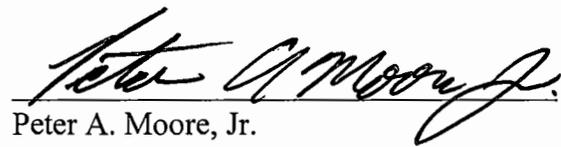


**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA**

**PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE  
LOCAL ADMIRALTY RULES, 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 Admiralty Rules, 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 August 14, 2017. 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](mailto:NCED_Local_Rules@nced.uscourts.gov).

This 30th day of June, 2017.

  
Peter A. Moore, Jr.  
Clerk of Court

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SUMMARY OF PROPOSED AMENDMENTS  
UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
LOCAL ADMIRALTY AND MARITIME CLAIMS RULES  
OF  
PRACTICE AND PROCEDURE<sup>1</sup>

June 2017

<b>Affected Local Admiralty Rule</b>	<b>Proposed Change in Rule</b>
All Rules	Restructure the Local Admiralty Rules so that the local rules more closely align with the subject matter of the Supplemental Rules of Civil Procedure. Change the numbering convention to reduce confusion when citing to both the Local Admiralty Rules and the Supplemental Rules.
C.4	Amend to specify what proof of service must be filed to obtain a default judgment.
F.2	Amend to add The News and Observer as one of the permissible newspapers for publication pursuant to Supplemental Rule F(4) in Southern Division cases.

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<sup>1</sup> This summary was prepared by the Clerk's Office as a guide to the proposed changes to the Local Admiralty 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 Admiralty Rules. The summary does not include minor stylistic changes or proposed technical amendments.

## Local Admiralty Rule C.4

### REDLINED VERSION

#### Rule C.4 Entry of Default

After the time for filing a claim or answer has expired, the plaintiff may request an entry of default under Fed. R. Civ. P. 55(a). Default will be entered upon the filing of an affidavit showing that:

- (a) Notice has been given as required in Local Admiralty Rule C.3 or, in the case of forfeiture actions in rem arising from a federal statute, as required by Supplemental Rule G(4); and
- (b) Where available, a copy of any of the following is attached: the United States Coast Guard certificate of ownership or abstract of title; any numbering identification obtained from any issuing authority; and/or the information obtained from the private and/or governmental registries; and if not available, an explanation or description of the attempts to obtain the same;
- (c) Where appropriate, notice has been attempted as required by Rule C.3.(b); and
- ~~(b)~~(d) No claim has been served or filed within the prescribed time or no answer has been served or filed within the prescribed time.

The plaintiff may move for judgment under Fed. R. Civ. P. 55(b) at any time after default has been entered.

### PROPOSED VERSION

#### Rule C.4 Entry of Default

After the time for filing a claim or answer has expired, the plaintiff may request an entry of default under Fed. R. Civ. P. 55(a). Default will be entered upon the filing of an affidavit showing that:

- (a) Notice has been given as required in Local Admiralty Rule C.3 or, in the case of forfeiture actions in rem arising from a federal statute, as required by Supplemental Rule G(4); and

- (b) Where available, a copy of any of the following is attached: the United States Coast Guard certificate of ownership or abstract of title; any numbering identification obtained from any issuing authority; and/or the information obtained from the private and/or governmental registries; and if not available, an explanation or description of the attempts to obtain the same;
- (c) Where appropriate, notice has been attempted as required by Rule C.3(b); and
- (d) No claim has been served or filed within the prescribed time or no answer has been served or filed within the prescribed time.

The plaintiff may move for judgment under Fed. R. Civ. P. 55(b) at any time after default has been entered.

## Local Admiralty Rule F.2

### REDLINED VERSION

#### Rule F.2 Notice

Plaintiff shall effect publication required by [Supplemental Rule F\(4\)](#) without further court order, in any one of the following newspapers:

**Northern Division:** The Virginian-Pilot (Norfolk, Virginia); The News and Observer (Raleigh, North Carolina)

**Southern Division:** Star News (Wilmington, North Carolina); ~~The News and Observer (Raleigh, North Carolina)~~

**All Other Divisions:** The News and Observer (Raleigh, North Carolina)

### PROPOSED VERSION

#### Rule F.2 Notice

Plaintiff shall effect publication required by [Supplemental Rule F\(4\)](#) without further court order, in any one of the following newspapers:

**Northern Division:** The Virginian-Pilot (Norfolk, Virginia); The News and Observer (Raleigh, North Carolina)

**Southern Division:** Star News (Wilmington, North Carolina); The News and Observer (Raleigh, North Carolina)

**All Other Divisions:** The News and Observer (Raleigh, North Carolina)

## **Local Admiralty Rules Restructuring**

Following this page is a redlined version of the proposed restructuring of the Admiralty Rules. In the redlined version, text in green font represents proposed substantive changes to the Local Admiralty Rules or new material. Red font represents rules that have been moved as part of the proposed restructuring, but do not entail any substantive changes.

## LOCAL ADMIRALTY RULE A CITATION, SCOPE AND DEFINITIONS

### Rule A(4).1 Title, Citation And Scope

These local admiralty rules apply to the admiralty and maritime proceedings as defined in [Supplemental Rule A of the Federal Rules of Civil Procedure](#) and shall be cited as "Local Admiralty Rule \_\_\_\_." ~~The [Local Civil Rules](#) of the United States District Court for the Eastern District of North Carolina apply to all civil cases, including admiralty and maritime proceedings, but if a local rule is inconsistent with a local admiralty rule, the local admiralty rule shall control.~~

### Rule A(2).2 Definitions **Scope**

~~The [Local Civil Rules](#) of the United States District Court for the Eastern District of North Carolina apply to all civil cases, including admiralty and maritime proceedings, but if a local rule is inconsistent with a local admiralty rule, the local admiralty rule shall control. Alternative dispute resolution in admiralty and maritime cases shall be governed by the provisions of [Local Civil Rules 101-101.3](#).~~

~~As used in these Admiralty Rules,~~

- ~~(a) — "court" means a United States District Judge or a United States Magistrate Judge;~~
- ~~(b) — "keeper" means any person or entity appointed by the marshal to take physical custody of and maintain the vessel or other property under arrest or attachment;~~
- ~~(c) — "marshal" means the United States Marshal and includes deputy marshals;~~
- ~~(d) — "substitute custodian" means the individual who or entity that, upon motion and order of the court, assumes the duties of the marshal or keeper with respect to the vessel or other property that is arrested or attached;~~
- ~~(e) — "Supplemental Rule" followed by a capital letter, e.g., "Supplemental Rule C," refers to the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.~~

### Rule A(3).3 **Alternative Dispute Resolution Definitions**

~~As used in these Admiralty Rules,~~

- ~~(a) "court" means a United States District Judge or a United States Magistrate Judge;~~

- (b) "keeper" means any person or entity appointed by the marshal to take physical custody of and maintain the vessel or other property under arrest or attachment;
- (c) "marshal" means the United States Marshal and includes deputy marshals;
- (d) "substitute custodian" means the individual who or entity that, upon motion and order of the court, assumes the duties of the marshal or keeper with respect to the vessel or other property that is arrested or attached;
- (e) "Supplemental Rule" followed by a capital letter, e.g., "Supplemental Rule C," refers to the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

~~Alternative dispute resolution in admiralty and maritime cases shall be governed by the provisions of [Local Civil Rules 101-101.3](#).~~

**LOCAL ADMIRALTY RULE B  
IN PERSONAM ACTIONS: ATTACHMENT AND GARNISHMENT**

**Rule B(1).1 ~~Use of State Procedure~~ Definition of “Not Found Within the District”**

A defendant is considered to be "not found within the district" if, in an action in *personam*, service upon the defendant cannot be effected in person or upon an authorized officer or agent within the State of North Carolina or if the only effective service is through the Secretary of State, the North Carolina Long Arm Statute, or through any method of substituted service.

**Rule B.2 Affidavit that Defendant is Not Found Within the District**

The affidavit required by Supplemental Rule B(1)(b) to accompany the complaint shall specify with particularity the efforts made by and on behalf of the plaintiff to find and serve the defendant.

**Rule B.3 Use of State Procedures**

When the plaintiff invokes a state procedure to attach or garnish property under [Fed. R. Civ. P. 4\(n\)](#), the process of attachment and garnishment shall include a citation to the applicable state law.

**LOCAL ADMIRALTY RULE C  
IN REM ACTIONS: SPECIAL PROVISIONS**

**Rule C(4).1 Issuance of Process: Intangible Property**

**(a) Issuance and Effect of Summons.**

The summons issued pursuant to [Supplemental Rule C\(3\)](#) shall direct the person having control of the funds or other intangible property to show cause no later than 14 days after service why the funds or other property should not be delivered to the court to abide the judgment. The court, for good cause shown, may shorten or lengthen the time. Service of the summons has the effect of an arrest of the property and brings it within the control of the court.

**(b) Payment to Marshal.**

The person who is served may deliver or pay over to the marshal the property or funds proceeded against, or a part thereof, sufficient to satisfy the claim. If such payment is made, the person served is excused from any duty to show cause.

**(c) Manner of Showing Cause.**

The claimant of the property may show cause why the property should not be delivered to the court by serving and filing a claim as provided in Supplemental Rule C(6) within the time allowed to show cause, and by serving and filing an answer to the complaint within 21 days thereafter.

**(d) Effect of Failure to Show Cause.**

If a claim is not filed within the time stated in the summons, or an answer is not filed within the time allowed under this Rule, the person who was served shall deliver or pay to the marshal the property or funds proceeded against, or a part thereof, sufficient to satisfy plaintiff's claim.

**Rule C(2).2 Publication**

- (a)** Publication required by [Supplemental Rule C\(4\)](#) shall be made once, without further court order, in any one of the following newspapers:

**Northern Division:** The Virginian-Pilot (Norfolk, Virginia); The News and Observer (Raleigh, North Carolina)

**Southern Division:** Star News (Wilmington, North Carolina); The News and

Observer (Raleigh, North Carolina)

**All Other Divisions:** The News and Observer (Raleigh, North Carolina)

- (b) If the property arrested is not released within 14 days after execution of process, publication hereunder shall, unless otherwise ordered, be caused by the plaintiff or intervenor to be made within 21 days after execution of process.
- (c) Such notice shall be substantially as follows, except and unless otherwise provided in actions for the enforcement of forfeitures for violation of any federal statute:

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Division

In Admiralty

No.

Caption of Case

NOTICE: The United States Marshal, Eastern District of North Carolina, has on (date) arrested the (Vessel and appurtenances) (Property) in the above causes, civil and maritime for (nature of claim, i.e. contract, salvage, damage, collision, foreclosure of preferred mortgage, etc.) amounting to (\$ (and nature of unliquidated items)). Any person who has not been previously served with process and who is entitled to possession or who claims an interest in the (Vessel or Property), must file a claim and serve an answer no later than (date 21 days after publication); otherwise, default may be entered and condemnation ordered.

DATED at (city of publication), (state), (month, day and year of publication).

(Name)

(Firm Name)

(Address)

(Telephone Number)

(Fax Number)

(N.C. Bar Number)

(Attorney(s)) for (Plaintiff)(Intervenor)

- (d) Whenever publication is required, the person or party causing the publication shall file with the clerk, no later than 30 days after the date of publication, sworn proof of publication (1) by a person duly authorized by the newspaper to execute

affidavits of legal notices, together with a copy of the publication or (2) through an affidavit executed by the person, party, or attorney of record. The affidavit shall include as an exhibit a copy of the required publication.

**Rule C~~(3)~~.3 Default In Action In Rem**

**(a) Notice Required.**

Except in actions by the United States for forfeitures, a party seeking a default judgment in an action in rem must show that due notice of the action and arrest of the property has been given:

- (1) By publication, as required in Local Admiralty Rule C.~~(2)~~;
- (2) By service on the master or other person having custody of the property;
- (3) By service on every other person who has not appeared in the action and is known to have an interest in the property; and
- (4) By service in accordance with the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 et seq., if the property is subject to that Act.

**(b) Persons with Recorded Interests.**

- (1) If the defendant property is a vessel documented under the laws of the United States, a party seeking default judgment must obtain a current certificate of ownership or abstract of title from the United States Coast Guard and attempt to serve persons named in the certificate or abstract who appear to have an interest in the property.
- (2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, 46 U.S.C. §§ 4301 et seq., a party seeking default judgment must attempt to serve persons named in the records of the issuing authority who appear to have an interest in the property.
- (3) If the defendant property is of such character that there exists a governmental registry of recorded property interests or security interests in the property, a party seeking default judgment must attempt to notify all persons named in the records of each such registry who appear to have an interest in the property.

**(c) Manner of Giving Notice.**

A required notice, other than by publication, of the action and arrest of the property

shall be given by delivery under [Fed. R. Civ. P. 5\(b\)](#).

**Rule C(4).4 Entry Of Default**

After the time for filing a claim or answer has expired, the plaintiff may request an entry of default under [Fed. R. Civ. P. 55\(a\)](#). Default will be entered upon the filing of an affidavit showing that:

- (a) Notice has been given as required in [Local Admiralty Rule C\(3\).3](#) or, in the case of forfeiture actions in rem arising from a federal statute, as required by [Supplemental Rule G\(4\)](#); and
- (b) Where available, a copy of any of the following is attached: the United States Coast Guard certificate of ownership or abstract of title; any numbering identification obtained from any issuing authority; and/or the information obtained from the private and/or governmental registries; and if not available, an explanation or description of the attempts to obtain the same;
- (c) Where appropriate, notice has been attempted as required by [Rule C.3\(b\)](#); and
- (d) No claim has been served or filed within the prescribed time or no answer has been served or filed within the prescribed time.

The plaintiff may move for judgment under [Fed. R. Civ. P. 55\(b\)](#) at any time after default has been entered.

**LOCAL ADMIRALTY RULE D**  
**POSSESSORY, PETITORY, AND PARTITION ACTIONS**

**Rule D(4).1 Return Date in Possessory, Petitory, and Partition Actions**

In an action under Supplemental Rule D, the court may order that the claim and answer be filed on a date earlier than 21 days after the arrest, and may by order set a date for expedited hearing of the action.

**LOCAL ADMIRALTY RULE E**  
**GENERAL PROVISIONS IN ACTIONS IN REM AND QUASI IN REM**

**Rule E(4).1 Process Pleadings and Parties**

- (a) Every complaint filed as a Fed. R. Civ. P. 9(h) action shall set forth:
- (1) "In Admiralty" following the designation of the court, in addition to the statement, if any, contained in the body of the complaint pursuant to such rule; and
  - (2) The individual name, firm name, address, telephone number, fax number, email address and State Bar number where applicable, of all attorneys who appear for the filing party, including an attorney making a special appearance pursuant to Local Civil Rule 83.1(e) or the telephone number and address of the plaintiff, if plaintiff appears pro se.
- (b) Every complaint in Supplemental Rule B and C actions shall state the amount of the debt, damages, or salvage for which the action is brought, and shall include in addition thereto the amounts of unliquidated claims, including a good faith estimate of attorney's fees to be supplemented seasonably. The defendant or claimant may post bond pursuant to Supplemental Rule E(5) based on such allegations. When a bond is posted under the Local Admiralty Rules for any reason, notice of the posting with a copy of the bond attached shall be electronically filed in the case by the posting party. The paper original of the bond shall be retained by the posting party unless otherwise directed by the court.
- (c) In cases of salvage, the complaint shall also state to the extent known or estimated the value of the hull, cargo, freight and other property salvaged, the amount claimed, the names of the principal salvors, and that the suit is instituted in their behalf and in the behalf of all other persons interested or associated with them. There shall also be attached to the complaint a list of all known salvors and all persons believed entitled to share in the salvage, and also any agreement of consortium available and known to exist among them or any of them, including a copy of any such agreement.

~~(a) **Order Authorizing the Clerk to Issue Process of Arrest, Attachment or Garnishment.**~~

~~Except in actions by the United States for forfeitures or where exigent circumstances make court review impracticable, the pleadings, the affidavit required by Supplemental Rule B, and accompanying supporting papers must be reviewed by the court pursuant to Supplemental Rules B and C before the clerk will issue a summons and process of arrest, attachment or garnishment to any party.~~

~~including intervenors. The clerk may refer a motion under this provision to any district or magistrate judge. The motion may be heard and the decision thereon communicated to the clerk by telephone or other electronic communication. If the court finds the conditions set forth in Supplemental Rules B or C appear to exist, as appropriate, the court shall authorize the clerk to issue process. Supplemental process may thereafter be issued by the clerk upon application without further order of the court.~~

~~(1) — Order~~

~~Upon approving the application for arrest, attachment or garnishment, the court will issue an order to the clerk to issue such process. The proposed form of order authorizing the issuance of such process and the proposed process itself shall be submitted to the court or the clerk before the court's review.~~

~~(b) — Exigent circumstances~~

~~If the plaintiff or the attorney of record certifies by affidavit submitted to the clerk that exigent circumstances make review by the court impracticable, the clerk shall issue a summons and warrant of arrest or process of attachment and garnishment. In actions by the United States for forfeitures for federal statutory violations, the clerk, upon filing of the complaint, shall immediately issue a summons and warrant for arrest of the vessel or other property without requiring a certification of exigent circumstances.~~

~~(c) — Return of Process — Supplemental Rules C and D.~~

~~Unless otherwise ordered by the court, all process from this court within the scope of Supplemental Rules C and D shall be returnable by claim no later than 14 days after execution of the process and by answer within 21 days following filing of a claim or, in the event the property is not released within 14 days after execution of process, by filing a claim and serving an answer within 21 days of publication as required by Supplemental Rule C(4).~~

~~(d) — Return of Process — Supplemental Rules B and F and other Rule 9(h) actions.~~

~~Unless otherwise ordered by the court, all process from this court within the contemplation of Supplemental Rules B and F shall be in conformity therewith. Unless otherwise ordered by the court, all process in [Fed. R. Civ. P. 9\(h\)](#) actions (other than process contemplated by Supplemental Rules B, C, D and F) shall be returnable no later than twenty one (21) days following service.~~

~~(e) — Registry of Vessel Information.~~

~~Whenever a vessel is to be served, the party seeking service shall inform the marshal of the registry of the vessel to be served, if known. However, failure to so inform the marshal shall not be cause for the marshal to refuse to serve the said vessel or in any way invalidate service of process.~~

**Rule E(2).2 ~~Seizure Of Property Already In Custody Of An Officer Of The United States~~  
Verification of Pleadings And Answers to Interrogatories**

Every complaint and claim in an action filed under the Supplemental Rules shall be verified on oath or solemn affirmation by a party, or an officer of a corporate party. If no party or corporate officer is within the district, verification of a complaint, claim or answers to interrogatories may be made by an agent, attorney-in-fact or attorney of record, who shall state briefly the sources of his or her knowledge, information and belief, declare that the document affirmed is true to the best of his or her knowledge, information and belief, state the reason why verification is not made by the party or a corporate officer, and that he or she is so authorized to act. Any such verification will be deemed to have been made by the party to whom a document might apply as if verified personally. Any interested party may move the court, with or without a request for stay, for the personal oath of any party or of a corporate party's officer. If required by the court, such verification shall be procured by commission or as otherwise ordered.

