ANNOTATED

LOCAL RULES

OF THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MAINE

THESE RULES ARE CURRENT AS OF DECEMBER 1, 2019

*(The Annotations are current as of **May 9, 2020**)*

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CIVIL RULES

RULE 1 - GENERAL

(a) Relaxation

The Court may relax these rules in exceptional circumstances when justice so requires.

(b) Effective Date: Repealer

These rules shall be effective February 1, 1997, and shall govern all proceedings in cases then pending, or thereafter brought. All prior rules of this Court are repealed, and all standing orders inconsistent with these rules are vacated, as of that date.

(c) Definition

The term "party's attorney" or similar term whenever used in these rules shall include a party appearing without counsel.

(d) Numbering

The numbering of the local rules tracks the numbers of the Federal Rules of Civil Procedure. Rules concerning criminal practice have been assigned to the 100 series and thereafter correspond to the Federal Rules of Criminal Procedure.

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Annotations

Rule 1(a)

(1) The "exceptional circumstances" provision of Local Rule 1(a) did not support the plaintiff's motion to set trial in Portland, which would overrule Local Rule 3(b)'s assignment of the case to Bangor ("the subject events or omissions occurred in Somerset County (locus of purchase) and Piscataquis County (locus of accident)"). The plaintiff argued for Portland because he and several witnesses were Massachusetts residents, his expert witnesses resided outside Maine, much of his medical treatment was in Massachusetts, and the defendant was incorporated in Minnesota and did business throughout Maine. The defendant contended that Bangor was more convenient for many potential witnesses and that the plaintiff's initial medical care occurred in Dover-Foxcroft. Phaneuf v. Polaris Indus., Inc., 2016 WL 4595677, at *1 (D. Me. Sept. 2, 2016).

(2) "[W]here the most logical means for the opposing party to bring a Rule 56 violation to the attention of the Court is a motion to strike, the Court relaxes the Local Rule 56(e) prohibition [on motions to strike] to allow the Plaintiff in this case to bring Defendants' Rule 56(d) violation to its attention," amounting to "exceptional circumstances when justice so requires" under Local Rule 1(a). Hinton v. Outboard Marine Corp., 828 F. Supp. 2d 366, 374-75 (D. Me. 2011).

(3) "The Court has the inherent and express authority to relax its own rules 'when justice requires.' D. Me. Loc. R. 1(a)." Therefore, it was not required to refer a petition for attorney reinstatement to counsel and assign the matter for hearing before a judge, because it was apparent from the face of the petition that the petitioner was not a member of the bar of the State of Maine, and the chief judge had authority to screen the petition and assign it to himself and no hearing was necessary in light of the record generated in the state court proceeding. In re Williams, 775 F. Supp. 2d 210, 225-26 (D. Me. 2011).

RULE 3 - COMMENCEMENT OF ACTION

(Amended December 1, 2009)

(a) Commencement of Civil Action

The filing fee shall be paid to the Clerk upon filing the complaint. A party who desires to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 shall file with the complaint a motion for leave to proceed *in forma pauperis* together with an affidavit showing in detail the party's inability to pay fees and costs and that the party is entitled to redress. All complaints shall be accompanied by a properly completed Civil Cover Sheet (Form JS-44) which is available from the Clerk.

(b) Assignment

Maine constitutes one judicial district. Court shall be held at Bangor and Portland. The filing party shall file each new action in Bangor or Portland, and the latter shall ordinarily be tried in Bangor or Portland, by reference to the county in which a substantial part of the events or omissions giving rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated. Cases arising in the counties of Aroostook, Franklin, Hancock, Kennebec, Penobscot, Piscataquis, Somerset, Waldo and Washington shall be filed and ordinarily tried at Bangor. Cases arising in the counties of Androscoggin, Cumberland, Knox, Lincoln, Oxford, Sagadahoc and York shall be filed and ordinarily tried at Portland. However, the Clerk shall assign those cases arising out of Kennebec County, in which the State of Maine is either a plaintiff or a defendant, to the judges of the Court by lot, in such manner that each judge shall be assigned an equal number of said cases.[1] Those Knox County cases brought by inmates at the Maine State Prison in Warren, which would ordinarily be filed in Portland, are to be filed in Bangor.

