that reciprocal discipline in a prior appeal to the Ninth Circuit ("Kramer III"). *Id*. On remand, the District Court, operating under newly revised local rule procedures after the Ninth Circuit's decision in Kramer III (C.D. Cal. L.R. 83-3.1.9), provided Kramer with notice, an opportunity to be heard, engaged in an independent review of the other court's disciplinary record, and reciprocally disbarred him. *Id.* at 723-24. The Ninth Circuit upheld the District Court's decision to disbar reciprocally under the provision. *Id*. at 724.

The Central District of California's Local Rule provides a good model for this Court's rule because a reciprocal discipline under its procedure survived appellate scrutiny. We have slightly modified the rule to reflect *Kramer's* holding that in reciprocal, as opposed to direct, discipline cases *the respondent attorney* carries the burden to prove by clear and convincing evidence that reciprocal discipline would be inappropriate. *Id.* at 724, 725.

Senior Judge Quackenbush attached to his memorandum a copy of the Eastern District of Washington's reciprocal discipline provision for this Court's information. Local Rule 83.3(c) is similar to the Central District of California's procedure, but it provides detailed instructions governing the timing of responses to an order to show cause and disciplinary hearings, if permitted. We have not recommended that the Court adopt the more detailed Eastern District of Washington provisions on the theory that "less is more" and will give rise to fewer claims that the Court failed to abide by its procedures. Moreover, although the Ninth Circuit cited the Central District of California's rule approvingly, it has as yet not so cited the Eastern District of Washington's rule. Erring on the side of an approved procedure, we would substantially adopt the Central District of California's language.

LR 5-1. Proof of Service.

(a) All papers required or permitted to be served shall have attached when presented for filing a written proof of service. The proof shall show the day and manner of service and the name of the person served. Proof of service may be by written acknowledgment of service or certificate of the person who made service. ~~The court may refuse to take action on any papers until proper proof of service is filed.~~

(b) The court may refuse to take action on any paper until a proof of service is filed. Either on its own initiative or on a motion by a party, the court may strike the unserved paper or vacate any decision made on the unserved paper.

~~(b)~~ (c) Failure to make the proof of service required by this rule does not affect the validity of the service. Unless material prejudice would result, the court may at any time allow the proof of service to be amended or supplied.

Commentary Note re LR 5-1:

The revisions are intended to highlight the importance of service and to provide the court or an affected party with an effective means to seek relief from decisions made where service did not occur or occurred in a defective fashion.

Proposed LR 5-3. Filing of Documents by Electronic Means.

Documents may be filed and signed by electronic means to the extent and in the manner authorized by Special Order of the Court. A document filed by electronic means in compliance with this Local Rule constitutes a written document for the purposes of applying these Local Rules and the Federal Rules of Civil Procedure.

Proposed LR 5-4. Service of Documents by Electronic Means.

Documents may be served by electronic means to the extent and in the manner authorized by further Special Order of the Court. Transmission of the Notice of Electronic Filing (NEF) constitutes service of the filed document upon each party in the case who is registered as an electronic case filing user with the Clerk. Any other party or parties shall be served documents according to these Local Rules and the Federal Rules of Civil Procedure.

Commentary Note re Proposed LR 5-3 and 5-4:

Proposed LR 5-3 and 5-4 authorize electronic filing and service of documents. Language taken primarily from Western District of Kentucky's local rules 5.4 and 5.5.

LR 7-4. Limitation on Length of Briefs and Points and Authorities; Requirement for Index and Table of Authorities.

Unless otherwise ordered by the court, pretrial and post-trial briefs and points and authorities in support of, or in response to, motions shall be limited to thirty (30) pages including the motion but excluding exhibits. Reply briefs and points and authorities shall be limited to twenty (20) pages, excluding exhibits. Where the court enters an order permitting a longer brief or points and authorities, the papers shall include ~~an index~~a table of contents and table of authorities.

Commentary Note re LR 7-4:

"An index" was changed to "a table of contents."

LR 10-2. Caption, Title of Court, and Name of Case.