In addition to the requirements of [Supplemental Rule C\(3\)](#), ~~where property in the custody of an officer or employee of the United States is to be arrested or attached, the marshal shall deliver a copy of the complaint and warrant for arrest, or summons and process of attachment, to such officer or employee or, if the officer or employee is not found within the district, then to the custodian of the property within the district. The marshal shall notify such officer, employee or custodian not to relinquish such property from custody until ordered to do so by the court.~~

~~A defendant is considered to be "not found within the district" if, in an action in *personam*, service upon the defendant cannot be effected in person or upon an authorized officer or agent within the State of North Carolina or if the only effective service is through the Secretary of State, the North Carolina Long Arm Statute, or through any method of substituted service.~~

**Rule E(3).3 ~~Post Arrest Procedure~~ Process**

**(a) ~~Order Authorizing the Clerk to Issue Process of Arrest, Attachment or Garnishment.~~**

Except in actions by the United States for forfeitures or where exigent circumstances make court review impracticable, the pleadings, the affidavit required by Supplemental Rule B, and accompanying supporting papers must be

reviewed by the court pursuant to Supplemental Rules B and C before the clerk will issue a summons and process of arrest, attachment or garnishment to any party, including intervenors. The clerk may refer a motion under this provision to any district or magistrate judge. The motion may be heard and the decision thereon communicated to the clerk by telephone or other electronic communication. If the court finds the conditions set forth in Supplemental Rules B or C appear to exist, as appropriate, the court shall authorize the clerk to issue process. Supplemental process may thereafter be issued by the clerk upon application without further order of the court.

**(1) Order**

Upon approving the application for arrest, attachment or garnishment, the court will issue an order to the clerk to issue such process. The proposed form of order authorizing the issuance of such process and the proposed process itself shall be submitted to the court or the clerk before the court's review.

**(b) Exigent circumstances**

If the plaintiff or the attorney of record certifies by affidavit submitted to the clerk that exigent circumstances make review by the court impracticable, the clerk shall issue a summons and warrant of arrest or process of attachment and garnishment. In actions by the United States for forfeitures for federal statutory violations, the clerk, upon filing of the complaint, shall immediately issue a summons and warrant for arrest of the vessel or other property without requiring a certification of exigent circumstances.

**(c) Return of Process -- Supplemental Rules C and D.**

Unless otherwise ordered by the court, all process from this court within the scope of Supplemental Rules C and D shall be returnable by claim no later than 14 days after execution of the process and by answer within 21 days following filing of a claim or, in the event the property is not released within 14 days after execution of process, by filing a claim and serving an answer within 21 days of publication as required by Supplemental Rule C(4).

~~(a) Whenever property is arrested, attached or garnished, any person claiming an interest in the property shall be entitled to a prompt hearing before the court on notice to the party bringing the arrest, attachment or garnishment and to all other parties who have appeared in the action. The hearing shall be noticed and scheduled as is a hearing on a request for temporary restraining order. At the hearing, the party that obtained the arrest, attachment or garnishment shall show cause why the arrest, attachment or garnishment order should not immediately be~~

~~vacated or other appropriate relief granted.~~

- ~~(b) — If the arrest, attachment or garnishment was obtained under a certification of exigent circumstances, the party obtaining the arrest, attachment or garnishment shall have the burden to show that exigent circumstances existed.~~
- ~~(c) — This Rule shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to 46 U.S.C. §§ 603 and 604 or to actions by the United States for forfeitures.~~

**Rule E(4).4 ~~Prepared Statement Of Attachment And Garnishment Or Arrest~~ **Seizure Of Property Already In Custody Of An Officer Of The United States****

In addition to the requirements of Supplemental Rule C(3), where property in the custody of an officer or employee of the United States is to be arrested or attached, the marshal shall deliver a copy of the complaint and warrant for arrest, or summons and process of attachment, to such officer or employee or, if the officer or employee is not found within the district, then to the custodian of the property within the district. The marshal shall notify such officer, employee or custodian not to relinquish such property from custody until ordered to do so by the court.

~~At the time process issues in Supplemental Rule B, C and D actions, plaintiff or intervenor will furnish to the marshal, by email or hand delivery, a prepared statement of attachment and garnishment or arrest with blanks for completion of date thereof and for signature below the name and title of such marshal, together with a valid email address or a self-addressed envelope to plaintiff or intervenor or its attorney with sufficient postage affixed. After execution of process, the marshal will promptly cause that completed prepared statement to be emailed or mailed to such addressee.~~

**Rule E(5).5 ~~Stipulations And Undertakings~~ **Post Arrest Procedure****

- ~~(a) Whenever property is arrested, attached or garnished, any person claiming an interest in the property shall be entitled to a prompt hearing before the court on notice to the party bringing the arrest, attachment or garnishment and to all other parties who have appeared in the action. The hearing shall be noticed and scheduled as is a hearing on a request for temporary restraining order. At the hearing, the party that obtained the arrest, attachment or garnishment shall show cause why the arrest, attachment or garnishment order should not immediately be vacated or other appropriate relief granted.~~
- ~~(b) If the arrest, attachment or garnishment was obtained under a certification of exigent circumstances, the party obtaining the arrest, attachment or garnishment shall have the burden to show that exigent circumstances existed.~~

- (c) This Rule shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to 46 U.S.C. §§ 603 and 604 or to actions by the United States for forfeitures.
- ~~(a) Except in cases instituted by the United States by information, or complaint of information upon seizures for any breach of the revenue, navigation, or other laws of the United States, stipulations or bonds in admiralty and maritime actions need not be under seal and may be executed on behalf of the stipulator or obligor by his/her/its agent or counsel. Stipulations for costs with corporate surety need not be signed or executed by the party, but may be signed on the party's behalf by the party's agent or counsel, and shall be sufficient in any event if executed only by the surety approved by the court.~~
- ~~(b) If, before or after commencement of suit, the arresting, attaching or garnishing party accepts any written undertaking to respond on behalf of the vessel or other property sued in return for foregoing its arrest or for stipulating to the release of such vessel or other property, the undertaking shall be filed, shall become the res in place of the vessel or other property sued and shall be deemed the subject referred to when any pleading, order or judgment in the action refers to the vessel or other property. The preceding shall apply to any such undertaking, subject to its own terms, whether or not it has been approved by a judge or the clerk.~~

**Rule E(6).6 Pleadings And Parties Release Of Seizures; Custodial Costs; General Bonds**

- (a) Property seized by the marshal may be released as follows:
- (1) By the marshal upon the receipt of security by the marshal, accompanied by the endorsed express authorization for release signed by the party or counsel for the party as provided by Supplemental Rule E(5)(c) if all costs and charges of the court and its officers shall have first been paid. Monies received as part of any cash stipulation shall be delivered by the marshal to the clerk for deposit in the registry of the court.
  - (2) In an action entirely for a sum certain, by paying into the court the amount alleged in the complaint to be due, plus interest at the rate of 10% per annum from the date claimed to be due to a date 24 months after the date the claim was filed, or by filing an approved stipulation for such alleged amount and interest. In either event, claim of the property shall be filed.
  - (3) In actions other than possessory, petitory, and partition, by filing, in addition to a claim of the property, an approved stipulation for the amount

of the appraised or agreed value of the property seized, with interest (unless otherwise ordered by the court), interlocutory or final, and to pay the amount awarded by the final decree rendered by this court or by any appellate court, with interest.

- (4) In possessory, petitory, and partition actions, only upon the order of the court, and on such security and terms as ordered.
  - (5) Upon the dismissal or discontinuance of the action or upon the written consent of the attorney for the party on whose behalf the property is detained, if all costs and charges of the court and its officers shall have first been paid.
- (b) The marshal shall not deliver any property so released until costs and charges of the marshal shall first have been paid.
  - (c) In any general bond as provided for by Supplemental Rule E(5)(b) the vessel will be identified by name, nationality, dimension, official number or registration number, hailing port and port of documentation, to the extent applicable. The owner of such vessel shall also file complete designated United States address and email address, if available, for communications to the owner or designated agent, which shall be by mail or email. Execution of process against the vessel so stayed under Supplemental Rule E(5)(b) shall be endorsed to the marshal as stayed pursuant to the rule. Such process shall be served by the marshal together with a copy of the complaint on the master or other person in whose charge or custody the vessel is found and the marshal shall make his or her return thereof. If no master or other person in charge of custody is found aboard the vessel, the marshal shall so make his or her return accordingly, and the clerk shall advise by mail or email the owner or designated agent, at the address furnished pursuant to this rule, of the nature of the action, any amount claimed, the plaintiff, the name and address of plaintiff's attorney, the case number, and the return day 30 days from the date of the marshal's attempt. The clerk will maintain a current list of vessels subject to a general bond and file said bonds alphabetically by name of vessel and endorsed as provided by Supplemental Rule E(5)(b).
- ~~(a) — Every complaint filed as a Fed. R. Civ. P. 9(h) action shall set forth:~~
- ~~(1) — "In Admiralty" following the designation of the court, in addition to the statement, if any, contained in the body of the complaint pursuant to such rule; and~~
  - ~~(2) — The individual name, firm name, address, telephone number, fax number, email address and State Bar number, where applicable, of all attorneys who appear for the filing party, including an attorney making a special~~

appearance pursuant to [Local Civil Rule 83.1\(e\)](#) or the telephone number and address of the plaintiff, if plaintiff appears pro se.

- (b) ~~Every complaint in Supplemental Rule B and C actions shall state the amount of the debt, damages, or salvage for which the action is brought, and shall include in addition thereto the amounts of unliquidated claims, including a good faith estimate of attorney's fees to be supplemented seasonably. The defendant or claimant may post bond pursuant to [Supplemental Rule E\(5\)](#) based on such allegations. When a bond is posted under the Local Admiralty Rules for any reason, notice of the posting with a copy of the bond attached shall be electronically filed in the case by the posting party. The paper original of the bond shall be retained by the posting party unless otherwise directed by the court.~~
- (c) ~~In cases of salvage, the complaint shall also state to the extent known or estimated the value of the hull, cargo, freight and other property salvaged, the amount claimed, the names of the principal salvors, and that the suit is instituted in their behalf and in the behalf of all other persons interested or associated with them. There shall also be attached to the complaint a list of all known salvors and all persons believed entitled to share in the salvage, and also any agreement of consortium available and known to exist among them or any of them, including a copy of any such agreement.~~

#### **Rule E(7).7 Verification Of Pleadings And Answers To Interrogatories Appraisal**

**(a) Order for Appraisal.**

An order for appraisal of property so that security may be given or altered will be entered by the clerk at the written request of any interested party. If the parties do not agree in writing on the selection of the appraiser, the court will appoint the appraiser.

**(b) Appraiser's Oath.**

The appraiser shall be sworn to the faithful and impartial discharge of duties before any federal or state officer authorized by law to administer oaths, and a copy of the oath shall be filed with the clerk.

**(c) Appraisal.**

The appraiser shall give one day's notice of the time and place of making the appraisal to the parties who have appeared in the action. The appraiser shall file the appraisal in writing with the clerk as soon as it is completed and shall serve it on all parties.

**(d) Cost of Appraisal.**

Absent stipulation of the parties or order of the court to the contrary, the appraiser shall be paid by the party requesting the appraisal. Appraiser's fees shall thereafter be taxed as the court orders.

~~Every complaint and claim in an action filed under the Supplemental Rules shall be verified on oath or solemn affirmation by a party, or an officer of a corporate party. If no party or corporate officer is within the district, verification of a complaint, claim or answers to interrogatories may be made by an agent, attorney in fact or attorney of record, who shall state briefly the sources of his or her knowledge, information and belief, declare that the document affirmed is true to the best of his or her knowledge, information and belief, state the reason why verification is not made by the party or a corporate officer, and that he or she is so authorized to act. Any such verification will be deemed to have been made by the party to whom a document might apply as if verified personally. Any interested party may move the court, with or without a request for stay, for the personal oath of any party or of a corporate party's officer. If required by the court, such verification shall be procured by commission or as otherwise ordered.~~

**Rule E(8).8 ~~Intervention~~ Security Deposits for Seizure of Vehicles**

**(a) Deposit Required Before Seizure.**

Any party, including any intervenor, who seeks arrest, attachment or garnishment of property in an action governed by Supplemental Rule E and Fed. R. Civ. P. 4(n) shall deposit with the marshal the sum estimated by the Marshal to be sufficient to pay the fees and expenses of arresting, attaching, or garnishing and keeping the property for at least 14 days, or such lesser amount as the marshal deems sufficient. The marshal is not required to execute process of arrest, attachment or garnishment until such deposit is made.

**(b) Additional Deposits Required After Seizure.**

Any party who has caused the marshal to arrest, attach or garnish property shall advance additional sums from time to time as required by the marshal to pay the fees and expenses of the marshal until the property is released or disposed of as provided in Supplemental Rule E.

**(c) Sanction for Failure to Make Deposit.**

Any party who fails to make a deposit when required by the marshal may be subject to sanctions including the release of the vessel.

~~(a) Presentation of Claim.~~

~~When a vessel or other property has been arrested, attached or garnished, and is in the custody of the marshal or substitute custodian, anyone seeking to enforce a claim against the vessel or property shall file a complaint in intervention in the in rem action, unless otherwise ordered by the court. The clerk shall promptly provide a copy of the complaint in intervention and the intervenor's warrant of arrest or process of attachment or garnishment as filed to the marshal, who shall deliver the same to the vessel and custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of a party originally arresting, attaching or garnishing the vessel or property unless otherwise provided herein, and the vessel or property shall stand arrested, attached or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the marshal until ordered by the court.~~

~~(b) — **Intervention When Sale Has Been Scheduled.**~~

~~No party may intervene without first obtaining leave of court if intervention is sought less than 21 days prior to the date for which a sale of the vessel or property has been set by the court.~~

~~(e) — **Compliance with Rules.**~~

~~An intervenor must comply with the [Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions](#), the [Federal Rules of Civil Procedure](#) and these [Local Admiralty Rules](#) in accomplishing and perfecting the arrest, attachment or garnishment unless otherwise provided in this Rule E(8) or by order of the court.~~

~~(d) — **Sharing of Marshal's Fees and Expenses.**~~

~~At any time after the filing of a complaint in intervention, any party to the action or the marshal may move the court for an order directing that the intervenor pay a fair share, as determined by the court, of the marshal's fees and expenses incurred and to be incurred for the arrest, attachment, garnishment, keeping, maintenance and security of the vessel or other property. A hearing on such motion may be held upon three days' notice.~~

~~(e) — **Intervenors' Obligations upon Vacation of the Arrest, Attachment or Garnishment.**~~

~~If an original arrest, attachment or garnishment is vacated, a party who has filed a complaint in intervention in the in rem action which was presented in accordance with Local Admiralty Rule E(8)(a) shall bear responsibility for the marshal's fees and expenses and shall deposit the sum required by the marshal for fees and expenses within 48 hours after receiving written notice from the marshal requiring such deposit. Such notice may be given as soon as the marshal learns that the~~

~~original arrest, attachment or garnishment is to be vacated. If more than one complaint in intervention has been delivered to the marshal, the intervenors shall step into the position of the originally arresting, attaching or garnishing party as provided herein in order of the delivery of their complaints in intervention to the marshal.~~

~~(f) — Service and Responsive Pleadings.~~

~~The intervenor shall serve a copy of (1) the complaint in intervention, (2) the order authorizing arrest, attachment or garnishment in intervention, and (3) the warrant, writ and/or summons in intervention on all parties who have appeared in the action pursuant to [Fed. R. Civ. P. 5](#) and any order of the court. Within 21 days of such service, each party to the action shall serve an answer, motion or other responsive pleading to the complaint in intervention consistent with [Fed. R. Civ. P. 12](#). The intervenor shall have 21 days from the filing of the complaint in intervention to file and serve an answer, motion or other responsive pleading to the complaints and claims previously filed in the action.~~

**Rule E(9).9 Custody Of Property ~~Stipulations And Undertakings~~**

- ~~(a) Except in cases instituted by the United States by information, or complaint of information upon seizures for any breach of the revenue, navigation, or other laws of the United States, stipulations or bonds in admiralty and maritime actions need not be under seal and may be executed on behalf of the stipulator or obligor by his/her/its agent or counsel. Stipulations for costs with corporate surety need not be signed or executed by the party, but may be signed on the party's behalf by the party's agent or counsel, and shall be sufficient in any event if executed only by the surety approved by the court.~~
- ~~(b) If, before or after commencement of suit, the arresting, attaching or garnishing party accepts any written undertaking to respond on behalf of the vessel or other property sued in return for foregoing its arrest or for stipulating to the release of such vessel or other property, the undertaking shall be filed, shall become the res in place of the vessel or other property sued and shall be deemed the subject referred to when any pleading, order or judgment in the action refers to the vessel or other property. The preceding shall apply to any such undertaking, subject to its own terms, whether or not it has been approved by a judge or the clerk.~~

~~(a) — Safekeeping of Property When Seized.~~

~~When a vessel, cargo or other property is seized, the marshal shall take custody and arrange for adequate and necessary security for its safekeeping which may include, in the marshal's discretion, the placing of keepers on or near the vessel, or the appointment of a facility or person as custodian of the property in lieu of the marshal. When a vessel with crew aboard is seized, the removal of such crew shall fall within the discretion of the marshal.~~

~~(b) — **Cargo Handling, Repairs and Movement of the Vessel.**~~

~~Upon arrest or attachment of the vessel, no cargo handling, repairs or movement of the vessel may be made without a court order except in an emergency situation in the discretion of the marshal. Written notice shall be given to the marshal and to all parties who have appeared prior to the application for such order, and the certificate of service of such notice shall be filed with the clerk before application is made to the court. For good cause shown, the court may direct the marshal to allow the conduct of cargo handling, repairs, movement of the vessel or other operations on a vessel under arrest or attachment. Neither the United States nor the marshal shall be liable for the consequence of the undertaking or continuation of any such activities during the arrest or attachment.~~

~~(c) — **Motion for Change in Arrangements.**~~

~~Prior to or after a vessel, cargo or property has been taken into custody by the marshal, any party then appearing may move the court to dispense with keepers or to remove or place the vessel, cargo or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the marshal and to all parties who have appeared.~~

~~(d) — **Insurance.**~~

~~The marshal may order insurance to protect the marshal, his or her deputies, keepers and substitute custodians from liability assumed in arresting and holding the vessel, cargo or other property and performing whatever services are undertaken to protect the vessel, cargo or other property and maintain the court's custody. The party applying for arrest of the vessel, cargo or other property shall reimburse the marshal for premiums paid for the insurance. The party applying for removal of the vessel, cargo or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium shall reimburse the marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo or other property is in *custodia legis*.~~

~~(e) — A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the court who has not been paid and claims the right to payment as an expense of administration shall file a verified claim with the court at any time before~~

~~the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim pursuant to [Fed. R. Civ. P. 5\(b\)](#), on the marshal, substitute custodian (if one has been appointed), and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.~~

**Rule E(10).10 Appraisal Intervention**

**(a) Presentation of Claim.**

When a vessel or other property has been arrested, attached or garnished, and is in the custody of the marshal or substitute custodian, anyone seeking to enforce a claim against the vessel or property shall file a complaint in intervention in the in rem action, unless otherwise ordered by the court. The clerk shall promptly provide a copy of the complaint in intervention and the intervenor's warrant of arrest or process of attachment or garnishment as filed to the marshal, who shall deliver the same to the vessel and custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of a party originally arresting, attaching or garnishing the vessel or property unless otherwise provided herein, and the vessel or property shall stand arrested, attached or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the marshal until ordered by the court.

