

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA**

**PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE
LOCAL CIVIL AND CRIMINAL RULES**

Pursuant to 28 U.S.C. § 2071 and Rule 83 of the Federal Rules of Civil Procedure, the United States District Court for the Eastern District of North Carolina gives public notice of proposed amendments to the Local Civil Rules and Local Criminal Rules. A copy of the proposed amendments is attached to this notice and is available at the clerk's offices in Greenville, New Bern, Raleigh, and Wilmington. The public and members of the bar are invited to submit any comments concerning the proposed revisions no later than August 12, 2019. Comments must be submitted in writing to the attention of the Clerk of Court, Post Office Box 25670, Raleigh, North Carolina 27611 or by email to NCED_Local_Rules@nced.uscourts.gov.

This 8 day of July, 2019.

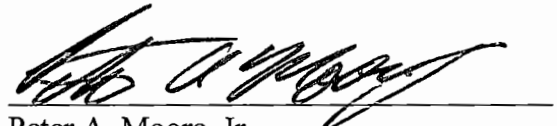

Peter A. Moore, Jr.
Clerk of Court

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SUMMARY OF PROPOSED AMENDMENTS TO THE LOCAL CIVIL RULES		
July 2019 ¹		
Affected Local Civil Rule	Proposed Change in Rule	Page
5.3	Amend subsection (c)(1) to conform to the amendment to Local Civil Rule 7.1.	3
7.1	Add a new subsection (d) to provide that evidentiary objections to material cited in a filing to support or dispute a fact must be raised by separate motion.	5
7.2	Amend subsection (f) to clarify which elements are included in the calculation of word and page limits.	9
26.1	Amend subsection (d) to conform to the amendments to Local Civil Rule 7.1 and 7.2.	13
55.1	Amend subsection (a) to reflect that a certificate of service is not required if the motion for entry of default is served via CM/ECF on a party who has appeared in the action.	15
83.8	Amend subsection (a) to conform to the amendment to Local Civil Rule 7.1.	17

¹ This summary was prepared by the Clerk's Office as a guide to the proposed changes to the Local Civil Rules and should not substitute for reading the full text of the proposed amendments. This summary is not intended to serve as legal advice or commentary on the proposed changes to the Local Civil Rules. The summary does not include minor stylistic changes.

Local Civil Rule 5.3

REDLINED VERSION

Rule 5.3 Removal and Post-Removal Procedure

(a) Filing of State Court and Other Documents

. . .

(b) Notice of Appearance in Removed Cases

. . .

(c) Pending Motions at the Time of Removal

. . .

- (2)** If, at the time of removal, a motion is pending for which no supporting memorandum of law has been submitted to the state court, the movant on that motion shall file a supporting memorandum within 14 days of the date of removal, unless the motion is of a type covered by Local Civil Rule 77.2 or unless otherwise ordered by the court. The Local Civil Rule 7.1(gf) deadline for a response to the motion runs from the date of the movant's filing of a supporting memorandum in this court.

. . .

PROPOSED VERSION

Rule 5.3 Removal and Post-Removal Procedure

(a) Filing of State Court and Other Documents

. . .

(b) Notice of Appearance in Removed Cases

. . .

(c) Pending Motions at the Time of Removal

. . .

- (2)** If, at the time of removal, a motion is pending for which no supporting memorandum of law has been submitted to the state court, the movant on that motion shall file a supporting memorandum within 14 days of the date of removal, unless the motion is of a type covered by Local Civil Rule 77.2 or unless otherwise ordered by the court. The Local Civil Rule 7.1(g) deadline for a response to the motion runs from the date of the movant's filing of a supporting memorandum in this court.

. . .

Local Civil Rule 7.1

REDLINED VERSION

Rule 7.1 Motion Practice

(a) Time for Filing.

. . .

(b) General Requirements.

. . .

(c) Discovery Motions.

. . .

(d) Evidentiary Objections; Motions Required

A party must raise by separate motion an evidentiary objection to material cited in a filing by an opposing party to support or dispute a fact. If multiple evidentiary objections can be raised at the same time, a party must raise all such objections in a single motion. Any such motion must be filed by the deadline to respond or reply to the filing containing the material objected to. This rule is not intended to affect trial practice. See Local Civil Rule 39.1.

(ed) Motions for Attorney's Fees in Certain Social Security Cases.

. . .

(fe) Supporting Memoranda.

. . .

(gf) Responses to Motions.

. . .

(hg) Replies.