The following information shall be stated upon the first page of every paper presented for filing, single-spaced::

(a) The name, address, telephone number, fax number, e-mail address and Nevada State Bar number, if any, of the attorney and any associated attorney filing the paper, whether such attorney appears for the plaintiff, defendant or other party, or the name, address and telephone number of a party appearing *in pro se*. This information shall be set forth in the space to the left of center of the page beginning at the top of the first page. The space to the right of center shall be reserved for the filing marks of the clerk.

(b) The title of the court shall appear at the center of the first page at least one inch (1_) below the information required by subsection (a) of this rule, as follows:

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

(c) The name of the action or proceeding shall appear below the title of the court, in the space to the left of center of the paper, i.e.:

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
vs.)
)
RICHARD ROE,)
)
Defendant.)

(d) In the space to the right of center, there shall be inserted the docket number which shall include a designation of the nature of the case ("CV" for civil), the division of the court ("~~S~~2" for Southern and "~~N~~3" for Northern), and, except for the original pleading, the case number and the initials of the presiding district judge followed in parentheses by the initials of the magistrate judge if one has been assigned. This information shall be separated ~~by dashes.~~ as follows: 3:05-CV-115-HDM-(RAM).

(e) Immediately below the caption and the docket number there shall be inserted the name of the paper and whenever there is more than one defendant a designation of the parties affected by it, e.g., Defendant Richard Roe's Motion for Disclosure of Confidential Informant.

Commentary Note re LR 10-2:

Case number changed to reflect new case number format under CM/ECF.

LR 10-3. Exhibits.

~~All exhibits attached to papers shall show the exhibit number at the bottom or side. Exhibits need not be typewritten and may be copies, but must be clearly legible and not unnecessarily voluminous. Counsel must reduce oversized exhibits to 8½_ x 11_ unless such reduction would destroy legibility or authenticity. An oversized exhibit that cannot be reduced shall be filed separately with a captioned cover sheet identifying the exhibit and the document(s) to which it relates.~~

(a) Exhibits attached to documents filed with or submitted to the court in paper form shall be tabbed with an exhibit number or letter at the bottom or side of the document. Exhibits need not be typewritten and may be copies, but must be clearly legible and not unnecessarily voluminous.

(b) No more than 100 pages of exhibits may be attached to documents filed or submitted to the court in paper form. Exhibits in excess of 100 pages shall be submitted in a separately bound appendix. Where an appendix exceeds 250 pages, the exhibits shall be filed in multiple volumes, with each volume containing no more than 250 pages. The appendix shall be bound on the left and must include a table of contents identifying each exhibit and, if applicable, the volume number.

(c) Oversized exhibits shall be reduced to 8½ ” x 11” unless such reduction would destroy legibility or authenticity. An oversized exhibit that cannot be reduced shall be filed separately with a captioned cover sheet identifying the exhibit and the document(s) to which it relates.

(d) Copies of cases, statutes or other legal authority shall not be attached as exhibits or made part of an appendix.

Commentary Note re LR 10-3:

LR 10-3 was selected for review and possible amendment in response to Judge Hagen’s concerns about the voluminous exhibits that are attached to summary motions and responses. Judge Hagen also pointed out that the already voluminous exhibits include copies of cases or other legal authorities. Because of the awkwardness in handling such lengthy documents, Judge Hagen suggested an amendment which would require exhibits in support or in opposition to a motion to be filed in a separate appendix and which prohibited inclusion of statutes or cases.

In order to deal with the manner in which exhibits were submitted regardless of the type of motion to which the exhibits were appended, we recommend that LR 10-3 be amended to adopt a method of submitting exhibits similar to the rule employed by the Ninth Circuit Court of Appeals. The amended rule imposes a page limit on exhibits attached to documents that are submitted or filed by non-electronic means, such as courtesy copies or pro per filings. If the page limit exceeds 100, then the exhibits are to be submitted in a separately bound appendix.

LR 10-6. Certificate as to Interested Parties.

~~LR 10-6.~~ LR 7.1-1. CERTIFICATE AS TO INTERESTED PARTIES.