**(b) Intervention When Sale Has Been Scheduled.**

No party may intervene without first obtaining leave of court if intervention is sought less than 21 days prior to the date for which a sale of the vessel or property has been set by the court.

**(c) Compliance with Rules.**

An intervenor must comply with the [Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions](#), the [Federal Rules of Civil Procedure](#) and these [Local Admiralty Rules](#) in accomplishing and perfecting the arrest, attachment or garnishment unless otherwise provided in this Rule E.10 or by order of the court.

**(d) Sharing of Marshal's Fees and Expenses.**

At any time after the filing of a complaint in intervention, any party to the action or the marshal may move the court for an order directing that the intervenor pay a fair share, as determined by the court, of the marshal's fees and expenses incurred and to be incurred for the arrest, attachment, garnishment, keeping, maintenance and security of the vessel or other property. A hearing on such motion may be held upon three days' notice.

**(e) Intervenor's Obligations upon Vacation of the Arrest, Attachment or Garnishment.**

If an original arrest, attachment or garnishment is vacated, a party who has filed a complaint in intervention in the in rem action which was presented in accordance with Local Admiralty Rule E.10(a) shall bear responsibility for the marshal's fees and expenses and shall deposit the sum required by the marshal for fees and expenses within 48 hours after receiving written notice from the marshal requiring such deposit. Such notice may be given as soon as the marshal learns that the original arrest, attachment or garnishment is to be vacated. If more than one complaint in intervention has been delivered to the marshal, the intervenors shall step into the position of the originally arresting, attaching or garnishing party as provided herein in order of the delivery of their complaints in intervention to the marshal.

**(f) Service and Responsive Pleadings.**

The intervenor shall serve a copy of (1) the complaint in intervention, (2) the order authorizing arrest, attachment or garnishment in intervention, and (3) the warrant, writ and/or summons in intervention on all parties who have appeared in the action pursuant to Fed. R. Civ. P. 5 and any order of the court. Within 21 days of such service, each party to the action shall serve an answer, motion or other responsive pleading to the complaint in intervention consistent with Fed. R. Civ. P. 12. The intervenor shall have 21 days from the filing of the complaint in intervention to file and serve an answer, motion or other responsive pleading to the complaints and claims previously filed in the action.

~~**(a) — Order for Appraisal.**~~

~~An order for appraisal of property so that security may be given or altered will be entered by the clerk at the written request of any interested party. If the parties do not agree in writing on the selection of the appraiser, the court will appoint the appraiser.~~

~~**(b) — Appraiser's Oath.**~~

~~The appraiser shall be sworn to the faithful and impartial discharge of duties before any federal or state officer authorized by law to administer oaths, and a copy of the oath shall be filed with the clerk.~~

~~**(c) — Appraisal.**~~

~~The appraiser shall give one day's notice of the time and place of making the appraisal to the parties who have appeared in the action. The appraiser shall file~~

~~the appraisal in writing with the clerk as soon as it is completed and shall serve it on all parties.~~

~~(d) — Cost of Appraisal.~~

~~Absent stipulation of the parties or order of the court to the contrary, the appraiser shall be paid by the party requesting the appraisal. Appraiser's fees shall thereafter be taxed as the court orders.~~

**Rule E(11).11 Sale Of Property Custody of Property**

**(a) Safekeeping of Property When Seized.**

When a vessel, cargo or other property is seized, the marshal shall take custody and arrange for adequate and necessary security for its safekeeping which may include, in the marshal's discretion, the placing of keepers on or near the vessel, or the appointment of a facility or person as custodian of the property in lieu of the marshal. When a vessel with crew aboard is seized, the removal of such crew shall fall within the discretion of the marshal.

**(b) Cargo Handling, Repairs and Movement of the Vessel.**

Upon arrest or attachment of the vessel, no cargo handling, repairs or movement of the vessel may be made without a court order except in an emergency situation in the discretion of the marshal. Written notice shall be given to the marshal and to all parties who have appeared prior to the application for such order, and the certificate of service of such notice shall be filed with the clerk before application is made to the court. For good cause shown, the court may direct the marshal to allow the conduct of cargo handling, repairs, movement of the vessel or other operations on a vessel under arrest or attachment. Neither the United States nor the marshal shall be liable for the consequence of the undertaking or continuation of any such activities during the arrest or attachment.

**(c) Motion for Change in Arrangements.**

Prior to or after a vessel, cargo or property has been taken into custody by the marshal, any party then appearing may move the court to dispense with keepers or to remove or place the vessel, cargo or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the marshal and to all parties who have appeared.

**(d) Insurance.**

The marshal may order insurance to protect the marshal, his or her deputies, keepers

and substitute custodians from liability assumed in arresting and holding the vessel, cargo or other property and performing whatever services are undertaken to protect the vessel, cargo or other property and maintain the court's custody. The party applying for arrest of the vessel, cargo or other property shall reimburse the marshal for premiums paid for the insurance. The party applying for removal of the vessel, cargo or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium shall reimburse the marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo or other property is in *custodia legis*.

- (e) A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the court who has not been paid and claims the right to payment as an expense of administration shall file a verified claim with the court at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim pursuant to **Fed. R. Civ. P. 5(b)**, on the marshal, substitute custodian (if one has been appointed), and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.

~~(a) — **Publication of Notice of Sale.**~~

~~Unless otherwise ordered upon a showing of urgency, impracticality or other good cause, or as provided by law, notice of the sale of property shall be published daily, at least twice, the first publication to be at least one calendar week prior to the date of sale and the second publication to be at least three calendar days prior to the date of sale, unless otherwise ordered by the court.~~

~~(b) — **Place of Sale.**~~

~~The place of sale will occur at a federal courthouse in the division in which the property is located unless the court otherwise directs.~~

~~(c) — **Payment of Bid.**~~

~~The person whose bid is accepted shall immediately pay the marshal either the full purchase price if the bid is no more than \$500 or a deposit of \$500 or ten percent of the bid, whichever is greater, if the bid exceeds \$500. The bidder shall pay the balance of the purchase price within three days following the sale. If an objection to the sale is filed within that time, the bidder is excused from paying the balance of the purchase price until three days after the sale is confirmed. Payments to the marshal shall be in cash, certified check or cashier's check. The court may specify different terms in any order of sale.~~

~~(d) — **Penalty for Late Payment of Balance.**~~

~~A successful bidder who fails to pay the balance of the bid within the time allowed under these rules or a different time specified by the court shall also pay the marshal the costs of keeping the property from the date payment of the balance was due to the date the bidder pays the balance and takes delivery of the property. Unless otherwise ordered by the court, the marshal shall refuse to release the property until this additional charge is paid.~~

**(e) — Penalty for Default in Payment of Balance.**

~~A successful bidder who fails to pay the balance of the bid within the time allowed is in default and the court may at any time thereafter order a sale to the second-highest bidder or order a new sale as appropriate. Any sum deposited by the bidder in default shall be forfeited and applied to pay any additional costs incurred by the marshal by reason of the forfeiture and default, including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the court.~~

**(f) — Report of Sale by the Marshal.**

~~At the conclusion of the sale, the marshal shall immediately file a written report with the court of the fact of sale, the date thereof, the price obtained, the name and address of the successful bidder, and any other pertinent information.~~

**(g) — Time and Procedure for Objection to Sale.**

~~An interested person may object to the sale by filing a written objection with the clerk within three days following the sale, serving the objection on all parties, the successful bidder and the marshal, and depositing a sum with the marshal that is sufficient to pay the expense of keeping the property for at least 7 days. Payment to the marshal shall be in cash, certified check, or cashier's check. The written objection must be endorsed by the marshal with an acknowledgment of receipt of the deposit prior to filing with the clerk.~~

**(h) — Confirmation of Sale Without Motion.**

~~A sale shall stand confirmed as of course without any affirmative action by the court unless (1) written objection is filed with the court within the time allowed under these rules, or (2) the purchaser is in default for failure to pay the balance due to the marshal. The purchaser in a sale so confirmed as of course shall present a proposed order reflecting the confirmation of the sale for entry by the clerk no earlier than the fourth day following the sale. The marshal shall transfer title to the purchaser upon issuance of such order by the clerk.~~

**(i) — Confirmation of the Sale on Motion.**

If an objection has been filed or if the successful bidder is in default, the marshal, the objector, the successful bidder, or a party may move the court for relief. Any person seeking a hearing on such motion may apply to the court for an order fixing the date and time of a hearing and directing the manner of giving notice and shall give written notice of the motion to the marshal, all parties, the successful bidder and the objector. The motion will be determined promptly by the court. The court may confirm the sale, order a new sale, or grant such other relief as justice requires.

~~(j) — Disposition of Deposits.~~

~~(1) — Objection Sustained.~~

If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder immediately. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

~~(2) — Objection Overruled.~~

If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector immediately.

~~(k) — Title to Property.~~

Failure of a party to give the required notice of the action and arrest of the vessel, cargo or other property or required notice of the sale may afford grounds for objecting to the sale but does not affect the title of a bona fide purchaser of the property without notice of the failure.

**Rule E(12).12 Release Of Seizures; Custodial Costs; General Bonds Sale of Property**

**(a) Publication of Notice of Sale.**

Unless otherwise ordered upon a showing of urgency, impracticality or other good cause, or as provided by law, notice of the sale of property shall be published daily, at least twice, the first publication to be at least one calendar week prior to the date of sale and the second publication to be at least three calendar days prior to the date of sale, unless otherwise ordered by the court.

**(b) Place of Sale.**

The place of sale will occur at a federal courthouse in the division in which the property is located unless the court otherwise directs.

**(c) Payment of Bid.**

The person whose bid is accepted shall immediately pay the marshal either the full purchase price if the bid is no more than \$500 or a deposit of \$500 or ten percent of the bid, whichever is greater, if the bid exceeds \$500. The bidder shall pay the balance of the purchase price within three days following the sale. If an objection to the sale is filed within that time, the bidder is excused from paying the balance of the purchase price until three days after the sale is confirmed. Payments to the marshal shall be in cash, certified check or cashier's check. The court may specify different terms in any order of sale.

**(d) Penalty for Late Payment of Balance.**

A successful bidder who fails to pay the balance of the bid within the time allowed under these rules or a different time specified by the court shall also pay the marshal the costs of keeping the property from the date payment of the balance was due to the date the bidder pays the balance and takes delivery of the property. Unless otherwise ordered by the court, the marshal shall refuse to release the property until this additional charge is paid.

**(e) Penalty for Default in Payment of Balance.**

A successful bidder who fails to pay the balance of the bid within the time allowed is in default and the court may at any time thereafter order a sale to the second highest bidder or order a new sale as appropriate. Any sum deposited by the bidder in default shall be forfeited and applied to pay any additional costs incurred by the marshal by reason of the forfeiture and default, including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the court.

**(f) Report of Sale by the Marshal.**

At the conclusion of the sale, the marshal shall immediately file a written report with the court of the fact of sale, the date thereof, the price obtained, the name and address of the successful bidder, and any other pertinent information.

**(g) Time and Procedure for Objection to Sale.**

An interested person may object to the sale by filing a written objection with the clerk within three days following the sale, serving the objection on all parties, the successful bidder and the marshal, and depositing a sum with the marshal that is sufficient to pay the expense of keeping the property for at least 7 days. Payment to the marshal shall be in cash, certified check, or cashier's check. The written objection must be endorsed by the marshal with an acknowledgment of receipt of the deposit prior to filing with the clerk.

**(h) Confirmation of Sale Without Motion.**

A sale shall stand confirmed as of course without any affirmative action by the court unless (1) written objection is filed with the court within the time allowed under these rules, or (2) the purchaser is in default for failure to pay the balance due to the marshal. The purchaser in a sale so confirmed as of course shall present a proposed order reflecting the confirmation of the sale for entry by the clerk no earlier than the fourth day following the sale. The marshal shall transfer title to the purchaser upon issuance of such order by the clerk.

**(i) Confirmation of the Sale on Motion.**

If an objection has been filed or if the successful bidder is in default, the marshal, the objector, the successful bidder, or a party may move the court for relief. Any person seeking a hearing on such motion may apply to the court for an order fixing the date and time of a hearing and directing the manner of giving notice and shall give written notice of the motion to the marshal, all parties, the successful bidder and the objector. The motion will be determined promptly by the court. The court may confirm the sale, order a new sale, or grant such other relief as justice requires.

**(j) Disposition of Deposits.**

**(1) Objection Sustained.**

If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder immediately. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

**(2) Objection Overruled.**

If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance

remaining will be returned to the objector immediately.

**(k) Title to Property.**

Failure of a party to give the required notice of the action and arrest of the vessel, cargo or other property or required notice of the sale may afford grounds for objecting to the sale but does not affect the title of a bona fide purchaser of the property without notice of the failure.

~~(a) Property seized by the marshal may be released as follows:~~

~~(1) By the marshal upon the receipt of security by the marshal, accompanied by the endorsed express authorization for release signed by the party or counsel for the party as provided by Supplemental Rule E(5)(c) if all costs and charges of the court and its officers shall have first been paid. Monies received as part of any cash stipulation shall be delivered by the marshal to the clerk for deposit in the registry of the court.~~

~~(2) In an action entirely for a sum certain, by paying into the court the amount alleged in the complaint to be due, plus interest at the rate of 10% per annum from the date claimed to be due to a date 24 months after the date the claim was filed, or by filing an approved stipulation for such alleged amount and interest. In either event, claim of the property shall be filed.~~

~~(3) In actions other than possessory, petitory, and partition, by filing, in addition to a claim of the property, an approved stipulation for the amount of the appraised or agreed value of the property seized, with interest (unless otherwise ordered by the court), interlocutory or final, and to pay the amount awarded by the final decree rendered by this court or by any appellate court, with interest.~~

~~(4) In possessory, petitory, and partition actions, only upon the order of the court, and on such security and terms as ordered.~~

~~(5) Upon the dismissal or discontinuance of the action or upon the written consent of the attorney for the party on whose behalf the property is detained, if all costs and charges of the court and its officers shall have first been paid.~~

~~(b) The marshal shall not deliver any property so released until costs and charges of the marshal shall first have been paid.~~

~~(c) In any general bond as provided for by Supplemental Rule E(5)(b) the vessel will be identified by name, nationality, dimension, official number or registration number, hailing port and port of documentation, to the extent applicable. The~~

~~owner of such vessel shall also file complete designated United States address and email address, if available, for communications to the owner or designated agent, which shall be by mail or email. Execution of process against the vessel so stayed under [Supplemental Rule E\(5\)\(b\)](#) shall be endorsed to the marshal as stayed pursuant to the rule. Such process shall be served by the marshal together with a copy of the complaint on the master or other person in whose charge or custody the vessel is found and the marshal shall make his or her return thereof. If no master or other person in charge of custody is found aboard the vessel, the marshal shall so make his or her return accordingly, and the clerk shall advise by mail or email the owner or designated agent, at the address furnished pursuant to this rule, of the nature of the action, any amount claimed, the plaintiff, the name and address of plaintiff's attorney, the case number, and the return day 30 days from the date of the marshal's attempt. The clerk will maintain a current list of vessels subject to a general bond and file said bonds alphabetically by name of vessel and endorsed as provided by [Supplemental Rule E\(5\)\(b\)](#).~~

#### **Rule E(13).13 Taxation Of Costs**

All applications for costs shall be made in accordance with Local Civil Rule 54.1 If costs shall be awarded to any party, then the reasonable premium or expenses paid on all bonds or stipulations or other security by the party in whose favor such costs are allowed shall be taxed as a part of the costs of the case. In addition, if costs shall be awarded to any party, then the reasonable expenses paid by a party incidental to or arising out of the attachment or arrest of any property in the proceedings or while said property is in *custodia legis* shall be taxed as a part of the costs of the case.