New Hampshire and Rhode Island cases referred to this Court due to the recusal of the judges in those Districts and appeals from decisions of the U. S. Bankruptcy Court to the district judges of this Court shall be assigned by lot so that each judge is assigned an equal number of each category of cases.

[1] Cases shall be randomly assigned to the extent a judge is not recused at the time of assignment.

(c) Form of Complaint in Social Security Cases

Complaints filed in civil cases, pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), for benefits under Titles II, XVI and XVIII of the Social Security Act shall use the form provided in Appendix I.

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Annotations

Rule 3(a)

(1) Under Local Rule 3(a), for a spouse to join a pro se plaintiff and proceed in forma pauperis, "she must provide an application and affidavit demonstrating her inability to pay fees and costs. D. Me. Loc. R. 3." Barnard v. State, 2016 WL 3264264, at *2 (D. Me. June 14, 2016), aff'd in part sub. nom. Barnard v. State, 2017 WL 3477740 (D. Me. Aug. 14, 2017).

Rule 3(b)

(1) Rule 3(b) properly assigned a case to Bangor where "the subject events or omissions occurred in Somerset County (locus of purchase) and Piscataquis County (locus of accident)." Phaneuf v. Polaris Indus., Inc., 2016 WL 4595677, at *1 (D. Me. Sept. 2, 2016).

RULE 4 - SERVICE OF PROCESS

(Amended May 1, 2009)

When service documents are issued in any civil case where a plaintiff has been granted *in forma pauperis* status in an action involving the State of Maine or its employees, and in all cases where a petitioner has filed a habeas corpus petition under 28 U.S.C. § 2254, regardless of whether or not the filing fee has been paid, procedures for service will be pursuant to the agreement between the Attorney General of Maine and the Court set forth in Appendix III to these Local Rules.

RULE 5 - SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(Amended December 1, 2009)

(a) Place of Filing

Unless otherwise ordered by the Court, papers shall be filed with the Court at Bangor in cases filed and pending at Bangor, and at Portland in cases filed and pending at Portland.

(b) Filing of Discovery

Unless otherwise ordered by the Court, depositions upon oral examination and interrogatories, requests for documents, requests for admissions, and answers and responses thereto and disclosures made under Fed. R. Civ. P. 26(a)(1)-(3) and pursuant to scheduling orders issued by the Court, shall be served upon other parties but shall not be filed with the Court. The party that has served notice of a deposition or has served discovery papers shall be responsible for preserving and for insuring the integrity of original transcripts and discovery papers for use by the Court.

(c) Filing and Service by Electronic Means

Unless exempt or otherwise ordered by the Court, papers shall be filed and served electronically as required by the Court's Administrative Procedures Governing the Filing and Service by Electronic Means, which is set forth in Appendix IV in these Local Rules. The provisions of the Court's Administrative Procedures Governing the Filing and Service by Electronic Means shall be applied and enforced as part of these Local Rules. No papers shall be submitted to the Court by means of a facsimile machine without prior leave of the Court.

RULE 5.1 – NOTICE OF CONSTITUTIONAL QUESTION

(formerly Rule 24)

To enable the Court to comply with the provisions of 28 U.S.C. § 2403 and Fed. R. Civ. P. 24(c), in any action, suit or proceeding to which the United States or any agency, officer or employee thereof is not a party, any party who shall draw into question the constitutionality of any Act of Congress affecting the public interest shall forthwith so notify the Clerk in writing, stating the title of the action, its docket number if any, and the Act of Congress in question.

To enable the Court to comply with the provisions of 28 U.S.C. § 2403, in any action, suit or proceeding to which a State or any agency, officer or employee thereof is not a party, any party who shall draw in question the constitutionality of any statute of that State affecting the public interest shall forthwith so notify the Clerk in writing, stating the title of the action, its docket number if any, and the statute of the State in question.

RULE 6 - TIME

(Amended December 1, 2017)

(a) Computation of Time

Federal Rule of Civil Procedure 6 applies when computing any period of time stated in these rules.