(a) Unless otherwise ordered, in all cases except *habeas corpus* cases counsel for private (nongovernmental) parties shall ~~upon entering the case file~~ identify in the disclosure statement required by Fed. R. Civ. P. 7.1 ~~a certificate listing~~ all persons, associations of persons, firms, partnerships or corporations (including parent corporations) ~~known to have an interest in the outcome of the case including the names of all parent, subsidiary, affiliate and/or insider of the named non-individual parties, as follows:~~ which have a direct, pecuniary interest in the outcome of the case.

The disclosure statement shall include the following certification:

~~"Number and Caption of Case~~
~~Certificate Required by LR 10-6~~
The undersigned, counsel of record for___,
certifies that the following have an interest in the
outcome of this case: (here list the names of all such
parties ~~including the names of all parent, subsidiary,~~
~~affiliate, and/or insider of the named non-individual~~
~~parties,~~ and identify their connection and interests).
These representations are made to enable
judges of the Ceourt to evaluate possible disqualification or recusal.
Signature, Attorney of Record for___"

(b) If there are no known interested parties other than those participating in the case, a statement to that effect will satisfy this rule.

(c) A party must promptly file a ~~There is a continuing obligation to~~ supplemental certification ~~in accordance with the provisions of this rule~~upon any change in the information that this rule requires.

Commentary Note re LR 10-6 (now LR 7.1-1):

The change to the Local Rule 10-6 is based upon the language of Canon 3C(1)(c) of the Code of Conduct for United States Judges and 28 U.S.C. § 455(b)(4) which require judges to disqualify themselves from a case when (1) they have a financial interest in the subject matter in controversy or in a party to the proceeding, or (2) they have any other interest that could be substantially affected by the outcome of the proceeding.

Canon 3C of the Code of Conduct for United States Judges provides in pertinent part:

> (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to

instances in which:

> (c) the judge knows that, individually or as a fiduciary, the judge or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding. (Emphasis added.)

Federal Rule of Civil Procedure 7.1 presently states that a "nongovernmental corporate party to an action or proceeding in a district court must file two copies of a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation."

LR 15-1. Amended Pleadings.

(a) ~~The original proposed amended pleading shall be signed and attached to any motion to amend a pleading. If the motion is granted the clerk shall forthwith detach and file the original amended pleading. Unless otherwise permitted by the court, every proposed amended pleading must be retyped or reprinted so that it will be complete in itself, including exhibits, without reference to the superseded pleading. An amended pleading shall include copies of all exhibits referred to in such pleading.~~Unless otherwise permitted by the court, the moving party shall attach the proposed amended pleading to any motion to amend so that it will be complete in itself without reference to the superseding pleading. An amended pleading shall include copies of all exhibits referred to in such pleading.

(b) ~~Upon order of the court, the clerk shall remove any exhibits attached to prior pleadings and attach them to the amended pleading. The time under Fed. R. Civ. P. 15(a) for an entity already a party to answer or reply to an amended pleading shall run from the date of service of the order allowing said pleading to be amended, or where no order is required under Fed. R. Civ. P. 15(a), from the date of service of the amended pleading.~~After the court has filed its order granting permission to amend, the moving party shall file and serve the amended pleading.

Commentary Note re LR 15-1:

In its 2004 Report on Local Rules, the Standing Committee on Rules of Practice and Procedure flagged Local Rule 15-1(b) as creating an arguable conflict with Rule 15(a). Local Rule 15-1(b) presently provides:

> (b) Upon order of the court, the clerk shall remove any exhibits attached to prior pleadings and attach them to the amended pleading. *The time under Fed. R. Civ. P. 15(a) for an entity already a party to answer or reply to an amended pleading shall run from the date of service of the order allowing said pleading to be amended, or where no order is required under Fed. R. Civ. P. 15(a), from the date of service of the amended pleading.*

(emphasis added). The Report noted that Federal Rule of Civil Procedure 15(a) provides that

> A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer ...

The Report then noted how the Local Rule calculates time from the date the order allowing the amendment is served, but that the Rule 15(a) time periods are measured by the time to respond to the original pleading or from service of the amended pleading.