#### **Rule E(14).14 Stay Of Execution Or Of Release Of Property After Judgment Or Dismissal**

No execution of judgment shall issue nor shall seized property be released pursuant to judgment or order of dismissal, until 14 days after its entry. Upon the filing of a motion for new trial or notice of appeal or motion to set aside default within said 14 day period, a further stay shall exist for a period not to exceed 30 days from the entry of judgment or dismissal to permit the entry of an order fixing the amount of a supersedeas bond and the filing of same.

#### **Rule E(15).15 Claims After Sale How Limited**

Claims upon the proceeds of sale of property under a final decree, except for seamen's wages, shall not be admitted in behalf of lienors who file their claims after the sale, to the prejudice of lienors who filed their claims before the sale, but shall be limited to remnants and surplus, unless for cause shown it shall be otherwise ordered.

**LOCAL ADMIRALTY RULE F  
LIMITATION OF LIABILITY**

**Rule F(1).1 Stipulations ~~Security~~ For Costs And ~~Security~~**

**(a) ~~Seamen.~~**

~~Seamen suing as provided in 28 U.S.C. § 1916 shall not be required to file a stipulation for costs in the first instance. The court may, however, order a stipulation to be given at any time. In all actions in rem brought by seamen in their own names and for their own benefit for wages, salvage, or the enforcement of laws for their health or safety without prepaying costs or fees or furnishing security therefor, pursuant to 28 U.S.C. § 1916, the marshal may at any time after service of process, attachment, or seizure of a vessel, petition the court to require the posting of security for any or all reasonable expenses which have been or may be incurred while the vessel is in the custody of the marshal. Upon filing such petition for the posting of security, a hearing date shall promptly be set by the court and the clerk shall give notice of the time and place of such hearing by serving a copy of the notice of hearing together with a copy of the petition upon the marshal and counsel of record for the parties or upon the parties, and the marshal shall post a copy of the same on the vessel.~~

**(b) ~~Increase or Decrease in Security.~~**

~~At any time, any party having an interest in the subject matter of the action may move the court, on due notice and for cause, for greater, better or lesser security; and any such order may be enforced by attachment or otherwise. The court may enter such order on its own motion, with or without notice.~~

**(c) ~~Deposit Required Before Seizure.~~**

~~Any party, including any intervenor, who seeks arrest, attachment or garnishment of property in an action governed by [Supplemental Rule E](#) and [Fed. R. Civ. P. 4\(n\)](#) shall deposit with the marshal the sum estimated by the Marshal to be sufficient to pay the fees and expenses of arresting, attaching, or garnishing and keeping the property for at least 14 days, or such lesser amount as the marshal deems sufficient. The marshal is not required to execute process of arrest, attachment or garnishment until such deposit is made.~~

**(d) ~~Additional Deposits Required After Seizure.~~**

~~Any party who has caused the marshal to arrest, attach or garnish property shall advance additional sums from time to time as required by the marshal to pay the fees and expenses of the marshal until the property is released or disposed of as~~

provided in [Supplemental Rule E](#).

**(e) — Sanction for Failure to Make Deposit.**

Any party who fails to make a deposit when required by the marshal may be subject to sanctions including the release of the vessel.

**(f) — Security for Costs.**

In complying with the provisions of [Supplemental Rule F\(1\)](#) concerning security for costs, if plaintiff elects to post cash, that sum shall be \$500.00; if the plaintiff elects to post a bond, the amount of the bond shall be \$500.00 plus interest at the rate of 6% per annum from the date of the security.

**Rule F(2).2 Notice**

Plaintiff shall effect publication required by [Supplemental Rule F\(4\)](#) without further court order, in any one of the following newspapers:

**Northern Division:** The Virginian-Pilot (Norfolk, Virginia); The News and Observer (Raleigh, North Carolina)

**Southern Division:** Star News (Wilmington, North Carolina); [The News and Observer \(Raleigh, North Carolina\)](#)

**All Other Divisions:** The News and Observer (Raleigh, North Carolina)

**Rule F(3).3 Order Of Proof At Trial**

In an action where a party seeks to limit liability under Supplemental Rule F, whether the right to limit arises as a claim or defense, the damage claimants shall offer their proof first.

SUMMARY OF PROPOSED AMENDMENTS UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA LOCAL CIVIL RULES OF PRACTICE AND PROCEDURE <sup>2</sup>  June 2017	
Affected Local Civil Rule	Proposed Change in Rule
5.1	Amend to allow parties in civil cases who are not represented by an attorney and are not incarcerated to receive documents in their cases electronically instead of by mail and to update the reference to the revised CM/ECF Policy Manual.
5.2	Amend subsection (b) to except <i>pro se</i> parties who are incarcerated from filing a Notice of Self Representation.
5.3	Amend subsection (d) to increase the amount of time parties have to file financial disclosure statements following the filing of a notice of removal from 7 days to 14 days.
7.2	Amend subsection (f) to provide for a word-count limit as an alternative to a page-count limit.
10.1	Add subsection (k) to provide that absent an order of the court, all materials filed with the court shall be in the English language unless translations are furnished.

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<sup>2</sup> 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 or proposed technical amendments.

SUMMARY OF PROPOSED AMENDMENTS  
UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
LOCAL CIVIL RULES  
OF  
PRACTICE AND PROCEDURE<sup>2</sup>

June 2017

<b>Affected Local Civil Rule</b>	<b>Proposed Change in Rule</b>
16.1	<p>Amend subsection (a) to require the clerk to give 45 days' notice of the pretrial conference in most cases.</p> <p>Amend subsection (b) to remove the requirements for the use of courtroom technology (which are moved to new Local Civil Rule 83.10).</p> <p>Amend subsection (c) to establish guidelines as to whether exhibits may be referred to in opening statements at trial.</p>
26.1	<p>Amend subsection (d) to reference the length limits in Local Civil Rule 7.2(f).</p> <p>Amend subsection (e) to include electronically stored information and privilege as topics that parties must discuss when preparing a Rule 26(f) report.</p>
56.1	<p>Add new subsection (a)(3), which provides:</p> <p>When a party opposing summary judgment submits a statement of additional material facts as to which it contends there is a genuine dispute, the moving party may submit a reply statement of additional facts limited to the additional facts referenced in the statement submitted by the party opposing summary judgment.</p>
67.1	<p>Amend to reflect that 17-SO-1, <u>In re: Deposit and Investment of Registry Funds</u>, abrogated this rule.</p>

SUMMARY OF PROPOSED AMENDMENTS  
UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
LOCAL CIVIL RULES  
OF  
PRACTICE AND PROCEDURE<sup>2</sup>

June 2017

<b>Affected Local Civil Rule</b>	<b>Proposed Change in Rule</b>
72.4	Amend to specify the circumstances when reply memoranda may be filed when there is an appeal from an order issued by a magistrate judge or an objection to a memorandum and recommendation issued by a magistrate judge.
79.2	Amend to update the references to the revised CM/ECF Policy Manual.
83.1	Amend to (1) require an attorney to take the required oath or affirmation of admission prior to being allowed to file as a member of this court; (2) update the language in the oath of admission; (3) require a special appearance attorney to certify in writing that he or she will submit any documents to local counsel for review prior to filing; and (4) change the references to “Local 83.1 Counsel” to “Local 83.1(d) Counsel.” Additionally, amend this rule to update references to the revised CM/ECF Policy Manual.
83.10	Add new Rule 83.10 to contain the requirements for the use of courtroom technology, including use of video conferencing equipment.

## Local Civil Rule 5.1

### REDLINED VERSION

#### Rule 5.1 Filing and Service of Papers

##### (a) Electronic Filing

- (1) **Parties' Pleadings and Other Documents.** Unless otherwise permitted by the Electronic Case Filing Administrative Policies and Procedures Manual ("Policy Manual"), or otherwise authorized by the assigned judge, all documents submitted for filing shall be filed electronically in text searchable format using the Case Management/Electronic Case Filing system ("CM/ECF") and in accordance with the Policy Manual. A document shall not be considered filed for the purposes of the Federal Rules of Civil, Criminal, or Appellate Procedure until the filing party receives a system generated Notice of Electronic Filing ("NEF"). Any document electronically filed or converted by the clerk's office to electronic format shall be the official record of the court. As such, the clerk's office will not maintain a paper record of these documents. The clerk's office will not accept any e-mail or facsimile transmission for filing unless ordered by the court.
- (2) **Court-Generated Documents.** All orders, decrees, judgments, and proceedings of the court will be filed in accordance with the Policy Manual, which shall constitute entry of that document on the docket kept by the clerk under Rules 58 and 79 of the Federal Rules of Civil Procedure. All signed orders will be filed electronically by the court or court personnel. Any order or other court-issued document filed electronically without the original signature of a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the order or other court-issued document and as if it had been entered on the docket in a conventional manner. Orders may be 'text only' entries on the docket, without an attached document. Such orders are official and binding.

##### (b) Registered Users

##### (1) Filing Users

Only an attorney who is registered in CM/ECF may file documents electronically. Registration constitutes written consent to service of all documents by electronic means as provided by the Federal Rules of Civil Procedure and the Policy Manual.

**(2) Receiving Users**

A pro se party who is not incarcerated may register to be a receiving user of CM/ECF. A receiving user receives notices of filings by email instead of by regular mail, but may not file electronically. Registration as a receiving user constitutes written consent to service of all documents by electronic means as provided by the Federal Rules of Civil Procedure and the Policy Manual.

**(c) Signature**

The electronic filing of a document by an attorney who is a registered filing user shall constitute the signature of that attorney under Rule 11 of the Federal Rules of Civil Procedure. No attorney shall knowingly permit or cause to permit the attorney's CM/ECF password to be used by anyone other than an authorized employee of the attorney's law firm. No person shall knowingly use or cause another person to use the password of a registered attorney unless such person is an authorized employee of the attorney's law firm.

**(d) Entry on Docket**

The electronic filing of a document in accordance with the Policy Manual shall constitute entry of that document on the docket kept by the clerk under Rule 79 of the Federal Rules of Civil Procedure. Except in the case of documents first filed in paper, a document filed electronically is deemed filed at the date and time stated on the NEF that is automatically generated by CM/ECF.

**(e) Service of Document**

Transmission of the NEF that is automatically generated by CM/ECF, except as provided in (f) below, constitutes service of the filed document on registered party users. Parties who are not registered users must be served with a copy of any document filed electronically in accordance with the Federal Rules of Civil Procedure. When more than one attorney in a law firm appears in a case, and not all of the attorneys are registered filing users, service of any court-generated document (i.e., orders, notices, etc.) will only be made on the attorneys registered in CM/ECF. It is the responsibility of the law firm's electronic users to notify all other firm members appearing in the case who are not receiving electronic notification. Non-registered attorneys will not receive paper copies from the court.

**(f) Exceptions to Electronic Filing**

Documents filed by a party who is not represented by an attorney permitted to practice in the Eastern District of North Carolina and registered in CM/ECF, and those documents listed in Section **HV.A** of the Policy Manual, shall be filed in paper, and are excluded from electronic filing. Any document filed in paper that is not exempt pursuant to this section must be accompanied by a motion for leave to file the document and a proposed order. When filed in paper form, the document must contain the original signature of the attorney or each unrepresented party, and must be served upon opposing parties as provided in Fed. R. Civ. P. 5(b).

### **PROPOSED VERSION**

#### **Rule 5.1 Filing and Service of Papers**

##### **(a) Electronic Filing**

- (1) Parties' Pleadings and Other Documents.** Unless otherwise permitted by the Electronic Case Filing Administrative Policies and Procedures Manual ("Policy Manual"), or otherwise authorized by the assigned judge, all documents submitted for filing shall be filed electronically in text searchable format using the Case Management/Electronic Case Filing system ("CM/ECF") and in accordance with the Policy Manual. A document shall not be considered filed for the purposes of the Federal Rules of Civil, Criminal, or Appellate Procedure until the filing party receives a system generated Notice of Electronic Filing ("NEF"). Any document electronically filed or converted by the clerk's office to electronic format shall be the official record of the court. As such, the clerk's office will not maintain a paper record of these documents. The clerk's office will not accept any e-mail or facsimile transmission for filing unless ordered by the court.
  
- (2) Court-Generated Documents.** All orders, decrees, judgments, and proceedings of the court will be filed in accordance with the Policy Manual, which shall constitute entry of that document on the docket kept by the clerk under Rules 58 and 79 of the Federal Rules of Civil Procedure. All signed orders will be filed electronically by the court or court personnel. Any order or other court-issued document filed electronically without the original signature of a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the order or other court-issued document and as if it had been entered on the docket in a conventional manner. Orders may be 'text only' entries on the docket, without an attached document. Such orders are official and binding.

**(b) Registered Users**

**(1) Filing Users**

Only an attorney who is registered in CM/ECF may file documents electronically. Registration constitutes written consent to service of all documents by electronic means as provided by the Federal Rules of Civil Procedure and the Policy Manual.

**(2) Receiving Users**

A pro se party who is not incarcerated may register to be a receiving user of CM/ECF. A receiving user receives notices of filings by email instead of by regular mail, but may not file electronically. Registration as a receiving user constitutes written consent to service of all documents by electronic means as provided by the Federal Rules of Civil Procedure and the Policy Manual.

**(c) Signature**

The electronic filing of a document by an attorney who is a filing user shall constitute the signature of that attorney under Rule 11 of the Federal Rules of Civil Procedure. No attorney shall knowingly permit or cause to permit the attorney's CM/ECF password to be used by anyone other than an authorized employee of the attorney's law firm. No person shall knowingly use or cause another person to use the password of a registered attorney unless such person is an authorized employee of the attorney's law firm.

**(d) Entry on Docket**

The electronic filing of a document in accordance with the Policy Manual shall constitute entry of that document on the docket kept by the clerk under Rule 79 of the Federal Rules of Civil Procedure. Except in the case of documents first filed in paper, a document filed electronically is deemed filed at the date and time stated on the NEF that is automatically generated by CM/ECF.

**(e) Service of Document**

Transmission of the NEF that is automatically generated by CM/ECF, except as provided in (f) below, constitutes service of the filed document on registered party users. Parties who are not registered users must be served with a copy of any document filed electronically in accordance with the Federal Rules of Civil Procedure. When more than one attorney in a law firm appears in a case, and not

all of the attorneys are registered filing users, service of any court-generated document (i.e., orders, notices, etc.) will only be made on the attorneys registered in CM/ECF. It is the responsibility of the law firm's electronic users to notify all other firm members appearing in the case who are not receiving electronic notification. Non-registered attorneys will not receive paper copies from the court.

**(f) Exceptions to Electronic Filing**

Documents filed by a party who is not represented by an attorney permitted to practice in the Eastern District of North Carolina and registered in CM/ECF, and those documents listed in Section V.A of the Policy Manual, shall be filed in paper, and are excluded from electronic filing. Any document filed in paper that is not exempt pursuant to this section must be accompanied by a motion for leave to file the document and a proposed order. When filed in paper form, the document must contain the original signature of the attorney or each unrepresented party, and must be served upon opposing parties as provided in Fed. R. Civ. P. 5(b).

## Local Civil Rule 5.2

### REDLINED VERSION

**Rule 5.2**      **Appearances in Civil Cases**

\* \* \*

**(b)**      **Notice of Self-Representation**

A **non-incarcerated** party who is proceeding without an attorney shall file a notice of appearance on a form available from the clerk. This notice shall be filed when the party initially appears in the action or as required by subsection (e) of this rule. The self-represented party shall also contemporaneously file a disclosure statement in accordance with Fed. R. Civ. P. 7.1 and Local Civil Rule 7.3.

### PROPOSED VERSION

**Rule 5.2**      **Appearances in Civil Cases**

\* \* \*

**(b)**      **Notice of Self-Representation**

A non-incarcerated party who is proceeding without an attorney shall file a notice of appearance on a form available from the clerk. This notice shall be filed when the party initially appears in the action or as required by subsection (e) of this rule. The self-represented party shall also contemporaneously file a disclosure statement in accordance with Fed. R. Civ. P. 7.1 and Local Civil Rule 7.3.

## Local Civil Rule 5.3

### REDLINED VERSION

#### Rule 5.3 Removal and Post-Removal Procedure

\* \* \*

##### (d) Disclosure of Affiliations and Financial Interest

Within ~~7~~ 14 days after the filing of a notice of removal, all parties shall make the disclosures required by Local Civil Rule 7.3 ~~irrespective of the provisions of subsection (b) of this rule and Local Civil Rule 5.2(a).~~

### PROPOSED VERSION

#### Rule 5.3 Removal and Post-Removal Procedure

\* \* \*

##### (d) Disclosure of Affiliations and Financial Interest

Within 14 days after the filing of a notice of removal, all parties shall make the disclosures required by Local Civil Rule 7.3.

## Local Civil Rule 7.2

### REDLINED VERSION

#### Rule 7.2 Memoranda

\* \* \*

#### (f) Length of Memoranda

- (1) **Page Limits.** Unless the court orders otherwise in advance, or unless the memorandum complies with Local Civil Rule 7.2(f)(2):
  - (A) A ~~M~~memoranda~~um~~ 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, ~~without prior court approval.~~
  - (B) A ~~M~~memoranda~~um~~ in support of or in opposition to a discovery motion shall not exceed 10 pages in length, excluding the certificate of service page, ~~without prior court approval.~~
  - (C) A ~~R~~reply or ~~surreply~~ memoranda~~um~~ (where allowed) shall not exceed 10 pages in length, excluding the certificate of service page, ~~without prior court approval.~~
- (2) **Alternative Word Limits.** A memorandum may exceed the governing page limit in Local Civil Rule 7.1(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) 8400 words for a memorandum in support of or in opposition to a motion other than a discovery motion;
  - (B) 2800 words for a memorandum in support of or in opposition to a discovery motion;
  - (C) 2800 words for a reply or surreply memorandum (where allowed).
- (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**

\* \* \*

##### **(f) Length of Memoranda**

- (1) 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 memorandum (where allowed) shall not exceed 10 pages in length, excluding the certificate of service page.
  