- (1) Non-discovery Motions.** Replies to responses are discouraged. However, except as provided in Local Civil Rule 7.1(hg)(2) and (3), a party desiring to reply to matters initially raised in a response to a motion shall file the reply within 14 days after service of the response, unless otherwise ordered by the court.
- (2) Discovery Motions.** Replies are not permitted in discovery disputes. See Local Civil Rule 26.1(d).
- (3) Evidentiary Objection Motions.** Replies to responses to motions under Local Civil Rule 7.1(d) are not permitted.

(ih) Subsequently Decided Controlling Authority.

. . .

(ji) Affidavits

. . .

(kj) Hearings on Motions

. . .

PROPOSED VERSION

Rule 7.1 Motion Practice

(a) Time for Filing.

. . .

(b) General Requirements.

. . .

(c) **Discovery Motions.**

. . .

(d) **Evidentiary Objections; Motions Required**

A party must raise by separate motion an evidentiary objection to material cited in a filing by an opposing party to support or dispute a fact. If multiple evidentiary objections can be raised at the same time, a party must raise all such objections in a single motion. Any such motion must be filed by the deadline to respond or reply to the filing containing the material objected to. This rule is not intended to affect trial practice. See Local Civil Rule 39.1.

(e) **Motions for Attorney’s Fees in Certain Social Security Cases.**

. . .

(f) **Supporting Memoranda.**

. . .

(g) **Responses to Motions.**

. . .

(h) **Replies.**

- (1) **Non-discovery Motions.** Replies to responses are discouraged. However, except as provided in Local Civil Rule 7.1(h)(2) and (3), a party desiring to reply to matters initially raised in a response to a motion shall file the reply within 14 days after service of the response, unless otherwise ordered by the court.
- (2) **Discovery Motions.** Replies are not permitted in discovery disputes. See Local Civil Rule 26.1(d).
- (3) **Evidentiary Objection Motions.** Replies to responses to motions under Local Civil Rule 7.1(d) are not permitted.

(i) Subsequently Decided Controlling Authority.

. . .

(j) Affidavits

. . .

(k) Hearings on Motions

. . .

Local Civil Rule 7.2

REDLINED VERSION

Rule 7.2 Memoranda

(a) **Form and Content.**

. . .

(b) **Citation of Published Decisions.**

. . .

(c) **Citation of Authorities Not Appearing in Certain Sources.**

. . .

(d) **Citation of Unpublished Decisions.**

. . .

(e) **Provision of Authorities.**

. . .

(f) **Length of Memoranda.**

Unless the court orders otherwise, memoranda must conform to either the page limits or word limits below.

(1) Headings, footnotes, citations, and quotations in a memorandum count toward the page and word limits. The case caption, the signature block, any required certificates, any table of contents, any table of authorities, and any attachments, exhibits, affidavits, and other addenda to a memorandum do not count toward the page and word limits.

(2) **Page Limits.** ~~Unless the court orders otherwise in advance, or unless~~

~~the memorandum complies with [Local Civil Rule 7.2\(f\)\(2\)](#):~~

- (A) A memorandum in support of or in opposition to a motion (other than a discovery motion) shall not exceed 30 pages in length, ~~excluding the certificate of service page.~~
- (B) A memorandum in support of or in opposition to a discovery motion shall not exceed 10 pages in length, ~~excluding the certificate of service page.~~
- (C) A reply or surreply memorandum (where allowed) shall not exceed 10 pages in length, ~~excluding the certificate of service page.~~

~~(2)(3) **Alternative Word Limits.** A memorandum may exceed the governing page limit in [Local Civil Rule 7.2\(f\)\(1\)](#) if the memorandum complies with [Local Civil Rule 7.2\(f\)\(3\)](#) and if the memorandum's word count (computed in accordance with [Local Civil Rule 7.2\(f\)\(4\)](#)) does not exceed:~~

- (A) **A memorandum in support of or in opposition to a motion (other than a discovery motion) shall not exceed 8400 words.** ~~for a memorandum in support of or in opposition to a motion other than a discovery motion;~~
- (B) **A memorandum in support of or in opposition to a discovery motion shall not exceed 2800 words.** ~~for a memorandum in support of or in opposition to a discovery motion;~~
- (C) **A reply or surreply memorandum (where allowed) shall not exceed 2800 words.** ~~for a reply or surreply memorandum (where allowed).~~

A memorandum under this subsection (f)(3) must contain a certificate, signed by the attorney or unrepresented party, attesting that the memorandum complies with the applicable word limit. The signer of the certificate may rely on the word count generated by word processing software, as long as the software counts the elements required by subsection (f)(1). The certificate must state the number of words in the memorandum.