Unfortunately, the 2004 Report on Local Rules neglected to address key caveat

language in Federal Rule of Civil Procedure 15(a). Rule 15(a) caveats the default time limits on responding to amended pleadings with the phrase "unless the court otherwise orders":

> A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, *unless the court otherwise orders.*

(emphasis added). The qualifying dependent clause, "unless the court otherwise orders," modifies the entire sentence. Thus, the Court may departfrom all the designated default time periods for responding to an amended pleading.

One reasonable construction of the Rule 15(a)'s opt-out language, "unless the court otherwise orders," is that Local Rule 15-1 constitutes the "court otherwise order[ing]" time periods for responding to amended pleadings on a categorical, as opposed to a case-by-case, basis. *Cf. John v. Louisiana,* 899 F.2d 1441, 1448 (5th Cir. 1990) (interpreting a district judge's standing instructions as properly invoking a local rule's opt-out language, "unless the court otherwise orders").

On this account, Local Rule 15-1, even if arguably inconsistent with 15(a)'s default periods, is consistent with 15(a)'s caveat. The Local Rules are adopted and amended by order of the Court. As permitted by 15(a)'s own terms, Local Rule 15-1 is a means of the court "otherwise order[ing]" periods of time in which to respond to amended pleadings. This construction of Local Rule 15-1 is faithful to LR IA 2-1, that the Local Rules "shall be construed so as to be consistent with the Federal Rules of Civil … Procedure they supplement."

In deciding whether to amend this rule, the Court should balance the value of this minor variation in local federal practice against the risk that litigants will challenge the Local Rule and the hazards of non-uniform federal procedure. On balance, we weigh more heavily avoidance of ancillary procedural litigation and rule uniformity than the marginal value of this local variation.

Proposed LR 16-6. Early Neutral Evaluation.

(a) All employment discrimination actions filed in this court must undergo early neutral evaluation as defined by this rule. The purpose of the early neutral evaluation session is for the evaluating Magistrate Judge to give the parties a candid evaluation of the merits of their claims and defenses.

(b) Motions for relief from early neutral evaluation must be filed not later than ten (10) days after the appearance in the case of the moving party. A response to the motion for relief from early neutral evaluation must be filed within ten (10) days after service of the original motion. No reply will be allowed. Motions filed under LR 16-6(b) are not subject to the requirements of LR. 7-2. The evaluating magistrate judge shall have final authority to grant or deny any motion requesting exemption from early neutral evaluation and may exempt any case from early neutral evaluation on the judge's own motion. Such orders are not appealable.

(c) Unless good cause is shown, the early neutral evaluation session shall be held by the court not later than seventy-five days after the first responding party appears in the case.

(d) Unless excused by the evaluating magistrate judge, the parties with authority to settle the case and their counsel shall attend the early neutral session in person.

(e) Parties shall submit to the chambers of the evaluating magistrate judge their written evaluation statements by 4:00 p.m. five (5) court days prior to the early neutral evaluation hearing. The written evaluation statement shall not be filed with the clerk or served on the opposing parties.

(1) Evaluation statements shall be concise and shall:

(A) Identify, by name or status the person(s) with decision-making authority, who, in addition to counsel, will attend the early neutral evaluation session as representative(s) of the party, and persons connected with a party opponent (including an insurer representative) whose presence might substantially improve the utility of the early neutral evaluation session or the prospects of settlement;

(B) Describe briefly the substance of the suit, addressing the party's views on the key liability issues and damages;

(C) Address whether there are legal or factual issues whose early resolution would reduce significantly the scope of the dispute or contribute to settlement negotiations;

(D) Describe the history and status of settlement negotiations; and

(E) Include copies of documents, pictures, recordings, etc. out of which the suit arose, or whose availability would materially advance the purposes of the evaluation session, (e.g., medical reports, documents by which special damages might be determined).

(2) Each evaluation statement shall remain confidential unless a party gives the court permission to reveal some or all of the information contained within the statement.