- (2) Alternative Word Limits.** A memorandum may exceed the governing page limit in Local Civil Rule 7.1(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)** 8400 words for a memorandum in support of or in opposition to a motion other than a discovery motion;
  - (B)** 2800 words for a memorandum in support of or in opposition to a discovery motion;
  - (C)** 2800 words for a reply memorandum (where allowed).
  
- (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.

## Local Civil Rule 10.1

### REDLINED VERSION

#### **Rule 10.1 Form of Pleadings, Motions and Documents**

All pleadings, motions, discovery procedures, memoranda and other papers filed with the clerk or the court shall:

\* \* \*

- (k) absent an order of the court upon a showing of good cause, be in the English language unless translations are furnished. Any English translation shall include a certification that the translation is accurate. Partial translations are acceptable if the filing party believes that the portion translated is sufficient to address the issues being litigated. Within 14 days of the filing of the translated document, any opposing party may file objections to the translation or to the partial nature of the translation, or may file additional partial or complete translations of the document as it believes necessary.

### PROPOSED VERSION

#### **Rule 10.1 Form of Pleadings, Motions and Documents**

All pleadings, motions, discovery procedures, memoranda and other papers filed with the clerk or the court shall:

\* \* \*

- (k) absent an order of the court upon a showing of good cause, be in the English language unless translations are furnished. Any English translation shall include a certification that the translation is accurate. Partial translations are acceptable if the filing party believes that the portion translated is sufficient to address the issues being litigated. Within 14 days of the filing of the translated document, any opposing party may file objections to the translation or to the partial nature of the translation, or may file additional partial or complete translations of the document as it believes necessary.

## Local Civil Rules 16.1

### REDLINED VERSION

#### Rule 16.1 Final Civil Pretrial and Conference

##### (a) Scheduling and Notice

A final pretrial conference shall be scheduled in every civil action after the time for discovery has expired. In most actions, the clerk shall give at least ~~28~~ 45 days' notice of such conference. In the court's discretion and upon request of any party or on the court's own initiative, a preliminary or "working" pretrial conference may be scheduled.

\* \* \*

##### (b) Preparation by Counsel for Final Pretrial Conference

\* \* \*

~~(3) If a party has a need for any type of courtroom technology for a hearing or trial, including but not limited to any audio equipment, video equipment, document presentation system, and jury evidentiary recording system, counsel must notify the case manager and request training from the court's information technology staff for the person or persons who will be operating the courtroom technology. Unless excepted by the clerk, no later than 7 days before the scheduled proceeding, counsel must file a certification provided by the court's technology staff that training has been completed.~~

##### (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:

- (1) **Stipulations.** Stipulations covering jurisdiction, joinder, capacity of the parties, all relevant and material facts, legal issues and factual issues.
- (2) **Contentions.** Contentions covering matters on which the parties have been unable to stipulate, including jurisdiction, misjoinder, capacity

of the parties, relevant and material facts, legal issues and factual issues. Claims and defenses as to which no contentions are listed in the pretrial order are deemed abandoned.

- (3) **Exhibits.** A list of exhibits that each party may offer at trial, including any map or diagram, numbered sequentially, which numbers shall remain the same throughout all further proceedings. Copies of all exhibits shall be provided to opposing counsel not later than the attorney conference provided for in Local Civil Rule 16.1(b). The court may excuse the copying of large maps or other exhibits. Except as otherwise indicated in the pretrial order, it will be deemed that all parties stipulate that all exhibits are authentic and may be admitted into evidence without further identification or proof. Grounds for objection as to authenticity or admissibility must be set forth in the pretrial order. When practicable, trial exhibits should carry the same number as in the depositions and references to exhibits in depositions should be changed to refer to the trial exhibit number. It is not necessary to designate exhibits that are to be used solely for impeachment or cross-examination. **Except as otherwise indicated in the pretrial order or ordered by the court, counsel may use any exhibit in opening statements, provided that the exhibit has been listed in the pretrial order, and (a) the opposing party has not objected to it, or (b) any such objection has been overruled prior to opening statement.**
- (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 objections shall be stated. It is not necessary to designate a deposition, any portion of a deposition, or any other discovery material, that is to be used solely for impeachment or cross- examination.
- (5) **Witnesses.** A list of the names and addresses of all witnesses each party may offer at trial, together with a brief statement of what counsel proposes to establish by their testimony.

### **PROPOSED VERSION**

(a) **Scheduling and Notice**

A final pretrial conference shall be scheduled in every civil action after the time for discovery has expired. In most actions, the clerk shall give at least 45 days' notice of such conference. In the court's discretion and upon request of any party or on the court's own initiative, a preliminary or "working" pretrial conference may be scheduled.

\* \* \*

(b) **Preparation by Counsel for Final 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:

- (1) **Stipulations.** Stipulations covering jurisdiction, joinder, capacity of the parties, all relevant and material facts, legal issues and factual issues.
- (2) **Contentions.** Contentions covering matters on which the parties have been unable to stipulate, including jurisdiction, misjoinder, capacity of the parties, relevant and material facts, legal issues and factual issues. Claims and defenses as to which no contentions are listed in the pretrial order are deemed abandoned.
- (3) **Exhibits.** A list of exhibits that each party may offer at trial, including any map or diagram, numbered sequentially, which numbers shall remain the same throughout all further proceedings. Copies of all exhibits shall be provided to opposing counsel not later than the attorney conference provided for in Local Civil Rule 16.1(b). The court may excuse the copying of large maps or other exhibits. Except as otherwise indicated in the pretrial order, it will be deemed that all parties stipulate that all exhibits are authentic and may be admitted into evidence without further identification or proof. Grounds for objection as to authenticity or admissibility must be set forth in the pretrial order. When practicable, trial exhibits should carry the same number as in the depositions and references to exhibits in depositions should

be changed to refer to the trial exhibit number. It is not necessary to designate exhibits that are to be used solely for impeachment or cross-examination. Except as otherwise indicated in the pretrial order or ordered by the court, counsel may use any exhibit in opening statements, provided that the exhibit has been listed in the pretrial order, and (a) the opposing party has not objected to it, or (b) any such objection has been overruled prior to opening statement.

- (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 objections shall be stated. It is not necessary to designate a deposition, any portion of a deposition, or any other discovery material, that is to be used solely for impeachment or cross- examination.
- (5) **Witnesses.** A list of the names and addresses of all witnesses each party may offer at trial, together with a brief statement of what counsel proposes to establish by their testimony.

## Local Civil Rule 26.1

### REDLINED VERSION

**Rule 26.1      Discovery**

\* \* \*

**(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)(1)(B) and 7.2(f)(2)(B)** 10 pages in length, ~~excluding the certificate of service page,~~ and shall otherwise comply with Local Civil Rules 7.1(d) and 7.2.

\* \* \*

**(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 ~~Form 52~~ **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. The parties may include in their report an agreement to mediate and a proposed time table for conducting that mediation.

THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

\_\_\_\_\_ DIVISION  
No. \_\_: \_\_\_\_-CV-\_\_-\_\_

JANE T. SMITH,  
  
Plaintiff,  
  
v.

)  
)  
)  
)  
)

REPORT OF THE PARTIES’  
PLANNING MEETING

AARON R. JONES et al., ) Fed. R. Civ. P. 26(f)  
)  
)  
Defendants. )  
)

1. The following persons participated in a Rule 26(f) conference on <Date> by <State the method of conferring>:

<Name>, representing the <plaintiff>  
<Name>, representing the <defendant>

2. Initial Disclosures. The parties [have completed] [will complete by <Date>] the initial disclosures required by Rule 26(a)(1).

3. Discovery Plan. The parties propose this discovery plan:

<Use separate paragraphs or subparagraphs if the parties disagree.>

- (a) Discovery will be needed on these subjects: <Describe>.
- (b) <Dates for commencing and completing discovery, including discovery to be commenced or completed before other discovery.>
- (c) <Maximum number of interrogatories by each party to another party, along with the dates the answers are due.>
- (d) <Maximum number of requests for admission, along with the dates responses are due.>
- (e) <Maximum number of depositions by each party.>
- (f) <Limits on the length of depositions, in hours.>
- (g) <Dates for exchanging reports of expert witnesses.>
- (h) <Dates for supplementations under Rule 26(e).>
- (i) <Any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced.>
- (j) <Any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502.>

4. Other Items:

- (a) <A date if the parties ask to meet with the court before a scheduling order.>
- (b) <Requested dates for pretrial conferences.>
- (c) <Final dates for the plaintiff to amend pleadings or to join parties.>
- (d) <Final dates for the defendant to amend pleadings or to join parties.>
- (e) <Final dates to file dispositive motions.>
- (f) <State the prospects for settlement.>

- (g) <Identify any alternative dispute resolution procedure that may enhance settlement prospects **and the timing of such procedure.**>
- (h) <Final dates for submitting Rule 26(a)(3) witness lists, designations of witnesses whose testimony will be presented by deposition, and exhibit lists.>
- (i) <Final dates to file objections under Rule 26(a)(3).>
- (j) <Suggested trial date and estimate of trial length.>
- (k) <Other matters.>

Date: <Date>

<Signature of the attorney or unrepresented party>

---

<Printed name>  
<Address>  
<E-mail address>  
<Telephone number>

Date: <Date>

<Signature of the attorney or unrepresented party>

---

<Printed name>  
<Address>  
<E-mail address>  
<Telephone number>

### **PROPOSED VERSION**

#### **Rule 26.1      Discovery**

\* \* \*

##### **(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)(1)(B) and 7.2(f)(2)(B), and shall otherwise comply with Local Civil Rules 7.1(d) and 7.2.

\* \* \*

(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. The parties may include in their report an agreement to mediate and a proposed time table for conducting that mediation.

THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
\_\_\_\_\_  
DIVISION  
No. \_\_: \_\_\_\_-CV-\_\_-\_\_

JANE T. SMITH,	)	
	)	
Plaintiff,	)	
	)	<u>REPORT OF THE PARTIES'</u>
v.	)	<u>PLANNING MEETING</u>
	)	Fed. R. Civ. P. 26(f)
AARON R. JONES et al.,	)	
	)	
Defendants.	)	
	)	

1. The following persons participated in a Rule 26(f) conference on <Date> by <State the method of conferring>:  
  
 <Name>, representing the <plaintiff>  
 <Name>, representing the <defendant>
2. Initial Disclosures. The parties [have completed] [will complete by <Date>] the initial disclosures required by Rule 26(a)(1).
3. Discovery Plan. The parties propose this discovery plan:  
  
 <Use separate paragraphs or subparagraphs if the parties disagree.>

- (a) Discovery will be needed on these subjects: <Describe>.
- (b) <Dates for commencing and completing discovery, including discovery to be commenced or completed before other discovery.>
- (c) <Maximum number of interrogatories by each party to another party, along with the dates the answers are due.>
- (d) <Maximum number of requests for admission, along with the dates responses are due.>
- (e) <Maximum number of depositions by each party.>
- (f) <Limits on the length of depositions, in hours.>
- (g) <Dates for exchanging reports of expert witnesses.>
- (h) <Dates for supplementations under Rule 26(e).>
- (i) <Any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced.>
- (j) <Any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502.>

4. Other Items:

- (a) <A date if the parties ask to meet with the court before a scheduling order.>
- (b) <Requested dates for pretrial conferences.>
- (c) <Final dates for the plaintiff to amend pleadings or to join parties.>
- (d) <Final dates for the defendant to amend pleadings or to join parties.>
- (e) <Final dates to file dispositive motions.>
- (f) <State the prospects for settlement.>
- (g) <Identify any alternative dispute resolution procedure that may enhance settlement prospects and the timing of such procedure.>
- (h) <Final dates for submitting Rule 26(a)(3) witness lists, designations of witnesses whose testimony will be presented by deposition, and exhibit lists.>
- (i) <Final dates to file objections under Rule 26(a)(3).>
- (j) <Suggested trial date and estimate of trial length.>
- (k) <Other matters.>

Date: <Date>

<Signature of the attorney or unrepresented party>

---

<Printed name>

<Address>

<E-mail address>

<Telephone number>

Date: <Date>

<Signature of the attorney or unrepresented party>

---

<Printed name>

<Address>

<E-mail address>

<Telephone number>

## Local Civil Rule 56.1

### REDLINED VERSION

#### Rule 56.1 Motions for Summary Judgment

##### (a) Statement of Material Facts on Motion for Summary Judgment.

- (1) **Movant's Statement.** Any motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 shall be supported by a separate statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine dispute.
- (2) **Opposing Statement.** The memorandum opposing a motion for summary judgment shall be supported by a separate statement including a response to each numbered paragraph in the moving party's statement, in correspondingly numbered paragraphs, and if necessary, additional paragraphs containing a statement of additional material facts as to which the opposing party contends there is a genuine dispute. Each numbered paragraph in the moving party's statement of material facts will be deemed admitted for purposes of the motion unless it is specifically controverted by a correspondingly numbered paragraph in the opposing statement.
- (3) **Reply Statement.** When a party opposing summary judgment submits a statement of additional material facts as to which it contends there is a genuine dispute, the moving party may submit a reply statement of additional facts limited to the additional facts referenced in the statement submitted by the party opposing summary judgment.
- (34) **Citations.** Each statement by the movant or opponent pursuant to this Local Civil Rule must be followed by citation to evidence that would be admissible, as required by Federal Rule of Civil Procedure 56(c). Citations shall identify with specificity the relevant page and paragraph or line number of the evidence cited.
- (45) **Appendix.** All evidence cited in moving or opposing statements, such as affidavits, relevant deposition testimony, responses to discovery requests, or other documents shall be filed as an appendix to the statement of facts prescribed by subsections (1) or (2) and denominated "Plaintiff's/Defendant's Appendix to Local Civil Rule 56.1 Statement of Material Facts."

\* \* \*

**PROPOSED VERSION**

**Rule 56.1 Motions for Summary Judgment**

**(a) Statement of Material Facts on Motion for Summary Judgment.**

- (1) Movant's Statement.** Any motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 shall be supported by a separate statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine dispute.
- (2) Opposing Statement.** The memorandum opposing a motion for summary judgment shall be supported by a separate statement including a response to each numbered paragraph in the moving party's statement, in correspondingly numbered paragraphs, and if necessary, additional paragraphs containing a statement of additional material facts as to which the opposing party contends there is a genuine dispute. Each numbered paragraph in the moving party's statement of material facts will be deemed admitted for purposes of the motion unless it is specifically controverted by a correspondingly numbered paragraph in the opposing statement.
- (3) Reply Statement.** When a party opposing summary judgment submits a statement of additional material facts as to which it contends there is a genuine dispute, the moving party may submit a reply statement of additional facts limited to the additional facts referenced in the statement submitted by the party opposing summary judgment.
- (4) Citations.** Each statement by the movant or opponent pursuant to this Local Civil Rule must be followed by citation to evidence that would be admissible, as required by Federal Rule of Civil Procedure 56(c). Citations shall identify with specificity the relevant page and paragraph or line number of the evidence cited.
- (5) Appendix.** All evidence cited in moving or opposing statements, such as affidavits, relevant deposition testimony, responses to discovery requests, or other documents shall be filed as an appendix

to the statement of facts prescribed by subsections (1) or (2) and denominated “Plaintiff’s/Defendant’s Appendix to Local Civil Rule 56.1 Statement of Material Facts.”

\* \* \*

## Local Civil Rule 67.1

### REDLINED VERSION

**[Rule 67.1] [Deposit of Registry Funds in Interest Bearing Accounts]**

(Abrogated eff. March 16, 2017)

See 17-SO-1.

~~A party seeking to have interest accrue on funds deposited into the court registry shall file a motion requesting deposit of the funds into an interest bearing account. Upon appropriate order of the court directing the clerk to place registry funds into interest bearing accounts, counsel shall confer with the clerk, within 7 days after receipt of the order, concerning the manner and place of investment. If counsel and the clerk do not agree, the clerk shall seek further direction from the court. No officer or employee of this court shall incur any liability for failure to invest or for improper investment unless counsel have complied with their obligations under this local rule.~~

### PROPOSED VERSION

**[Rule 67.1] [Deposit of Registry Funds in Interest Bearing Accounts]**

(Abrogated eff. March 16, 2017)

See 17-SO-1.

## Local Civil Rule 72.4

### REDLINED VERSION

#### Rule 72.4 Review and Appeal

(a) **Review and Appeal of Non-Dispositive Matters – 28 U.S.C. § 636(b)(1)(A).**

- (1) Any party may appeal from a magistrate judge's order determining a motion or matter under ~~28 U.S.C. 636(b)(1)(A) Local Civil Rule 72.3(b)~~ **within** 14 days after service of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a judge. Such party shall file with the clerk, and serve on ~~the magistrate judge and~~ all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. Any party may respond to another party's statement of appeal within 14 days after being served with a copy thereof, unless otherwise ordered by the court.
- (2) **The statement of appeal and any response thereto shall meet the requirements applicable to memoranda in support of or in opposition to a discovery motion in Local Civil Rule 7.2.**
- (3) **Replies are not permitted absent leave of court.**
- (4) A judge shall consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law, **unless some other standard of review is provided by applicable law.** The judge may also reconsider *sua sponte* any matters determined by a magistrate judge under this local rule.

(b) **Review of Case-Dispositive Motions and Prisoner Litigation — 28 U.S.C. § 636(b)(1)(B).**

- (1) Any party may object to a magistrate judge's proposed findings, recommendations or report under ~~28 U.S.C. 636(b)(1)(B) Local Civil Rules 72.3(e), 72.3(d) or 72.3(e)~~, within 14 days after being served with a copy thereof, unless otherwise ordered by the court. Such party shall file with the clerk, and serve on ~~the magistrate judge and~~ all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objection. Any party may respond to another party's

objections within 14 days after being served with a copy thereof, unless otherwise ordered by the court.

- (2) The objections and any response thereto shall meet the requirements applicable to memoranda in support of or in opposition to a non-discovery motion in Local Civil Rule 7.2.
- (3) Replies to responses are not permitted absent leave of court.
- (4) A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, needs to conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses, or recommit the matter to the magistrate judge with instructions.

