

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

**PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE LOCAL CIVIL RULES,
LOCAL CRIMINAL RULES, AND LOCAL PATENT 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, Local Criminal Rules, and Local Patent 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 July 31, 2018. 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 20 day of June, 2018.

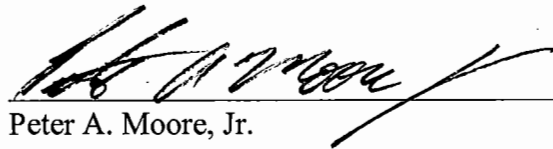

Peter A. Moore, Jr.
Clerk of Court

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SUMMARY OF PROPOSED AMENDMENTS TO THE LOCAL CIVIL RULES

June 2018

Affected Local Civil Rule	Proposed Change in Rule	Page
16.1	Amend subsection (c)(4) to include pleadings in the list of materials that a party does not have to designate in the pretrial order if the material is to be used solely for impeachment or cross-examination.	3
26.1	Amend subsection (e)(2) to specify that in cases where mediation is not mandatory, parties may include in the Rule 26(f) report an agreement to mediate and a proposed timetable for mediation.	5

Local Civil Rule 16.1

REDLINED VERSION

Rule 16.1 Final Civil Pretrial Conference

. . .

(c) **Form of Pretrial Order.**

The pretrial order shall be prepared in one sequential document without reference to attached exhibits or schedules and shall contain the following in 5 separate sections, numbered by roman numerals, as indicated:

. . .

(4) **Designation of Pleadings and Discovery Materials.**

The designation of all portions of pleadings and discovery materials, including depositions, interrogatories, and requests for admission that each party may offer at trial shall be noted by reference, where applicable, to document volume, page number and line. Objection by opposing counsel shall be noted by reference, where applicable, to document volume, page number and line, and reasons for such objection shall be stated. It is not necessary to designate a ~~deposition~~, any portion of a **pleading**, deposition, or any other discovery material, that is to be used solely for impeachment or cross-examination.

PROPOSED VERSION

Rule 16.1 Final Civil Pretrial Conference

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(c) **Form of Pretrial Order.**

The pretrial order shall be prepared in one sequential document without reference to attached exhibits or schedules and shall contain the following in 5 separate sections, numbered by roman numerals, as indicated:

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(4) Designation of Pleadings and Discovery Materials.

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Local Civil Rule 26.1

REDLINED VERSION

Rule 26.1 **Discovery**

. . .

(e) Other Discovery Matters.

. . .

- (2)** In accordance with [Fed. R. Civ. P. 16\(b\)](#), this court will routinely issue an order for a discovery plan and will thereafter enter a scheduling order. The planning meeting of counsel required by [Fed. R. Civ. P. 26\(f\)](#) and the report of counsel contemplated by said rule are a mandatory part of the process of formulating a scheduling order. A report in accordance with the following form shall be sufficient to comply with [Fed. R. Civ. P. 26\(f\)](#), although the parties may include greater detail or additional topics. If the parties cannot agree on a joint report, each party shall file a separate Rule 26(f) report setting forth its position on disputed matters. **In cases in which mediation is not mandatory pursuant to Local Civil Rule 101.1a,** ~~the~~ the parties may include in their report an agreement to mediate and a proposed timetable for conducting that mediation.

PROPOSED VERSION

Rule 26.1 **Discovery**

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(e) Other Discovery Matters.

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- (2)** In accordance with [Fed. R. Civ. P. 16\(b\)](#), this court will routinely

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SUMMARY OF PROPOSED AMENDMENTS TO THE LOCAL CRIMINAL RULES

June 2018

Affected Local Criminal Rule	Proposed Change in Rule	Page
44.1	Amend subsection (b) to require an attorney to state in the notice of appearance whether he or she is appointed, retained, or serving pro bono.	8
58.1	Amend subsection (b) to (1) revise an outdated reference to the filing fee required for appealing from a judgment in a misdemeanor case tried by a magistrate judge; (2) omit the requirement for a magistrate judge to certify the accuracy of a transcript prepared from an audio recording; and (3) allow the parties to raise objections to a transcript.	9

Local Criminal Rule 44.1

REDLINED VERSION

Rule 44.1 Appearance of Counsel in Criminal Cases

. . . .

(b) Notice of Appearance.

Counsel representing a defendant in a criminal action shall file a Notice of Appearance with the clerk and serve the United States Attorney and other counsel with a copy. The Notice of Appearance shall contain the attorney's name and the name of the attorney's law firm, phone number and state bar number, and shall state whether the attorney is appointed, retained, or representing the defendant pro bono. The attorney also shall file contemporaneously a corporate affiliate/financial interest disclosure statement in accordance with Fed. R. Crim. P. 12.4 and Local Criminal Rule 12.3.

PROPOSED VERSION

Rule 44.1 Appearance of Counsel in Criminal Cases

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(b) Notice of Appearance.

Counsel representing a defendant in a criminal action shall file a Notice of Appearance with the clerk and serve the United States Attorney and other counsel with a copy. The Notice of Appearance shall contain the attorney's name and the name of the attorney's law firm, phone number and state bar number, and shall state whether the attorney is appointed, retained, or representing the defendant pro bono. The attorney also shall file contemporaneously a corporate affiliate/financial interest disclosure statement in accordance with Fed. R. Crim. P. 12.4 and Local Criminal Rule 12.3.