(f) Each evaluating magistrate judge shall:

(1) Permit each party (through counsel or otherwise), orally and through documents or other media, to present its claims or defenses and to describe the principal evidence on which they are based;

(2) Assist the parties to identify areas of agreement and, where feasible, enter stipulations;

(3) Assess the relative strengths and weaknesses of the parties' contentions and evidence, and carefully explain the reasoning that supports these;

(4) When appropriate, assist the parties through private caucusing or otherwise, to explore the possibility of settling the case;

(5) Estimate, where feasible, the likelihood of liability and the range of damages;

(6) Assist the parties in devising a plan for expediting discovery, both formal and informal, in order to enter into meaningful settlement discussions or to position the case for disposition by other means;

(7) Assist the parties to realistically assess litigation costs; and

(8) Determine whether some form of follow up to the session would contribute to the case development process or to settlement.

Commentary Note re Proposed LR 16-6:

Proposed LR 16-6 incorporates most of the language from Special Order 102 (Early Neutral Evaluation Program). Language indicating ½ half of the cases would be assigned to the Early Neutral Evaluation Program and the remaining cases referred to a control group was removed from the proposed rule. Additional minor stylistic corrections and formatting changes to conform with the current appearance of the Local Rules were also made.

Proposed LR 22-1. Interpleader Actions.

In all interpleader actions, no discharge will be granted and no plaintiff will be dismissed prior to the scheduling conference provided for in Local Rule 22-2.

Proposed LR 22-2. Scheduling Conferences for Interpleader Actions.

In all interpleader actions, the Plaintiff must file a motion requesting that the Court set a scheduling conference. The motion must be filed within 30 days after the first defendant answers or otherwise appears. At the scheduling conference, the Plaintiff will advise the Court as to the status of service on all defendants who have not appeared. In addition, the Court and parties will develop a briefing schedule or discovery plan and scheduling order for resolving the parties' competing claims. If the plaintiff fails to prosecute the interpleader action by failing to file the motion required by this local rule, the Court may dismiss the action.

Commentary Note re Proposed LRs 22-1 and 22-2:

Proposed Local Rules 22-1 and 22-2 set up a new procedure for case management of interpleader cases.

LR 26-1. Discovery Plans and Mandatory Disclosures.

(a) [Repealed December 1, 2000. See Fed. R. Civ. P. 26(a).]

(b) [Repealed December 1, 2000. See Fed. R. Civ. P. 26(g)(1).]

(c) [Repealed December 1, 2000. See Fed. R. Civ. P. 26(e).]

(d) Fed. R. Civ. P. 26(f) Meeting; Filing and Contents of Discovery Plan and Scheduling Order. Counsel for the plaintiff ~~The parties~~ shall ~~meet and/or confer as required by~~ initiate the scheduling of the Fed. R. Civ. P. 26(f) meeting within thirty (30) days after the first defendant answers or otherwise appears. Fourteen (14) days after the mandatory Fed._R._Civ._P._26(f) conference, the parties shall submit a stipulated discovery plan and scheduling order. The plan shall be in such form so as to permit the plan, on court approval thereof, to become the scheduling order required by Fed._R._Civ._P._16(b). If the plan sets deadlines within those specified in LR 26-1(e), the plan shall state on its face in bold type, "SUBMITTED IN COMPLIANCE WITH LR 26-1(e)." If longer deadlines are sought, the plan shall state on its face "SPECIAL SCHEDULING REVIEW REQUESTED." Plans requesting special scheduling review shall include, in addition to the information required by Fed._R._Civ._P._26(f) and LR_26-1(e), a statement of the reasons why longer or different time periods should apply to the case or, in cases in which the parties disagree as to the form or contents of the discovery plan, a statement of each party's position on each point in dispute.