### **PROPOSED VERSION**

#### **Rule 72.4      Review and Appeal**

**(a)      Review and Appeal of Non-Dispositive Matters – 28 U.S.C. § 636(b)(1)(A).**

- (1) Any party may appeal from a magistrate judge's order determining a motion or matter under 28 U.S.C. 636(b)(1)(A) within 14 days after service of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a judge. Such party shall file with the clerk, and serve on all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. Any party may respond to another party's statement of appeal within 14 days after being served with a copy thereof, unless otherwise ordered by the court.
- (2) The statement of appeal and any response thereto shall meet the requirements applicable to memoranda in support of or in opposition to a discovery motion in Local Civil Rule 7.2.
- (3) Replies are not permitted absent leave of court.

(4) A judge shall consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law, unless some other standard of review is provided by applicable law. The judge may also reconsider *sua sponte* any matters determined by a magistrate judge under this local rule.

**(b) Review of Case-Dispositive Motions and Prisoner Litigation — 28 U.S.C. § 636(b)(1)(B).**

(1) Any party may object to a magistrate judge's proposed findings, recommendations or report under 28 U.S.C. 636(b)(1)(B), within 14 days after being served with a copy thereof, unless otherwise ordered by the court. Such party shall file with the clerk, and serve on all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objection. Any party may respond to another party's objections within 14 days after being served with a copy thereof, unless otherwise ordered by the court.

(2) The objections and any response thereto shall meet the requirements applicable to memoranda in support of or in opposition to a non-discovery motion in Local Civil Rule 7.2.

(3) Replies to responses are not permitted absent leave of court.

(4) A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, needs to conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses, or recommit the matter to the magistrate judge with instructions.

## Local Civil Rule 79.2

### REDLINED VERSION

#### Rule 79.2 Sealed Documents

(a) **Filing Sealed Documents.**

No cases or documents may be sealed without an order from the court. A party desiring to file a document under seal must first file a motion seeking leave in accordance with Section ~~¶~~V.G of the CM/ECF Policy Manual. All sealed and proposed documents shall be maintained electronically in CM/ECF unless otherwise ordered by the court. First-time filers are strongly encouraged to call the CM/ECF Help Desk at 866-855-8894.

(b) **Proposed Sealed Documents.**

(1) Unless otherwise permitted by Section ~~¶~~V.G of the CM/ECF Policy Manual or order of the court, all proposed sealed documents must be accompanied by a motion to seal. The motion to seal shall be a public document and noted with a docket entry that gives the public notice of the request to seal. The docket entry for the proposed sealed document shall identify it as a “proposed” sealed document and describe the type of document it is (e.g., affidavit, record) and the substantive motion or other specific proceedings in the case to which it relates (e.g., in support of defendant’s motion to compel at D.E. \_\_\_\_). The proposed sealed document is deemed to be provisionally sealed until the court rules on the motion to seal.

\* \* \*

(d) **Procedures for Manual Filers.**

For those parties who are required to manually file all court documents (i.e., *pro se* litigants), proposed sealed documents shall be delivered to the clerk’s office in paper form in a sealed envelope. The proposed sealed documents must be accompanied by a motion to seal in accordance with Section ~~¶~~V.G of the CM/ECF Policy Manual. Both the documents and the envelope shall be prominently labeled “UNDER SEAL.” The envelope must also have written on it: the case caption; the case number; the title of the document or, if the title contains proposed sealed information, the title omitting the proposed sealed information; and the following notice in all capital letters and otherwise prominently displayed:

PROPOSED SEALED DOCUMENTS: SUBMITTED PURSUANT TO MOTION TO SEAL.

**PROPOSED VERSION**

**Rule 79.2 Sealed Documents**

**(a) Filing Sealed Documents.**

No cases or documents may be sealed without an order from the court. A party desiring to file a document under seal must first file a motion seeking leave in accordance with Section V.G of the CM/ECF Policy Manual. All sealed and proposed documents shall be maintained electronically in CM/ECF unless otherwise ordered by the court. First-time filers are strongly encouraged to call the CM/ECF Help Desk at 866-855-8894.

**(b) Proposed Sealed Documents.**

**(1)** Unless otherwise permitted by Section V.G of the CM/ECF Policy Manual or order of the court, all proposed sealed documents must be accompanied by a motion to seal. The motion to seal shall be a public document and noted with a docket entry that gives the public notice of the request to seal. The docket entry for the proposed sealed document shall identify it as a “proposed” sealed document and describe the type of document it is (e.g., affidavit, record) and the substantive motion or other specific proceedings in the case to which it relates (e.g., in support of defendant’s motion to compel at D.E. \_\_\_\_). The proposed sealed document is deemed to be provisionally sealed until the court rules on the motion to seal.

\* \* \*

**(d) Procedures for Manual Filers.**

For those parties who are required to manually file all court documents (i.e., *pro se* litigants), proposed sealed documents shall be delivered to the clerk's office in paper form in a sealed envelope. The proposed sealed documents must be accompanied by a motion to seal in accordance with Section V.G of the CM/ECF Policy Manual. Both the documents and the envelope shall be prominently labeled "UNDER SEAL." The envelope must also have written on it: the case caption; the case number; the title of the document or, if the title contains proposed sealed information, the title omitting the proposed sealed information; and the following notice in all capital letters and otherwise prominently displayed:

PROPOSED SEALED DOCUMENTS: SUBMITTED PURSUANT TO MOTION  
TO SEAL.

## Local Civil Rule 83.1

### REDLINED VERSION

#### Rule 83.1 Attorneys

(a) **Roll of Attorneys.**

The bar of this court consists of those previously admitted and those hereafter admitted as prescribed by this Local Civil Rule 83.1.

(b) **Eligibility.**

A member in good standing of the bar of the Supreme Court of North Carolina is eligible for admission to the bar of this court.

(c) **Procedure for Admission.**

Before being presented to the court for taking the required oath, an applicant for admission shall certify in a written application that such applicant:

- (1) Is a member in good standing of the bar of the Supreme Court of North Carolina; and
- (2) Has studied the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, and the local rules of this court.

In addition to these certifications, the written application shall contain the certification of two attorneys who are members in good standing of the bar of this court that the applicant is of good moral character and professional reputation and meets the requirements for admission. An applicant may be admitted to practice in this court by a district judge, bankruptcy judge, or magistrate judge of this court or of the United States District Court for the Middle District or Western District of North Carolina upon oral motion by a member of the bar of this court. If the motion for admission is granted, the applicant shall take the following oath or affirmation:

*I do solemnly swear **[affirm]** that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will ~~demean~~ **[conduct]** myself as an attorney of this court, uprightly and according to law. So help me God. **[This is my solemn affirmation.]***

Following the administration of the oath **or affirmation**, the application shall be signed by the district judge, bankruptcy judge, or magistrate judge and the applicant shall file with the clerk the application, accompanied by the filing fee required by the Administrative Office of the United States Courts and this court for admission to practice in this district. The clerk shall then issue the applicant a certificate of admission to the bar of this court. ~~Upon the filing of a properly certified and executed application accompanied by the admission fee, the clerk may accept for filing papers signed by the applicant. However, no applicant shall make an appearance on behalf of a client, either before a district judge, bankruptcy judge, or magistrate judge, by telephone conference or in person, until the applicant has taken the oath.~~

(3) Current law clerks to district judges, bankruptcy judges, and magistrate judges within this District shall be admitted to the bar of this court without payment of an admission fee.

**(d) Representation by Local Counsel Who Must Sign All Pleadings**

Litigants in civil actions, except governmental agencies and parties appearing *pro se*, must be represented by at least one member of the bar of this court who shall sign all documents filed in this court, including his or her state bar number and fax number in the signature block on all pleadings. If an attorney appears solely to bring the litigant in compliance with this local rule, he or she shall in each instance designate himself or herself "Local Civil Rule 83.1(d) Counsel." In signing the pleading, motion, discovery request or other document, counsel certifies that he or she is an authorized representative for communication with the court about the litigation, and the document conforms to the practice and procedure of this court. However, counsel does not make the certification required by Rule 11 of the Federal Rules of Civil Procedure. Nevertheless, the requirements of Rule 11 must be complied with by out-of-state counsel. **For failure to comply with the requirements of this rule, the court may on motion or its own initiative disqualify individuals from serving as local counsel.** Signatures in the following form shall be sufficient to comply with this local rule. Local Civil Rule 83.1(d) Local Counsel must include the state bar number and fax number in the signature block on all pleadings:

Jane M. Jones  
Jones, Jones and Jones  
P.O. Box 500  
New York, NY 10050  
(212) 555-1212  
Jane.jones@email.address.com

State Bar No.  
Attorney for Defendant

John B. Counselor  
Abbott, Ball and Counselor  
P.O. Box 50  
Raleigh, NC 27602  
John.B.Counselor@email.address.com  
(919) 878-8787  
Fax (919) 878-8000  
State Bar No.  
Local Civil Rule 83.1(d) Counsel for Defendant

**(e) Appearances by Attorneys Not Admitted in the District – Special Appearance.**

- (1)** Attorneys who are members in good standing of the bar of a United States Court and the bar of the highest court of any state or the District of Columbia may practice in this court for a particular case in association with a member of the bar of this court. By filing a Notice of **Special Appearance (available on the district's website)**, completing an Electronic Filing Attorney Registration Form, and complying with Section ~~J-(4)~~**IV.D** of the Policy Manual, an attorney agrees that:
  - (a)** the special appearance attorney will be responsible for ensuring the presence of an attorney who is familiar with the case and has authority to control the litigation at all conferences, hearings, trials and other proceedings;
  - (b)** the attorney submits to the disciplinary jurisdiction of the court for any misconduct in connection with the litigation in which the attorney is specially appearing; ~~and~~
  - (c)** for purposes of Fed. R. Civ. P. 11, the Federal Rules of Civil Procedure and the Local Civil Rules of this court, the special appearance attorney's electronic signature shall carry the same force and effect as an original signature.; **and**
  - (d)** **the special appearance attorney shall submit any document to Local Civil Rule 83.1 counsel for review prior to filing the document with this court.**
- (2)** An attorney who is not a member of the bar of this court will not receive electronic notification until the attorney becomes a registered CM/ECF filer with this court and files a Notice of **Special Appearance**.

- (3) A member of the bar of this court who accepts employment in association with a special appearance attorney is responsible to this court for the conduct of the litigation of the proceeding, must be a CM/ECF registrant and shall review for submission by the special appearance attorney all pleadings and papers electronically filed ~~in compliance with Section J.(1) of the Policy Manual~~. The responsibility of the member of the bar who accepts employment in association with a special appearance attorney and designates him or herself as Local Civil Rule 83.1(d) local counsel shall be governed by Local Civil Rule 83.1(d).
- (4) Any document filed by a special appearance attorney that does not comport with associated Local Civil Rule 83.1(d) counsel's standards may be objected to. Any such objection must be filed within 7 days of the issuance of the NEF for the document.
- (5) A special appearance is not a substitute for admission to the bar of this court, but rather is intended to facilitate occasional appearances only. Unless otherwise ordered for good cause shown, no attorney may be admitted pursuant to Local Civil Rule 83.1 in more than three unrelated cases in any twelve-month period, nor may any attorney be admitted pursuant to Local Civil Rule 83.1 in more than three active unrelated cases at any one time.

**(f) Pleadings Service and Attendance by Local Counsel in Cases Where Out-of-State Attorneys Appear by Special Appearance.**

Pleadings and other documents filed in a case where an attorney appears who is not admitted to the bar of this court shall contain the individual name, firm name, address and phone number of both the attorney making a special appearance under this local rule and the associated local counsel. As part of making an appearance in every case, an attorney also shall file contemporaneously a client disclosure statement in accordance with Fed. R. Civ. P. 7.1 and Local Civil Rule 7.3. The service of all pleadings and notices as required shall be sufficient if served only upon the associated local counsel. Local counsel shall attend all court proceedings unless excused by the court.

\* \* \*

**PROPOSED VERSION**

**Rule 83.1 Attorneys**

**(d) Roll of Attorneys.**

The bar of this court consists of those previously admitted and those hereafter admitted as prescribed by this Local Civil Rule 83.1.

**(e) Eligibility.**

A member in good standing of the bar of the Supreme Court of North Carolina is eligible for admission to the bar of this court.

**(f) Procedure for Admission.**

Before being presented to the court for taking the required oath, an applicant for admission shall certify in a written application that such applicant:

- (1)** Is a member in good standing of the bar of the Supreme Court of North Carolina; and
- (2)** Has studied the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, and the local rules of this court.

In addition to these certifications, the written application shall contain the certification of two attorneys who are members in good standing of the bar of this court that the applicant is of good moral character and professional reputation and meets the requirements for admission. An applicant may be admitted to practice in this court by a district judge, bankruptcy judge, or magistrate judge of this court or of the United States District Court for the Middle District or Western District of North Carolina upon oral motion by a member of the bar of this court. If the motion for admission is granted, the applicant shall take the following oath or affirmation:

*I do solemnly swear [affirm] that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will [conduct] myself as an attorney of this court, uprightly and according to law. So help me God.  
[This is my solemn affirmation.]*

Following the administration of the oath or affirmation, the application shall be signed by the district judge, bankruptcy judge, or magistrate judge and the applicant shall file with the clerk the application, accompanied by the filing fee required by the Administrative Office of the United States Courts and this court for admission to practice in this district. The clerk shall then issue the applicant a certificate of admission to the bar of this court.

- (3) Current law clerks to district judges, bankruptcy judges, and magistrate judges within this District shall be admitted to the bar of this court without payment of an admission fee.

**(d) Representation by Local Counsel Who Must Sign All Pleadings**

Litigants in civil actions, except governmental agencies and parties appearing *pro se*, must be represented by at least one member of the bar of this court who shall sign all documents filed in this court, including his or her state bar number and fax number in the signature block on all pleadings. If an attorney appears solely to bring the litigant in compliance with this local rule, he or she shall in each instance designate himself or herself "Local Civil Rule 83.1(d) Counsel." In signing the pleading, motion, discovery request or other document, counsel certifies that he or she is an authorized representative for communication with the court about the litigation, and the document conforms to the practice and procedure of this court. However, counsel does not make the certification required by Rule 11 of the Federal Rules of Civil Procedure. Nevertheless, the requirements of Rule 11 must be complied with by out-of-state counsel. For failure to comply with the requirements of this rule, the court may on motion or its own initiative disqualify individuals from serving as local counsel. Signatures in the following form shall be sufficient to comply with this local rule. Local Civil Rule 83.1(d) Local Counsel must include the state bar number and fax number in the signature block on all pleadings:

Jane M. Jones  
Jones, Jones and Jones  
P.O. Box 500  
New York, NY 10050  
(212) 555-1212  
Jane.jones@email.address.com  
State Bar No.  
Attorney for Defendant

John B. Counselor  
Abbott, Ball and Counselor  
P.O. Box 50  
Raleigh, NC 27602  
John.B.Counselor@email.address.com  
(919) 878-8787  
Fax (919) 878-8000  
State Bar No.

Local Civil Rule 83.1(d) Counsel for Defendant

- (e) **Appearances by Attorneys Not Admitted in the District – Special Appearance.**
- (1) Attorneys who are members in good standing of the bar of a United States Court and the bar of the highest court of any state or the District of Columbia may practice in this court for a particular case in association with a member of the bar of this court. By filing a Notice of Special Appearance (available on the district’s website), completing an Electronic Filing Attorney Registration Form, and complying with Section IV.D of the Policy Manual, an attorney agrees that:
    - (a) the special appearance attorney will be responsible for ensuring the presence of an attorney who is familiar with the case and has authority to control the litigation at all conferences, hearings, trials and other proceedings;
    - (b) the attorney submits to the disciplinary jurisdiction of the court for any misconduct in connection with the litigation in which the attorney is specially appearing;
    - (c) for purposes of Fed. R. Civ. P. 11, the Federal Rules of Civil Procedure and the Local Civil Rules of this court, the special appearance attorney’s electronic signature shall carry the same force and effect as an original signature; and
    - (d) the special appearance attorney shall submit any document to Local Civil Rule 83.1(d) counsel for review prior to filing the document with this court.
  - (2) An attorney who is not a member of the bar of this court will not receive electronic notification until the attorney becomes a registered CM/ECF filer with this court and files a Notice of Special Appearance.
  - (3) A member of the bar of this court who accepts employment in association with a special appearance attorney is responsible to this court for the conduct of the litigation of the proceeding, must be a CM/ECF registrant and shall review for submission by the special appearance attorney all pleadings and papers electronically filed. The responsibility of the member of the bar who accepts employment in association with a special appearance attorney and designates him or herself as Local Civil Rule 83.1(d) local counsel shall be governed by Local Civil Rule 83.1(d).
  - (4) Any document filed by a special appearance attorney that does not comport with associated Local Civil Rule 83.1(d) counsel’s standards may be objected to. Any such objection must be filed within 7 days of the issuance of the NEF for the document.

(5) A special appearance is not a substitute for admission to the bar of this court, but rather is intended to facilitate occasional appearances only. Unless otherwise ordered for good cause shown, no attorney may be admitted pursuant to Local Civil Rule 83.1 in more than three unrelated cases in any twelve-month period, nor may any attorney be admitted pursuant to Local Civil Rule 83.1 in more than three active unrelated cases at any one time.

(f) **Pleadings Service and Attendance by Local Counsel in Cases Where Out-of-State Attorneys Appear by Special Appearance.**

Pleadings and other documents filed in a case where an attorney appears who is not admitted to the bar of this court shall contain the individual name, firm name, address and phone number of both the attorney making a special appearance under this local rule and the associated local counsel. As part of making an appearance in every case, an attorney also shall file contemporaneously a client disclosure statement in accordance with Fed. R. Civ. P. 7.1 and Local Civil Rule 7.3. The service of all pleadings and notices as required shall be sufficient if served only upon the associated local counsel. Local counsel shall attend all court proceedings unless excused by the court.

\* \* \*

## Local Civil Rule 83.10

### REDLINED VERSION

#### **Rule 83.10 Courtroom Technology**

##### **(a) Video Teleconferencing**

If a party has a need for use of video teleconference (“VTC”) technology for a hearing or trial, the party shall file a motion seeking leave of the court for use of the technology no later than 14 days prior to the scheduled proceeding. If the court allows the motion, the party shall submit a VTC Request Form (available from the clerk) to the court no later than 7 days before the scheduled proceeding.