~~(3) Under [Local Civil Rule 7.2\(f\)](#), headings, footnotes, citations, and~~

~~quotations in a memorandum count toward the page and word limits. The case caption, the signature block, any required certificates, any table of contents, any table of authorities, and any attachments, exhibits, affidavits, and other addenda to a memorandum do not count toward the page and word limits.~~

~~(4) To comply with Local Civil Rule 7.2(f)(2), a memorandum must contain a certificate, signed by the attorney or unrepresented party, attesting that the memorandum complies with the applicable word limit. The signer of the certificate may rely on the word count generated by word processing software, as long as the software counts the elements required by Local Civil Rule 7.2(f)(3). The certificate must state the number of words in the memorandum.~~

PROPOSED VERSION

Rule 7.2 Memoranda

(b) Form and Content.

. . .

(b) Citation of Published Decisions.

. . .

(c) Citation of Authorities Not Appearing in Certain Sources.

. . .

(d) Citation of Unpublished Decisions.

. . .

(e) Provision of Authorities.

. . .

(f) Length of Memoranda.

Unless the court orders otherwise, memoranda must conform to either the page limits or word limits below.

(1) Headings, footnotes, citations, and quotations in a memorandum count toward the page and word limits. The case caption, the signature block, any required certificates, any table of contents, any table of authorities, and any attachments, exhibits, affidavits, and other addenda to a memorandum do not count toward the page and word limits.

(2) Page Limits.

(A) A memorandum in support of or in opposition to a motion (other than a discovery motion) shall not exceed 30 pages in length.

(B) A memorandum in support of or in opposition to a discovery motion shall not exceed 10 pages in length.

(C) A reply or surreply memorandum (where allowed) shall not exceed 10 pages in length.

(3) Word Limits.

(A) A memorandum in support of or in opposition to a motion (other than a discovery motion) shall not exceed 8400 words.

(B) A memorandum in support of or in opposition to a discovery motion shall not exceed 2800 words.

(C) A reply or surreply memorandum (where allowed) shall not exceed 2800 words.

A memorandum under this subsection (f)(3) must contain a certificate, signed by the attorney or unrepresented party, attesting that the memorandum complies with the applicable word limit. The signer of the certificate may rely on the word count generated by word processing software, as long as the software counts the elements required by subsection (f)(1). The certificate must state the number of words in the memorandum.

Local Civil Rule 26.1

REDLINED VERSION

Rule 26.1 Discovery

(a) **Discovery Materials Not to Filed Unless Ordered or Needed.**

. . .

(b) **Conducting Discovery.**

. . .

(c) **Numbering Discovery Procedures**

. . .

(d) **Discovery Disputes—Expedited Briefing Schedule.**

Any motion relating to a discovery dispute shall be handled on an expedited basis:

(1) Memoranda in support of or in opposition to a discovery motion shall not exceed the length limit stated in Local Civil Rules 7.2(f)(~~2~~)(B) and 7.2(f)(~~3~~)(B), and shall otherwise comply with Local Civil Rules 7.1(~~c~~) and 7.2.

. . .

(3) Replies are not permitted in discovery disputes. See also Local Civil Rule 7.1(~~h~~)(2).

. . .

PROPOSED VERSION

Rule 26.1 Discovery

(a) **Discovery Materials Not to Filed Unless Ordered or Needed.**

. . .

(b) **Conducting Discovery.**

. . .

(c) **Numbering Discovery Procedures**

. . .

(d) **Discovery Disputes—Expedited Briefing Schedule.**

Any motion relating to a discovery dispute shall be handled on an expedited basis:

- (1) Memoranda in support of or in opposition to a discovery motion shall not exceed the length limit stated in Local Civil Rules 7.2(f)(2)(B) and 7.2(f)(3)(B), and shall otherwise comply with Local Civil Rules 7.1(c) and 7.2.

. . .

- (3) Replies are not permitted in discovery disputes. See also Local Civil Rule 7.1(h)(2).

. . .

Local Civil Rule 55.1

REDLINED VERSION

Rule 55.1 Entry of Default and Default Judgment

(a) Entry of Default by Clerk.