(e) Form of Stipulated Discovery Plan and Scheduling Order, Applicable Deadlines. The discovery plan shall include, in addition to the information required by Fed. R. Civ. P. 26(f), the following information:

(1) Discovery Cut-Off Date. The plan shall state the date the first defendant answered or otherwise appeared, the number of days required for discovery measured from the date the first defendant answers or otherwise appears, and shall give the calendar date on which discovery will close. Unless otherwise ordered, discovery periods longer than one hundred eighty (180) days from the date the first defendant answers or appears will require special scheduling review;

(2) Amending the Pleadings and Adding Parties. Unless the discovery plan otherwise provides and the court so orders, the date for filing motions to amend the pleadings or to add parties shall be not later than ninety (90) days prior to the close of discovery. The plan should state the calendar dates on which these amendments will fall due;

(3) Fed. R. Civ. P. 26(a)(2) Disclosures (Experts). Unless the discovery plan otherwise provides and the court so orders, the time deadlines specified in Fed._R._Civ._P._26(a)(2)(C) for disclosures concerning experts are modified to require that the disclosures be made sixty (60) days before the discovery cut-off date and that

disclosures respecting rebuttal experts be made thirty (30) days after the initial disclosure of experts. The plan should state the calendar dates on which these exchanges will fall due;

(4) Dispositive Motions. Unless the discovery plan otherwise provides and the court so orders, the date for filing dispositive motions shall be not later than thirty (30) days after the discovery cut-off date. The plan should state the calendar dates on which these dispositive motions will fall due;

(5) Pretrial Order. Unless the discovery plan otherwise provides and the court so orders, the joint pretrial order shall be filed not later than thirty (30) days after the date set for filing dispositive motions. In the event dispositive motions are filed, the date for filing the joint pretrial order shall be suspended until thirty (30) days after decision of the dispositive motions or further order of the court;

(6) Fed. R. Civ. P. 26(a)(3) Disclosures. Unless the discovery plan otherwise provides and the court so orders, the disclosures required by Fed. R. Civ. P. 26(a)(3) and any objections thereto shall be included in the pretrial order; and

(7) Form of Order. All discovery plans shall include on the last page thereof the words "IT IS SO ORDERED" with a date and signature block for the judge in the manner set forth in LR 6-2.

(f) Unless otherwise ordered, Local Rule 26-1(d) and (e) do not apply to interpleader actions. The procedures in Local Rules 22-1 and 22-2 will govern all interpleader actions.

Commentary Note re LR 26-1:

New language in section (d) adopted to place the onus on counsel for the plaintiff to initiate the scheduling of the Fed. R. Civ. P. 26(f) meeting so that the local rule is clear at to which party has this responsibility.

26-1(f) directs parties to follow Local Rules 22-1 and 22-2 in all interpleader actions rather than following the general case management procedures in Local Rule 26-1 (a) - (d).

A primary purpose for these changes is that the general discovery plan and scheduling order process does not adequately address interpleader actions. Generally, the Plaintiff in interpleader actions is most concerned with depositing the funds or property in the court and then withdrawing from the litigation leaving the competing claimants to litigate their entitlement to the interpleaded funds or property. As a result in many cases, when the date for a Fed. R. Civ. P. 26(f) conference arrives, the Plaintiff interpleader has been allowed to withdraw from the lawsuit leaving any appearing defendant to arrange the required conference and establish a discovery plan and scheduling order for a case all without knowing what actions Plaintiff has taken with respect to the other named

defendants. The new procedure are meant to insure that the Plaintiff remain an active participant in the case until the Court has had an opportunity to assess the status of the case and formulate an appropriate case management plan.

LR 26-4. Extension of Schedules Deadlines.

Applications to extend any date set by the discovery plan, scheduling order, or other order must, in addition to satisfying the requirements of LR 6-1, be supported by a showing of good cause for the extension. All motions or stipulations to extend discovery shall be received by the court no later than ~~within~~ twenty (20) days before the discovery cut-off date or any extension thereof. Any motion or stipulation to extend or to reopen discovery shall include:

(a) A statement specifying the discovery completed;

(b) A specific description of the discovery that remains to be completed;

(c) The reasons why discovery remaining was not completed within the time limits set by the discovery plan; and

(d) A proposed schedule for completing all remaining discovery.

Commentary Note re LR 26-4:

Subcommittee kept "20 days prior" time frame but modified the language of the rule to require the request to extend discovery be received by the court **no later than** 20 days before the discovery cutoff date.