##### **(b) Training**

If a party has a need for any type of courtroom technology, other than VTC, for a hearing or trial, including but not limited to any audio equipment, video equipment, document presentation system, and jury evidentiary recording system, counsel must notify the case manager and request training from the court’s information technology staff for the person or persons who will be operating the courtroom technology. Unless excepted by the clerk, no later than 7 days before the scheduled proceeding, counsel must file a certification provided by the court’s technology staff that the required training has been completed.

### PROPOSED VERSION

#### **Rule 83.10 Courtroom Technology**

##### **(a) Video Teleconferencing**

If a party has a need for use of video teleconference (“VTC”) technology for a hearing or trial, the party shall file a motion seeking leave of the court for use of the technology no later than 14 days prior to the scheduled proceeding. If the court allows the motion, the party shall submit a VTC Request Form (available from the clerk) to the court no later than 7 days before the scheduled proceeding.

##### **(b) Training**

If a party has a need for any type of courtroom technology, other than VTC, for a hearing or trial, including but not limited to any audio equipment, video equipment, document presentation system, and jury evidentiary recording system, counsel must notify the case manager and request training from the court's information technology staff for the person or persons who will be operating the courtroom technology. Unless excepted by the clerk, no later than 7 days before the scheduled proceeding, counsel must file a certification provided by the court's technology staff that the required training has been completed.

<b>SUMMARY OF PROPOSED AMENDMENTS UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA LOCAL CRIMINAL RULES OF PRACTICE AND PROCEDURE<sup>3</sup>  June 2017</b>	
<b>Affected Local Criminal Rule</b>	<b>Proposed Change in Rule</b>
47.3	Add subsection (k) to provide that absent an order of the court, all materials filed with the court shall be in the English language unless translations are furnished.
49.1	Amend to update reference to revised CM/ECF Policy Manual.
55.2	Amend to update references to the revised CM/ECF Policy Manual.
57.1	Amend to (1) require an attorney take the required oath or affirmation of admission prior to being allowed to file as a member of this court; (2) update the language in the oath of admission; (3) require a special appearance attorney to certify in writing that he or she will submit any documents to local counsel for review prior to filing; and (4) change the references to “Local 57.1 Counsel” to “Local 57.1(d) Counsel.” Additionally, amend this rule to update references to the revised CM/ECF Policy Manual.

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<sup>3</sup> 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 or proposed technical amendments.

## Local Criminal Rule 47.3

### REDLINED VERSION

#### **Rule 47.3 Form of Pleadings, Motions and Documents**

All pleadings, motions, discovery procedures, memoranda and other papers filed with the clerk or the court shall:

\* \* \*

- (k) absent an order of the court upon a showing of good cause, be in the English language unless translations are furnished. Any English translation shall include a certification that the translation is accurate. Partial translations are acceptable if the filing party believes that the portion translated is sufficient to address the issues being litigated. Within 14 days of the filing of the translated document, any opposing party may file objections to the translation or to the partial nature of the translation, or may file additional partial or complete translations of the document as it believes necessary.

### PROPOSED VERSION

#### **Rule 47.3 Form of Pleadings, Motions and Documents**

All pleadings, motions, discovery procedures, memoranda and other papers filed with the clerk or the court shall:

\* \* \*

- (k) absent an order of the court upon a showing of good cause, be in the English language unless translations are furnished. Any English translation shall include a certification that the translation is accurate. Partial translations are acceptable if the filing party believes that the portion translated is sufficient to address the issues being litigated. Within 14 days of the filing of the translated document, any opposing party may file objections to the translation or to the partial nature of the translation, or may file additional partial or complete translations of the document as it believes necessary.

## Local Criminal Rule 49.1

### REDLINED VERSION

#### **Rule 49.1 Filing and Service of Papers**

\* \* \*

##### **(f) Exceptions to Electronic Filing.**

Documents filed by a party who is not represented by an attorney permitted to practice in the Eastern District of North Carolina and registered in CM/ECF, and those documents listed in Section ~~H~~V.A of the [Policy Manual](#), shall be filed in paper, and are excluded from electronic filing. Any document filed in paper that is not exempt pursuant to this section must be accompanied by a motion for leave to file the document and a proposed order. When filed in paper form, the document must have an original signature, and must be served upon opposing parties as provided in Rule 5(b) of the [Federal Rules of Civil Procedure](#).

### PROPOSED VERSION

#### **Rule 49.1 Filing and Service of Papers**

\* \* \*

##### **(f) Exceptions to Electronic Filing.**

Documents filed by a party who is not represented by an attorney permitted to practice in the Eastern District of North Carolina and registered in CM/ECF, and those documents listed in Section V.A of the [Policy Manual](#), shall be filed in paper, and are excluded from electronic filing. Any document filed in paper that is not exempt pursuant to this section must be accompanied by a motion for leave to file the document and a proposed order. When filed in paper form, the document must have an original signature, and must be served upon opposing parties as provided in Rule 5(b) of the [Federal Rules of Civil Procedure](#).

## Local Criminal Rule 55.2

### REDLINED VERSION

#### Rule 55.2 Sealed Documents

(a) **Filing Sealed Documents.**

No cases or documents may be sealed without an order from the court. A party desiring to file a document under seal must first file a motion seeking leave in accordance with Section ~~F~~V.G of the CM/ECF [Policy Manual](#). All sealed and proposed documents shall be maintained electronically in CM/ECF unless otherwise ordered by the court. First-time filers are strongly encouraged to call the CM/ECF Help Desk at 866-855-8894.

(b) **Proposed Sealed Documents.**

- (1) Unless otherwise permitted by Section ~~F~~V.G of the CM/ECF [Policy Manual](#) or order of the court, all proposed sealed documents must be accompanied by a motion to seal. The motion to seal shall be a public document and noted with a docket entry that gives the public notice of the request to seal. The docket entry for the proposed sealed document shall identify it as a “proposed” sealed document and describe the type of document it is (e.g., affidavit, record) and the substantive motion or other specific proceedings in the case to which it relates (e.g., in support of defendant’s motion to compel at D.E. \_\_\_\_). The proposed sealed document is deemed to be provisionally sealed until the court rules on the motion to seal.
- (2) If the motion to seal is granted, the clerk will remove the word “proposed” from the docket entry.
- (3) If the motion to seal is denied, the document will remain sealed and the word “proposed” will remain in the docket entry for the document in order to preserve the record. The document will not be considered by the court, except as provided herein or as otherwise ordered by the court. A party desiring to remove a proposed sealed document or docket entry therefor from the docket sheet must file a motion to strike in accordance with [Local Criminal Rule 47.1](#). A party whose motion to seal is denied but that desires the court to consider a proposed sealed document as a publicly filed

document shall file the document as a public document within 3 days after entry of the order denying the motion to seal or within such other period as the court directs.

**(c) Return of Sealed Documents.**

- (1)** For those sealed documents not scanned into CM/ECF, upon 14 days' notice to all parties, the clerk may destroy or dispose of the sealed documents, unless the attorney or party who filed them retrieves them from the clerk. This notice may occur no earlier than 30 days after the judgment of conviction has become final and the one-year period of limitation within which to file a motion under 28 U.S.C. § 2255 has expired, and in the event a § 2255 motion is filed, then after the conclusion of the litigation. If the trial results in an acquittal or dismissal as to all counts and all defendants, then the 30-day period would begin to run from the date of the jury verdict or the court's order of acquittal or dismissal, unless the Government appeals, in which case the period would begin to run after that appellate litigation has been completed and any proceedings on remand have become final.
- (2)** If, during the fourteen-day period after the clerk has given notice of intent to dispose of the sealed documents, any party files an objection to such disposition, the presiding judge in the case shall resolve the dispute over the proposed disposition.

**(d) Procedures for Manual Filers.**

For those parties who are required to manually file all court documents (i.e., *pro se* litigants), proposed sealed documents shall be delivered to the clerk's office in paper form in a sealed envelope. The proposed sealed documents must be accompanied by a motion to seal in accordance with Section **IV.G** of the CM/ECF [Policy Manual](#). Both the documents and the envelope shall be prominently labeled "UNDER SEAL." The envelope must also have written on it: the case caption; the case number; the title of the document or, if the title contains proposed sealed information, the title omitting the proposed sealed information; and the following notice in all capital letters and otherwise prominently displayed:

PROPOSED SEALED DOCUMENTS: SUBMITTED PURSUANT TO MOTION TO SEAL.

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**PROPOSED VERSION**

**Rule 55.2      Sealed Documents**

**(a)      Filing Sealed Documents.**

No cases or documents may be sealed without an order from the court. A party desiring to file a document under seal must first file a motion seeking leave in accordance with Section V.G of the CM/ECF [Policy Manual](#). All sealed and proposed documents shall be maintained electronically in CM/ECF unless otherwise ordered by the court. First-time filers are strongly encouraged to call the CM/ECF Help Desk at 866-855-8894.

**(b)      Proposed Sealed Documents.**

- (1)**      Unless otherwise permitted by Section V.G of the CM/ECF [Policy Manual](#) or order of the court, all proposed sealed documents must be accompanied by a motion to seal. The motion to seal shall be a public document and noted with a docket entry that gives the public notice of the request to seal. The docket entry for the proposed sealed document shall identify it as a “proposed” sealed document and describe the type of document it is (e.g., affidavit, record) and the substantive motion or other specific proceedings in the case to which it relates (e.g., in support of defendant’s motion to compel at D.E. \_\_\_\_). The proposed sealed document is deemed to be provisionally sealed until the court rules on the motion to seal.
- (2)**      If the motion to seal is granted, the clerk will remove the word “proposed” from the docket entry.
- (3)**      If the motion to seal is denied, the document will remain sealed and the word “proposed” will remain in the docket entry for the document in order to preserve the record. The document will not be considered by the court, except as provided herein or as otherwise ordered by the court. A party desiring to remove a proposed sealed document or docket entry therefor from the docket sheet must file a motion to strike in accordance with [Local Criminal Rule 47.1](#). A party whose motion to seal is denied but that desires the court to consider a proposed sealed document as a publicly filed document shall file the document as a public document within 3 days after entry of the order denying the motion to seal or within such other period as the court directs.

**(c)      Return of Sealed Documents.**

- (1) For those sealed documents not scanned into CM/ECF, upon 14 days' notice to all parties, the clerk may destroy or dispose of the sealed documents, unless the attorney or party who filed them retrieves them from the clerk. This notice may occur no earlier than 30 days after the judgment of conviction has become final and the one-year period of limitation within which to file a motion under 28 U.S.C. § 2255 has expired, and in the event a § 2255 motion is filed, then after the conclusion of the litigation. If the trial results in an acquittal or dismissal as to all counts and all defendants, then the 30-day period would begin to run from the date of the jury verdict or the court's order of acquittal or dismissal, unless the Government appeals, in which case the period would begin to run after that appellate litigation has been completed and any proceedings on remand have become final.
- (2) If, during the fourteen-day period after the clerk has given notice of intent to dispose of the sealed documents, any party files an objection to such disposition, the presiding judge in the case shall resolve the dispute over the proposed disposition.

**(d) Procedures for Manual Filers.**

For those parties who are required to manually file all court documents (i.e., *pro se* litigants), proposed sealed documents shall be delivered to the clerk's office in paper form in a sealed envelope. The proposed sealed documents must be accompanied by a motion to seal in accordance with Section V.G of the CM/ECF [Policy Manual](#). Both the documents and the envelope shall be prominently labeled "UNDER SEAL." The envelope must also have written on it: the case caption; the case number; the title of the document or, if the title contains proposed sealed information, the title omitting the proposed sealed information; and the following notice in all capital letters and otherwise prominently displayed:

PROPOSED SEALED DOCUMENTS: SUBMITTED PURSUANT TO MOTION TO SEAL.

## Local Criminal Rule 57.1

### REDLINED VERSION

#### Rule 57.1 Attorneys

(a) **Roll of Attorneys.**

The bar of this court consists of those previously admitted and those hereafter admitted as prescribed by this Local Criminal Rule 57.1.

(b) **Eligibility.**

A member in good standing of the bar of the Supreme Court of North Carolina is eligible for admission to the bar of this court.

(c) **Procedure for Admission.**

Before being presented to the court for taking the required oath, an applicant for admission shall certify in a written application that such applicant:

- (1) Is a member in good standing of the bar of the Supreme Court of North Carolina; and
- (2) Has studied the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, and the local rules of this court.

In addition to these certifications, the written application shall contain the certification of two attorneys who are members in good standing of the bar of this court that the applicant is of good moral character and professional reputation and meets the requirements for admission. An applicant may be admitted to practice in this court by a district judge, bankruptcy judge, or magistrate judge of this court or of the United States District Court for the Middle District or Western District of North Carolina upon oral motion by a member of the bar of this court. If the motion for admission is granted, the applicant shall take the following oath or affirmation:

*I do solemnly swear **[affirm]** that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will ~~demean~~ **[conduct]** myself as an attorney of this court, uprightly and according to law. So help me God. **[This is my solemn affirmation.]***

Following the administration of the oath **or affirmation**, the application shall be signed by the district judge, bankruptcy judge, or magistrate judge and the applicant shall file with the clerk the application, accompanied by the filing fee required by the Administrative Office of the United States Courts and this court for admission to practice in this district. The clerk shall then issue the applicant a certificate of admission to the bar of this court. ~~Upon the filing of a properly certified and executed application accompanied by the admission fee, the clerk may accept for filing papers signed by the applicant. However, no applicant shall make an appearance on behalf of a client, either before a district judge, bankruptcy judge, or magistrate judge, by telephone conference or in person, until the applicant has taken the oath.~~

(3) Current law clerks to district judges, magistrate judges, and bankruptcy judges within this District shall be admitted to the bar of this court without payment of an admission fee.

**(d) Representation by Local Counsel Who Must Sign All Pleadings**

Litigants in criminal actions, except governmental agencies and parties appearing *pro se*, must be represented by at least one member of the bar of this court who shall sign all documents filed in this court, including his or her state bar number and fax number in the signature block on all pleadings. If an attorney appears solely to bring the litigant in compliance with this local rule, he or she shall in each instance designate himself or herself "Local Criminal Rule 57.1(d) Counsel." In signing the pleading, motion, discovery request or other document, counsel certifies that he or she is an authorized representative for communication with the court about the litigation, and the document conforms to the practice and procedure of this court. **For failure to comply with the requirements of this rule, the court may on motion or its own initiative disqualify individuals from serving as local counsel.** Signatures in the following form shall be sufficient to comply with this local rule. Local Criminal Rule 57.1(d) Local Counsel must include the state bar number and fax number in the signature block on all pleadings:

Jane M. Jones  
Jones, Jones and Jones  
P.O. Box 500  
New York, NY 10050  
(212) 555-1212  
Jane.jones@email.address.com  
State Bar No.  
Attorney for Defendant

John B. Counselor  
Abbott, Ball and Counselor  
P.O. Box 50  
Raleigh, NC 27602  
John.B.Counselor@email.address.com  
(919) 878-8787  
Fax (919) 878-8000  
State Bar No.  
Local Criminal Rule 57.1(d) Counsel for Defendant

(e) **Appearances by Attorneys Not Admitted in the District – Special Appearance.**

- (1) Attorneys who are members in good standing of the bar of a United States Court and the bar of the highest court of any state or the District of Columbia may practice in this court for a particular case in association with a member of the bar of this court. By filing a Notice of **Special Appearance (available on the district's website)**, completing an Electronic Filing Attorney Registration Form, and complying with Section ~~I.(1)~~ **IV.D** of the Policy Manual, an attorney agrees that:
  - (a) the special appearance attorney will be responsible for ensuring the presence of an attorney who is familiar with the case and has authority to control the litigation at all conferences, hearings, trials and other proceedings;
  - (b) the attorney submits to the disciplinary jurisdiction of the court for any misconduct in connection with the litigation in which the attorney is specially appearing; ~~and~~
  - (c) for purposes of Fed. R. Civ. P. 11, the Federal Rules of Civil and Criminal Procedure and the Local Criminal Rules of this court, the special appearance attorney's electronic signature shall carry the same force and effect as an original signature; ~~and~~
  - (d). **the special appearance attorney shall submit any document to Local Criminal Rule 57.1(d) counsel for review prior to filing the document with this court.**
- (2) An attorney who is not a member of the bar of this court will not receive electronic notification until the attorney becomes a registered CM/ECF filer with this court and files a Notice of **Special Appearance**.
- (3) A member of the bar of this court who accepts employment in association with a special appearance attorney is responsible to this court for the conduct of the litigation of the proceeding, must be a CM/ECF registrant

and shall review for submission by the special appearance attorney all pleadings and papers electronically filed ~~in compliance with Section J.(1) of the Policy Manual~~. The responsibility of the member of the bar who accepts employment in association with a special appearance attorney and designates him or herself as Local Criminal Rule 57.1(d) local counsel shall be governed by Local Criminal Rule 57.1(d).

- (4) Any document filed by a special appearance attorney that does not comport with associated Local Civil Rule 83.1(d) counsel's standards may be objected to. Any such objection must be filed within 7 days of the issuance of the NEF for the document.
- (5) A special appearance is not a substitute for admission to the bar of this court, but rather is intended to facilitate occasional appearances only. Unless otherwise ordered for good cause shown, no attorney may be admitted pursuant to Local Criminal Rule 57.1 in more than three unrelated cases in any twelve-month period, nor may any attorney be admitted pursuant to Local Criminal Rule 57.1 in more than three active unrelated cases at any one time.

\* \* \*

### **PROPOSED VERSION**

#### **Rule 57.1 Attorneys**

- (d) **Roll of Attorneys.**  
The bar of this court consists of those previously admitted and those hereafter admitted as prescribed by this Local Criminal Rule 57.1.
- (e) **Eligibility.**  
A member in good standing of the bar of the Supreme Court of North Carolina is eligible for admission to the bar of this court.
- (f) **Procedure for Admission.**  
Before being presented to the court for taking the required oath, an applicant for admission shall certify in a written application that such applicant:
  - (1) Is a member in good standing of the bar of the Supreme Court of North Carolina; and

- (2) Has studied the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, and the local rules of this court.