Local Criminal Rule 58.1

REDLINED VERSION

Rule 58.1 Magistrate Judges

. . . .

(b) Appeal from Judgments in Misdemeanor Cases -- 18 U.S.C. § 3402.

A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal and paying a ~~Thirty Seven Dollar (\$37.00)~~ **the** filing fee **as set out in the District Court Miscellaneous Fee Schedule** within 14 days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the district court to the court of appeals.

- (1) Upon receipt of the notice of appeal, the clerk shall docket the appeal and assign the case to a district judge.
- (2) The record on appeal shall consist of the original papers and exhibits filed in the proceedings before the magistrate judge and the ~~transcript record~~ **record** of proceedings, ~~if any~~.
- (3) Unless excused by order of the district judge, every appellant shall be responsible for preparation of a typewritten transcript of the proceedings before the magistrate judge from which an appeal has been taken. Preparation of the transcript should be coordinated with the clerk of court. ~~If such transcript has been prepared from an audio tape recording, the transcript shall be submitted to the magistrate judge for certification of its accuracy. After certification by the magistrate judge, the transcript shall be forwarded to the clerk for filing, and the clerk shall promptly notify the parties of the filing.~~ A copy of the record of such proceedings shall be made available at the expense of the court, to a person who establishes by affidavit the inability to pay or give security therefore.

- (4) Within 21 days of the date on which the transcript is filed in the clerk's office, or if there is to be no transcript, within 21 days of the filing of the notice of appeal, the appellant shall serve and file a memorandum which shall enumerate each reversible error claimed to have occurred in the proceedings before the magistrate judge and shall explain the factual and legal basis for each claimed error, with citations to the record and to pertinent legal authorities, **and any objections to the transcript**. Within 21 days of service of the appellant's memorandum, the appellee shall serve and file a memorandum that responds to each claim of error, **and any objections to the transcript**. The appellant may serve and file a reply brief within 7 days of service of the appellee's brief. All memoranda shall conform to the requirements and length restrictions of Local Criminal Rules 47.2 and 47.3. Reply briefs shall be limited to 10 pages.
- (5) The district judge to whom the appeal is assigned may hear oral argument or may decide the appeal on the briefs. Requests for oral argument shall be made at the time briefs are filed and shall be granted at the discretion of the district judge.

PROPOSED VERSION

Rule 58.1 Magistrate Judges

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(b) Appeal from Judgments in Misdemeanor Cases -- 18 U.S.C. § 3402.

A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal and paying the filing fee as set out in the [District Court Miscellaneous Fee Schedule](#) within 14 days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the district court to the court of appeals.

- (1) Upon receipt of the notice of appeal, the clerk shall docket the appeal and assign the case to a district judge.

- (2) The record on appeal shall consist of the original papers and exhibits filed in the proceedings before the magistrate judge and the record of proceedings.
- (3) Unless excused by order of the district judge, every appellant shall be responsible for preparation of a typewritten transcript of the proceedings before the magistrate judge from which an appeal has been taken. Preparation of the transcript should be coordinated with the clerk of court. A copy of the record of such proceedings shall be made available at the expense of the court to a person who establishes by affidavit the inability to pay or give security therefore.
- (4) Within 21 days of the date on which the transcript is filed in the clerk's office, or if there is to be no transcript, within 21 days of the filing of the notice of appeal, the appellant shall serve and file a memorandum which shall enumerate each reversible error claimed to have occurred in the proceedings before the magistrate judge and shall explain the factual and legal basis for each claimed error, with citations to the record and to pertinent legal authorities, and any objections to the transcript. Within 21 days of service of the appellant's memorandum, the appellee shall serve and file a memorandum that responds to each claim of error, and any objections to the transcript. The appellant may serve and file a reply brief within 7 days of service of the appellee's brief. All memoranda shall conform to the requirements and length restrictions of Local Criminal Rules 47.2 and 47.3. Reply briefs shall be limited to 10 pages.
- (5) The district judge to whom the appeal is assigned may hear oral argument or may decide the appeal on the briefs. Requests for oral argument shall be made at the time briefs are filed and shall be granted at the discretion of the district judge.

SUMMARY OF PROPOSED AMENDMENTS TO THE LOCAL PATENT RULES

June 2018

Affected Local Patent Rule	Proposed Change in Rule	Page
303.3	Technical amendment to omit a reference to “non-infringement contentions” and replace with “invalidity contentions.”	13

Local Patent Rule 303.3

REDLINED VERSION

Rule 303.3 Preliminary Invalidity Contentions

Not later than forty 45 days after service upon it of the “Disclosure of Asserted Claims and Preliminary Infringement Contentions,” each party opposing a claim of patent infringement, shall serve on all parties its “Preliminary ~~Non-Infringement~~ **Invalidity** Contentions.”

. . .

PROPOSED VERSION

Rule 303.3 Preliminary Invalidity Contentions

Not later than forty 45 days after service upon it of the “Disclosure of Asserted Claims and Preliminary Infringement Contentions,” each party opposing a claim of patent infringement, shall serve on all parties its “Preliminary Invalidity Contentions.”

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