LR 54-13. Method of Taxation of Costs.

(a) Any objections to a bill of costs shall be filed and served no later than ten (10) days after service of the bill of costs. Such objections shall specify each item to which objection is made and the grounds therefor, and shall include, if appropriate, supporting affidavits or other material.

(b) On the date set for the taxation neither the parties nor their attorneys shall appear.~~, and the clerk shall proceed to tax such costs as are properly chargeable and shall make an insertion of the costs into the docket and the judgment, if appropriate. The clerk's taxation of costs shall be final unless modified on review as provided in these rules.~~

(1) If no objection has been filed, the clerk may enter the bill of costs as submitted and shall make an insertion of the costs in to the docket and the judgment, if appropriate. The clerk's taxation of costs shall be final unless modified on review as provided in these rules. If no objection to a cost bill is filed, such failure may constitute a consent to the award of all costs included but does not prevent a party from filing a motion to retax as provided in LR 54-14, subject to the court's consideration of the party's failure to file an objection.

(2) If the costs are sought against the United States, its officers, and agencies, the clerk shall proceed to tax such costs as are properly chargeable and shall make an insertion of the costs in to the docket and the judgment, if appropriate. The clerk's taxation of costs shall be final unless modified on review as provided in these rules.

(3) If an objection to a cost bill is filed, the cost bill shall be treated as a motion and the objection shall be treated as a response thereto. The Clerk or a deputy clerk may prepare sign and enter an order disposing of a cost bill, subject to a motion to retax as provided in LR 54-14. The clerk's taxation of costs shall be final unless modified on review as provided in these rules.

(c) Notice of the clerk's taxation of costs shall be given by serving a copy of the bill as approved by the clerk to all parties in accordance with Fed. R. Civ. P. 5.

Commentary Note re LR 54-13:

The goal of the committee was to give the Clerk's office the authority to approve all costs submitted that have no objection. The changes authorize the clerk to enter costs when not objected to, unless the US government is a party. Rule changes do not prevent a party from filing a motion to retax as provided in LR 54-14.

LR 54-16. Motions for Attorney's Fees.

(a) Time for Filing. When a party is entitled to move for attorney's fees, such motion shall be filed with the court and served within fourteen (14) days after entry of the final judgment or other order disposing of the action.

(b) Content of Motions. Unless otherwise ordered by the court, a motion for attorney's fees must, in addition to those matters required by Fed._R._Civ._P._54(d)(2)(B), include the following:

(1) A reasonable itemization and description of the work performed;

(2) An itemization of all costs sought to be charged as part of the fee award and not otherwise taxable pursuant to LR 54-1 through 54-15;

(3) A brief summary of:

(A) ~~The nature of the case~~ The results obtained and the amount involved;

~~(B) The difficulty of the case;~~

(~~D~~B) The time and labor required;

(~~E~~C) The novelty and difficulty of the questions involved;

(~~F~~D) The skill requisite to perform the legal service properly;

(~~G~~E) The preclusion of other employment by the attorney due to acceptance of the case;

(~~H~~F) The customary fee;

(~~I~~G) Whether the fee is fixed or contingent;

(~~J~~H) The time limitations imposed by the client or the circumstances;

(~~K~~I) The experience, reputation, and ability of the attorney(s);

(~~L~~J) The undesirability of the case, if any;

(~~M~~K) The nature and length of the professional relationship with the client;

(~~N~~L) Awards in similar cases; and

(4) Such other information as the court may direct.

(c) Attorney Affidavit. Each motion must be accompanied by an affidavit from the attorney responsible for the billings in the case ~~containing the following:~~ authenticating the information contained in the motion and confirming that the bill has been reviewed and edited and that the fees and costs charged are reasonable.

~~(1) Authentication of the information contained in the motion;~~

~~(2) A statement of the amount usually charged by the firm for costs, e.g., computer legal research, telephone surcharges, copy charges;~~

~~(3) A statement setting forth the hourly rates usually charged for similar services;~~

~~(4) A statement that the bill has been reviewed and edited; and~~

~~(5) A statement that the fees and costs charged are reasonable.~~

(d) Failure to provide the information required by LR 54-16(b) and (c) in a motion for attorneys' fees constitutes a consent to the denial of the motion.