In addition to these certifications, the written application shall contain the certification of two attorneys who are members in good standing of the bar of this court that the applicant is of good moral character and professional reputation and meets the requirements for admission. An applicant may be admitted to practice in this court by a district judge, bankruptcy judge, or magistrate judge of this court or of the United States District Court for the Middle District or Western District of North Carolina upon oral motion by a member of the bar of this court. If the motion for admission is granted, the applicant shall take the following oath or affirmation:

*I do solemnly swear [affirm] that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will [conduct] myself as an attorney of this court, uprightly and according to law. So help me God. [This is my solemn affirmation.]*

Following the administration of the oath or affirmation, the application shall be signed by the district judge, bankruptcy judge, or magistrate judge and the applicant shall file with the clerk the application, accompanied by the filing fee required by the Administrative Office of the United States Courts and this court for admission to practice in this district. The clerk shall then issue the applicant a certificate of admission to the bar of this court.

- (3) Current law clerks to district judges, magistrate judges, and bankruptcy judges within this District shall be admitted to the bar of this court without payment of an admission fee.

**(d) Representation by Local Counsel Who Must Sign All Pleadings**

Litigants in criminal actions, except governmental agencies and parties appearing *pro se*, must be represented by at least one member of the bar of this court who shall sign all documents filed in this court, including his or her state bar number and fax number in the signature block on all pleadings. If an attorney appears solely to bring the litigant in compliance with this local rule, he or she shall in each instance designate himself or herself "Local Criminal Rule 57.1(d) Counsel." In signing the pleading, motion, discovery request or other document, counsel certifies that he or she is an authorized representative for communication with the court about the litigation, and the document conforms to the practice and procedure of this court. For failure to comply with the requirements of this rule, the court may on motion or its own initiative disqualify individuals from serving as local counsel. Signatures in

the following form shall be sufficient to comply with this local rule. Local Criminal Rule 57.1(d) Local Counsel must include the state bar number and fax number in the signature block on all pleadings:

Jane M. Jones  
Jones, Jones and Jones  
P.O. Box 500  
New York, NY 10050  
(212) 555-1212  
Jane.jones@email.address.com  
State Bar No.  
Attorney for Defendant

John B. Counselor  
Abbott, Ball and Counselor  
P.O. Box 50  
Raleigh, NC 27602  
John.B.Counselor@email.address.com  
(919) 878-8787  
Fax (919) 878-8000  
State Bar No.  
Local Criminal Rule 57.1(d) Counsel for Defendant

**(e) Appearances by Attorneys Not Admitted in the District – Special Appearance.**

- (1)** Attorneys who are members in good standing of the bar of a United States Court and the bar of the highest court of any state or the District of Columbia may practice in this court for a particular case in association with a member of the bar of this court. By filing a Notice of Special Appearance (available on the district’s website), completing an Electronic Filing Attorney Registration Form, and complying with Section IV.D of the Policy Manual, an attorney agrees that:
- (a)** the special appearance attorney will be responsible for ensuring the presence of an attorney who is familiar with the case and has authority to control the litigation at all conferences, hearings, trials and other proceedings;
  - (b)** the attorney submits to the disciplinary jurisdiction of the court for any misconduct in connection with the litigation in which the attorney is specially appearing;

- (c) for purposes of Fed. R. Civ. P. 11, the Federal Rules of Civil and Criminal Procedure and the Local Criminal Rules of this court, the special appearance attorney's electronic signature shall carry the same force and effect as an original signature; and
  - (d) the special appearance attorney shall submit any document to Local Criminal Rule 57.1(d) counsel for review prior to filing the document with this court.
- (2) An attorney who is not a member of the bar of this court will not receive electronic notification until the attorney becomes a registered CM/ECF filer with this court and files a Notice of Special Appearance.
  - (3) A member of the bar of this court who accepts employment in association with a special appearance attorney is responsible to this court for the conduct of the litigation of the proceeding, must be a CM/ECF registrant and shall review for submission by the special appearance attorney all pleadings and papers electronically. The responsibility of the member of the bar who accepts employment in association with a special appearance attorney and designates him or herself as Local Criminal Rule 57.1(d) local counsel shall be governed by Local Criminal Rule 57.1(d).
  - (4) Any document filed by a special appearance attorney that does not comport with associated Local Civil Rule 83.1(d) counsel's standards may be objected to. Any such objection must be filed within 7 days of the issuance of the NEF for the document.
  - (5) A special appearance is not a substitute for admission to the bar of this court, but rather is intended to facilitate occasional appearances only. Unless otherwise ordered for good cause shown, no attorney may be admitted pursuant to Local Criminal Rule 57.1 in more than three unrelated cases in any twelve-month period, nor may any attorney be admitted pursuant to Local Criminal Rule 57.1 in more than three active unrelated cases at any one time.

\* \* \*

SUMMARY OF PROPOSED AMENDMENTS UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA LOCAL PATENT RULES OF PRACTICE AND PROCEDURE <sup>4</sup>  June 2017	
Affected Local Patent Rule	Proposed Change in Rule
302.1	Amend subsection (a) to require attorneys to address additional topics during the Rule 26(f) conference.
302.2	Amend to provide for a standing Patent Protective Order that will govern patent cases in this district.
303.3	Amend to require additional specificity with regard to invalidity contentions.
303.6	Amend to allow parties to amend their infringement and invalidity contentions more freely.
303.7	Amend to allow parties to amend their infringement and invalidity contentions more freely.

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<sup>4</sup> This summary was prepared by the Clerk's Office as a guide to the proposed changes to the Local Patent 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 Patent Rules. The summary does not include minor stylistic changes or proposed technical amendments.

## Local Patent Rule 302.1

### REDLINED VERSION

#### Rule 302.1 Governing Procedure

##### (a) Initial Rule 26(f) Scheduling Conference (“Initial Scheduling Conference”)

When the parties confer with each other pursuant to [Fed. R. Civ. P. 26\(f\)](#), in addition to the matters covered by [Fed. R. Civ. P. 26](#), the parties must discuss and address in the Discovery Plan filed pursuant to [Fed. R. Civ. P. 26\(f\)](#) and [Local Civil Rule 26.1\(e\)\(2\)](#) the following items:

- (1) Proposed modification of the deadlines provided for in the local patent rules, and the effect of any such modification on the date and time of the Claim Construction Hearing provided for in [Local Civil Rule 304.6](#), if any;
- (2) Whether the court will hear live testimony at the Claim Construction Hearing;
- (3) The need for and any specific limits on discovery relating to claim construction, including depositions of witnesses, including expert witnesses; ~~and~~
- (4) The order of presentation at the Claim Construction Hearing;
- (5) Whether the parties request a claim construction prehearing conference be held after the Joint Claim Construction and Prehearing Statement has been filed;
- (6) Whether it may be appropriate to bifurcate discovery for infringement, invalidity, and damage issues;
- (7) Whether the parties believe that appointment of a Special Master may be helpful to the parties and the court;
- (8) Whether modifications to the standard protective order are needed, including, but not limited to, whether additional information should be disclosed regarding consulting experts, access to materials by prosecution counsel and restrictions on use, access, or dissemination of source code and other highly confidential materials;
- (9) Whether the parties believe it would be worthwhile to have a hearing to

provide the court with an overview of the technology at issue in the suit and proposed timing for presentation; and

- (10) Any other patent-related issues foreseeable in the case.

\* \* \*

### **PROPOSED VERSION**

#### **Rule 302.1 Governing Procedure**

(a) **Initial Rule 26(f) Scheduling Conference (“Initial Scheduling Conference”)**

When the parties confer with each other pursuant to [Fed. R. Civ. P. 26\(f\)](#), in addition to the matters covered by [Fed. R. Civ. P. 26](#), the parties must discuss and address in the Discovery Plan filed pursuant to [Fed. R. Civ. P. 26\(f\)](#) and [Local Civil Rule 26.1\(e\)\(2\)](#) the following items:

- (1) Proposed modification of the deadlines provided for in the local patent rules, and the effect of any such modification on the date and time of the Claim Construction Hearing provided for in [Local Civil Rule 304.6](#), if any;
- (2) Whether the court will hear live testimony at the Claim Construction Hearing;
- (3) The need for and any specific limits on discovery relating to claim construction, including depositions of witnesses, including expert witnesses;
- (4) The order of presentation at the Claim Construction Hearing;
- (5) Whether the parties request a claim construction prehearing conference be held after the Joint Claim Construction and Prehearing Statement has been filed;
- (6) Whether it may be appropriate to bifurcate discovery for infringement, invalidity, and damage issues;
- (7) Whether the parties believe that appointment of a Special Master may be helpful to the parties and the court;
- (8) Whether modifications to the standard protective order are needed, including, but not limited to, whether additional information should be

disclosed regarding consulting experts, access to materials by prosecution counsel and restrictions on use, access, or dissemination of source code and other highly confidential materials

- (9)** Whether the parties believe it would be worthwhile to have a hearing to provide the court with an overview of the technology at issue in the suit and proposed timing for presentation; and
- (10)** Any other patent-related issues foreseeable in the case.

\* \* \*

## Local Patent Rule 302.2

### REDLINED VERSION

#### Rule 302.2 Confidentiality

- (a) ~~If any document or information produced under these Local Civil Rules is deemed confidential by the producing party and if the court has not entered a protective order or otherwise ruled on the confidentiality of the document or information, then until a protective order is issued by the court, the document shall be marked “confidential” or with some other confidential designation (such as “Confidential Outside Attorneys Eyes Only”) by the disclosing party and disclosure of the confidential document or information shall be limited to each party’s outside attorney(s) of record and the employees of such outside attorney(s). If a party is not represented by an outside attorney, disclosure of the confidential document or information shall be limited to one (1) designated “in house” attorney, whose identity and job functions shall be disclosed to the producing party 7 days prior to any such disclosure, in order to permit any motion for protective order or other relief regarding such disclosure. The person(s) to whom disclosure of a confidential document or information is made under this Local Patent Rule shall keep it confidential and use it only for purposes of litigating the case, unless and until the court issues a ruling to the contrary.~~
- (b) ~~If a party wishes to file with the court any document or information that has been designated as confidential pursuant to subsection (a) and as to which the court has not ruled, that party must comply with the provisions of [Local Civil Rule 79.2](#) by filing a motion to seal the document. If the party proffering the document or information designated as confidential does not agree it is entitled to be sealed, then the party shall so state in its motion to seal and the party that made the “confidential” designation shall be entitled, in its responsive brief, to explain its position. The provisions of [Local Civil Rule 79.2](#) shall thereafter determine the status and handling of the material with respect to such filing.~~

Discovery cannot be withheld on the basis of confidentiality absent court order. The Protective Order authorized by the Eastern District of North Carolina shall govern discovery unless the court enters a different protective order. The approved protective order can be found on the court’s website.

### PROPOSED VERSION

#### Rule 302.2 Confidentiality

Discovery cannot be withheld on the basis of confidentiality absent court order. The Protective Order authorized by the Eastern District of North Carolina shall govern discovery unless the court enters a different protective order. The approved protective order can be found on the court's website.

## Local Patent Rule 303.3

### REDLINED VERSION

#### Rule 303.3 Preliminary Invalidation 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 Contentions.”

(a) Invalidation Contentions must contain the following information:

(1) An identification of each statutory section and subsection, where applicable, relied upon for any assertion of invalidity;

~~(1)~~(2) The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art ~~with respect to an~~ under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known; shall specify the date and nation in which the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. In claims alleging infringement of patents governed by the provisions of law prior to the America Invents Act, ~~P~~prior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived; ~~and~~ ~~P~~prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

~~(2)~~(3) Whether each item of prior art anticipates each asserted claim or renders it obvious. If a combination of items of prior art makes a claim obvious, each such combination, ~~and the motivation to combine such items,~~ must be identified;

~~(3)~~(4) A chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by ~~the sixth paragraph of~~ 35 U.S.C. § 112 subparagraph (6) or (f) as applicable, the identity of the structure(s), act(s),

or material(s) in each item of prior art that performs the claimed function;  
and

- ~~(4)~~(5) ~~Any~~ Each grounds of invalidity of any of the asserted claims based on ~~any applicable provision of 35 U.S.C. § 112~~ 35 U.S.C. § 101, or on indefiniteness or lack of enablement or written description under 35 U.S.C. § 112, citing the applicable statutory section(s) and subsection(s) thereof.

### **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 Non-Infringement Contentions.”

- (a) Invalidity Contentions must contain the following information:
- (1) An identification of each statutory section and subsection, where applicable, relied upon for any assertion of invalidity;
  - (2) The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art with respect to an item offered for sale or publicly used or known shall specify the date and nation in which the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. In claims alleging infringement of patents governed by the provisions of law prior to the America Invents Act, prior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived; and prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);
  - (3) Whether each item of prior art anticipates each asserted claim or renders it obvious. If a combination of items of prior art makes a claim obvious, each such combination must be identified;

- (4) A chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112 subparagraph (6) or (f) as applicable, the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and
- (5) Each grounds of invalidity of any of the asserted claims based on 35 U.S.C. § 101, or on indefiniteness or lack of enablement or written description under 35 U.S.C. § 112, citing the applicable statutory section(s) and subsection(s) thereof.

## Local Patent Rule 303.6

### PROPOSED VERSION

#### Rule 303.6 Final Contentions

Each party's "Preliminary Infringement Contentions" and "Preliminary Invalidity Contentions" shall be deemed to be that party's final contentions, except as set forth below.

(a) If the parties stipulate to serving Amended or Supplemental Infringement Contentions and Invalidity Contentions.

~~(a)~~(b) If a party claiming patent infringement believes in good faith that (1) the court's Claim Construction Ruling or (2) the documents produced pursuant to [Local Civil Rule 303.4](#) so requires, not later than thirty (30) days after service by the court of its Claim Construction Ruling, that party may serve "Final Infringement Contentions" without leave of court that amend its "Preliminary Infringement Contentions" with respect to the information required by [Local Civil Rule 303.1\(c\)](#) and (d).

(c) Discovery has revealed information requiring modification of the contentions.

~~(b)~~(d) Not later than 50 days after service by the court of its Claim Construction Ruling, each party ~~opposing a claim of patent infringement~~ asserting a claim, counterclaim, or defense of invalidity may serve "Final Invalidity Contentions" as of right ~~without leave of court~~ that amend its "Preliminary Invalidity Contentions" with respect to the information required by [Local Civil Rule 303.3](#) if it believes in good faith that amendment is required by "Final Infringement Contentions" pursuant to Local Civil Rule 303.6(b) or the court's Claim Construction Ruling so requires.:

~~(1) a party claiming patent infringement has served "Final Infringement Contentions" pursuant to [Local Civil Rule 303.6\(a\)](#), or~~

~~(2) the party opposing a claim of patent infringement believes in good faith that the court's Claim Construction Ruling so requires.~~

### PROPOSED VERSION

#### Rule 303.6 Final Contentions

Each party's "Preliminary Infringement Contentions" and "Preliminary Invalidity

Contentions” shall be deemed to be that party's final contentions, except as set forth below.

- (a) If the parties stipulate to serving Amended or Supplemental Infringement Contentions and Invalidity Contentions.
- (b) If a party claiming patent infringement believes in good faith that (1) the court's Claim Construction Ruling or (2) the documents produced pursuant to [Local Civil Rule 303.4](#) so requires, not later than thirty (30) days after service by the court of its Claim Construction Ruling, that party may serve “Final Infringement Contentions” without leave of court that amend its “Preliminary Infringement Contentions” with respect to the information required by [Local Civil Rule 303.1\(c\) and \(d\)](#).
- (c) Discovery has revealed information requiring modification of the contentions.
- (d) Not later than 50 days after service by the court of its Claim Construction Ruling, each party asserting a claim, counterclaim, or defense of invalidity may serve “Final Invalidity Contentions” as of right that amend its “Preliminary Invalidity Contentions” with respect to the information required by [Local Civil Rule 303.3](#) if it believes in good faith that amendment is required by “Final Infringement Contentions” pursuant to Local Civil Rule 303.6(b) or the court’s Claim Construction Ruling so requires.

## Local Patent Rule 303.7

### REDLINED VERSION

#### Rule 303.7 Amendment To Contentions

- (a) Amendment or modification of the Preliminary or Final Infringement Contentions or the Preliminary or Final Invalidity Contentions, other than as expressly permitted in [Local Civil Rule 303.6](#), may be made only as expressly permitted by Local Civil Rule 303.6, or within 30 days of the discovery of new information relevant to the issues of infringement or invalidity. Otherwise, amendment or modification shall be made only by order of the court, which shall be entered only upon a showing of good cause.
- (b) Non-exhaustive examples of circumstances supporting a finding of good cause can include at least the following:
- (1) A claim construction by the court different from that proposed by the party seeking amendment;
  - (2) Information newly discovered or confirmed, through due diligence, regarding an accused product or prior art;
  - (3) Information discovered, confirmed, or provided by a party's consultant or expert after a party's contentions have been served;
  - (4) New product launches;
  - (5) Amendments to the complaint or counterclaim adding or removing one or more asserted patents; and
  - (6) Information learned from or positions taken by another party during the exchange of contentions set forth in Local Rules 303.1 through 303.5.

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**PROPOSED VERSION**

**Rule 303.7      Amendment To Contentions**

- (a) Amendment or modification of the Preliminary or Final Infringement Contentions or the Preliminary or Final Invalidity Contentions, other than as expressly permitted in [Local Civil Rule 303.6](#), may be made only as expressly permitted by Local Civil Rule 303.6, or within 30 days of the discovery of new information relevant to the issues of infringement or invalidity. Otherwise, amendment or modification shall be made only by order of the court, which shall be entered only upon a showing of good cause.
  
- (b) Non-exhaustive examples of circumstances supporting a finding of good cause can include at least the following:
  - (1) A claim construction by the court different from that proposed by the party seeking amendment;
  - (2) Information newly discovered or confirmed, through due diligence, regarding an accused product or prior art;
  - (3) Information discovered, confirmed, or provided by a party's consultant or expert after a party's contentions have been served;
  - (4) New product launches;
  - (5) Amendments to the complaint or counterclaim adding or removing one or more asserted patents; and
  - (6) Information learned from or positions taken by another party during the exchange of contentions set forth in Local Rules 303.1 through 303.5.