To obtain an entry of default pursuant to Fed. R. Civ. P. 55(a), a party must file a motion for entry of default and a proposed order. The moving party shall serve, ~~in the manner provided in~~ pursuant to Fed. R. Civ. P. 5(b), any party that has failed to appear, and all other parties, with the motion for entry of default, ~~and~~ proposed order, ~~and a certificate of service.~~ Such service shall also be made on any attorney the moving party knows, or reasonably should know, represents the party against which default is sought. The motion shall be supported by an affidavit that describes with specificity how each allegedly defaulting party was served with process in a manner authorized by Fed. R. Civ. P. 4 and the date of such service. Following the 21-day response time provided under Local Civil Rule 7.1(gf)(1), the motion shall be submitted to the presiding judge if it is opposed or if the allegedly defaulting party has filed a responsive pleading. Otherwise, the motion shall be referred to the clerk and if the clerk is satisfied that the moving party has effected service of process, the clerk shall enter a default.

. . . .

PROPOSED VERSION

Rule 55.1 Entry of Default and Default Judgment

(a) Entry of Default by Clerk.

To obtain an entry of default pursuant to Fed. R. Civ. P. 55(a), a party must file a motion for entry of default and a proposed order. The moving party shall serve, in the manner provided in Fed. R. Civ. P. 5(b), any party that has failed to appear, and all other parties, with the motion for entry of default and proposed order. Such service shall also be made on any attorney the moving party knows, or reasonably should know, represents the party against

which default is sought. The motion shall be supported by an affidavit that describes with specificity how each allegedly defaulting party was served with process in a manner authorized by Fed. R. Civ. P. 4 and the date of such service. Following the 21-day response time provided under Local Civil Rule 7.1(g)(1), the motion shall be submitted to the presiding judge if it is opposed or if the allegedly defaulting party has filed a responsive pleading. Otherwise, the motion shall be referred to the clerk and if the clerk is satisfied that the moving party has effected service of process, the clerk shall enter a default.

. . . .

Local Civil Rule 83.8

REDLINED VERSION

Rule 83.8 Bankruptcy Appeals

(a) General Provisions.

The following Local Civil Rules apply to appeals from the bankruptcy courts in this district:

. . .

7.1(~~h~~) (Subsequently Decided Controlling Authority)

. . .

PROPOSED VERSION

Rule 83.8 Bankruptcy Appeals

(a) General Provisions.

The following Local Civil Rules apply to appeals from the bankruptcy courts in this district:

. . .

7.1(i) (Subsequently Decided Controlling Authority)

. . .

SUMMARY OF PROPOSED AMENDMENTS TO THE LOCAL CRIMINAL RULES

July 2019²

Affected Local Criminal Rule	Proposed Change in Rule	Page
12.3	Amend subsection (d) to comply with Fed. R. Crim. P. 12.4(b), which requires nongovernmental corporate parties to file a disclosure statement within 28 days after the defendant's initial appearance.	19
47.1	Add a new subsection (i) to specify that Local Civil Rules 7.1 and 7.2 govern motion practice in proceedings under 28 U.S.C. § 2255.	21
47.2	Amend subsection (f) to allow for a word-count limit as an alternative to a page-count limit.	24

² This summary was prepared by the Clerk's Office as a guide to the proposed changes to the Local Criminal Rules and should not substitute for reading the full text of the proposed amendments. This summary is not intended to serve as legal advice or commentary on the proposed changes to the Local Criminal Rules. The summary does not include minor stylistic changes.

Local Criminal Rule 12.3

REDLINED VERSION

Rule 12.3 Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation

- (a) All corporate defendants in a criminal case, whether or not they are covered by the terms of Fed. R. Crim. P. 12.4, shall file a corporate affiliate/financial interest disclosure statement.
- (b) The statement shall set forth the information required by Fed. R. Crim. P. 12.4 and the following:

. . .
- (c) The disclosure statement shall be on a form provided by the clerk. A negative statement is required if a party has no disclosures to make.
- (d) The disclosure statement shall be filed **within 28 days after** ~~when~~ the party makes an initial appearance in the action. The parties are required to amend their disclosure statements when necessary to maintain their current accuracy.

PROPOSED VERSION

Rule 12.3 Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation

- (a) All corporate defendants in a criminal case, whether or not they are covered by the terms of Fed. R. Crim. P. 12.4, shall file a corporate affiliate/financial interest disclosure statement.
- (b) The statement shall set forth the information required by Fed. R. Crim. P. 12.4 and the following:

. . .