(~~d~~e) Opposition. If no opposition is filed, the court may grant the motion. If an opposition is filed, it shall set forth the specific charges that are disputed and state with reasonable particularity the basis for such opposition. The opposition shall further include affidavits to support any contested fact.

(~~e~~f) Hearing. If either party wishes to examine the affiant, such party must specifically make such a request in writing. Absent such a request, the court may decide the motion on the papers or set the matter for evidentiary hearing.

Commentary Note re LR 54-16:

The U.S. Attorney's office has received numerous motions for attorneys' fees that do not comply with LR 54-16. In particular, the motions do not contain any basis for the award of fees, a detailed description of the services rendered for the fees, and other similar, serious failures. In many instances, the motions are so lacking in detail that the U.S. Attorney's office cannot frame an objection. Because of these failures, we recommend that LR 54-16 be amended by adding a new subparagraph (d) and re-lettering the remaining subparagraphs.

LR 67-2. Investment of Funds.

(a) Funds on deposit in the Registry Account of the court pursuant to 28 U.S.C. § 2041 will ~~not~~ be invested in an interest bearing account established by the clerk in the absence of an order by the court.

_____(b) All motions or stipulations for an order directing the clerk to invest Registry Account funds in an ~~alternative interest bearing account~~ account other than the court's standard interest bearing account shall contain the following:

(1) The name of the bank or financial institution where the funds are to be invested;

(2) The type of account or instrument and the terms of investment where a timed instrument is involved; and

(3) Language that either

(A) Directs the clerk to deduct from income earned on the investment a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office; or

(B) States affirmatively the investment is being made for the benefit of the United States and, therefore, no fee shall be charged.

_____(~~b~~c) Counsel obtaining an order under these rules shall cause a copy of the order to be served personally upon the clerk or the chief deputy and the financial deputy. A supervisory deputy clerk may accept service on behalf of the clerk, chief deputy or financial deputy in their absence.

_____(~~c~~d) The clerk shall take all reasonable steps to deposit funds into interest bearing accounts or instruments within, but not more than, fifteen (15) days after having been served with a copy of the order for such investment.

_____(~~d~~e) Any party who obtains an order directing investment of funds by the clerk shall, within fifteen (15) days after service of the order on the clerk, verify that the funds have been invested as ordered.

_____(~~e~~f) Failure of the party or parties to personally serve the clerk, the chief deputy and financial deputy, or in their absence a supervisory deputy clerk with a copy of the order, or failure to verify investment of the funds, shall release the clerk from any liability for the loss of earned interest on such funds.

_____(~~f~~g) It shall be the responsibility of counsel to notice the clerk regarding disposition of funds at maturity of a timed instrument. In the absence of such notice funds invested in a timed instrument subject to renewal will be reinvested for a like period of time at the prevailing interest rate. Funds invested in a timed instrument not subject to

renewal will be re-deposited by the clerk into the Registry Account of the court which is a non-interest-bearing account.

_____(~~g~~h) Service of notice by counsel as required by LCR 46-8(g) shall be made as provided in LCR 46-8(c) not later than fifteen (15) days prior to maturity of the timed instrument.

_____(~~h~~i) Any change in terms or conditions of an investment shall be by court order only and counsel will be required to comply with LCR 46-8(b) and (c).

Commentary Note re LR 67-2:

Made changes to reflect that all funds on deposit in the Registry Account are invested in an interest bearing account established by the clerk.

LR 78-1. Submission of Motions to the Court.

~~The clerk will submit motions to the court for decision after all motion papers are filed or the time period therefor has expired, unless the party who made the motion files a written withdrawal of the motion.~~

Commentary Note re LR 78-1:

This rules states that motions are submitted to the chambers by the Clerk's office. As this will no longer be the case management practice under CM/ECF, proposal is to delete this rule.