- (c) The disclosure statement shall be on a form provided by the clerk. A negative statement is required if a party has no disclosures to make.
- (d) The disclosure statement shall be filed within 28 days after the party makes an initial appearance in the action. The parties are required to amend their disclosure statements when necessary to maintain their current accuracy.

Local Criminal Rule 47.1

REDLINED VERSION

Rule 47.1 Motion Practice

(a) General Requirements.

. . .

(b) Supporting Memoranda.

. . .

(c) Responses to Motions.

. . .

(d) Subsequently Decided Controlling Authority.

. . .

(e) Affidavits.

. . .

(f) Hearings on Motions.

. . .

(g) Frivolous or Delaying Motions.

. . .

(h) Motions for an Extension of Time to Perform an Act.

. . .

(i) Motion Practice in Proceedings Seeking Relief Under 28 U.S.C. § 2255.

Local Civil Rules 7.1 and 7.2 shall govern motion practice in a proceeding seeking relief under 28 U.S.C. § 2255.

PROPOSED VERSION

Rule 47.1 Motion Practice

(a) General Requirements.

. . .

(b) Supporting Memoranda.

. . .

(c) Responses to Motions.

. . .

(d) Subsequently Decided Controlling Authority.

. . .

(e) Affidavits.

. . .

(f) Hearings on Motions.

. . .

(g) Frivolous or Delaying Motions.

. . .

(h) Motions for an Extension of Time to Perform an Act.

. . .

(i) Motion Practice in Proceedings Seeking Relief Under 28 U.S.C. § 2255.

Local Civil Rules 7.1 and 7.2 shall govern motion practice in a proceeding seeking relief under 28 U.S.C. § 2255.

Local Criminal Rule 47.2

REDLINED VERSION

Rule 47.2 Supporting Memoranda

(a) **Form and Content.**

. . .

(b) **Citation of Published Decisions.**

. . .

(c) **Citation of Authorities Not Appearing in Certain Published Sources.**

. . .

(d) **Citation of Unpublished Decisions.**

. . .

(e) **Provision of Authorities.**

. . .

(f) **Length of Memoranda.**

Unless the court orders otherwise, memoranda must conform either to page limits or word limits below.

- (1) Headings, footnotes, citations, and quotations in a memorandum count toward the page and word limits. The case caption, the signature block, any required certificates, any table of contents, any table of authorities, and any attachments, exhibits, affidavits, and other addenda to a memorandum do not count toward the page and word limits.

- (2) **Page Limits.** ~~Except as otherwise provided by these local rules~~
- (A) A memorandum in support of or in opposition to a motion shall not exceed 30 pages in length ~~without prior court approval.~~
- (B) A reply or surreply memorandum (where allowed) shall not exceed 10 pages in length.
- (3) **Word Limits**
- (A) A memorandum in support of or in opposition to a motion shall not exceed 8400 words.
- (B) A reply or surreply memorandum (where allowed) shall not exceed 2800 words.

A memorandum under this subsection (f)(3) must contain a certificate, signed by the attorney or unrepresented party, attesting that the memorandum complies with the applicable word limit. The signer of the certificate may rely on the word count generated by word processing software, as long as the software counts the elements required by subsection (f)(1). The certificate must state the number of words in the memorandum.

PROPOSED VERSION

Rule 47.2 Supporting Memoranda

(a) **Form and Content.**

. . .

(b) **Citation of Published Decisions.**

. . .

(c) **Citation of Authorities Not Appearing in Certain Published Sources.**

. . .

(d) Citation of Unpublished Decisions.

. . .

(e) Provision of Authorities.

. . .

(f) Length of Memoranda.

Unless the court orders otherwise, memoranda must conform either to page limits or word limits below.

(1) Headings, footnotes, citations, and quotations in a memorandum count toward the page and word limits. The case caption, the signature block, any required certificates, any table of contents, any table of authorities, and any attachments, exhibits, affidavits, and other addenda to a memorandum do not count toward the page and word limits.

(2) Page Limits.

(A) A memorandum in support of or in opposition to a motion shall not exceed 30 pages in length.

(B) A reply or surreply memorandum (where allowed) shall not exceed 10 pages in length.

(3) Word Limits

(A) A memorandum in support of or in opposition to a motion shall not exceed 8400 words.

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A memorandum under this subsection (f)(3) must contain a certificate, signed by the attorney or unrepresented party, attesting that the memorandum complies with the applicable word limit. The signer of the certificate may rely on the word count generated by

word processing software, as long as the software counts the elements required by subsection (f)(1). The certificate must state the number of words in the memorandum.