RULE 7 - MOTIONS AND MEMORANDA OF LAW

(Amended December 1, 2019)

(a) Submissions of Motions and Supporting Memoranda

Every motion shall incorporate a memorandum of law, including citations and supporting authorities. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be filed with the motion. No written discovery motions shall be filed without the prior approval of a judicial officer. See Rule 26(b).

(b) Objections to Motions

Unless within 21 days after the filing of a motion the opposing party files written objection thereto, incorporating a memorandum of law, the opposing party shall be deemed to have waived objection.

Any objections shall include citations and supporting authorities and affidavits and other documents setting forth or evidencing facts on which the objection is based. The deemed waiver imposed herein shall not apply to motions filed during trial.

(c) Reply Memorandum

Within 14 days of the filing of any objection to a motion, the moving party may file a reply memorandum, which shall not exceed 7 pages in length and which shall be strictly confined to replying to new matter raised in the objection or opposing memorandum.

(d) Form and Length

All memoranda shall be typed, in a font of no less than size 12 point, and shall be double-spaced on 8-1/2 x 11 inch paper or printed. Footnotes shall be in a font of no less than size 10 point, and may be single spaced. All pages shall be numbered at the bottom. No memorandum of law in support of or in opposition to a nondispositive motion shall exceed 10 pages. No memorandum of law in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment or a motion for injunctive relief shall exceed 20 pages. No reply memorandum shall exceed 7 pages.

A motion to exceed the limitation of this rule shall be filed no later than three (3) business days in advance of the date for filing the memorandum to permit meaningful review by the Court. A motion to exceed the page limitations shall not be filed simultaneously with a memorandum in excess of the limitations of this rule.

(e) Written Submissions and Oral Argument

Unless otherwise required by federal rule or statute, all motions may be decided by the Court without oral argument unless otherwise ordered by the Court on its own motion or, in its discretion, upon request of counsel.

(f) Motions for Reconsideration

A motion to reconsider an interlocutory order of the Court, meaning a motion other than one governed by Fed. R. Civ. P. 59 or 60, shall demonstrate that the order was based on a manifest error of fact or law and shall be filed within 14 days from the date of the order unless the party seeking a reconsideration shows cause for not filing within that time. Cause for not filing within 14 days from the date of the order includes newly available material evidence and an intervening change in the governing legal standard. When a motion to reconsider a ruling by the magistrate judge is directed to the magistrate judge, an objection pursuant to Fed. R. Civ. P. 72 or 28 U.S.C. § 636(b) shall be filed within 14 days after the party objecting has been served with a copy of the magistrate's ruling on the motion to reconsider.

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Annotations

Rule 7(a)

(1) "[I]t seems apparent to me that the parties' extension of 'professional courtesies' cannot operate to suspend the Local Rules of federal district courts, in this case Local Rule 7(a)'s requirement that every motion must incorporate a legal memorandum" (but court delayed action until a ruling from the District of Idaho). Mktg. Unlimited LLC v. SRE Cheaptrips Inc., 2009 WL 2711954, at *2 (D. Me. Aug. 21, 2009), R. & R. adopted, 2009 WL 2923061 (D. Me. Sept. 10, 2009).

Rule 7(b) *(formerly Local Rule 19(c))*

(1) A party's failure to file a response in opposition to a motion to dismiss "militates in favor of the [opposing party]'s motion, as a party who fails to oppose a motion by filing an objection that incorporates a memorandum of law 'shall be deemed to have waived objection.' *See* D. Me. Loc. R. 7(b)" Barronton v. Lambrew, No. 1:19-CV-00215-LEW, 2019 U.S. Dist. LEXIS 113269, at *5 n.3 (D. Me. July 9, 2019).

(2) Even though Local Rule 7(b) provides that if a party fails to file a timely objection to a motion, the party is "deemed to have waived objection," the court "may not automatically grant a motion for summary judgment simply because the opposing party failed to comply with a local rule requiring a response within a certain number of days." Maddocks v. Portland Police Dep't, 2016 WL 7480270, at *1 (D. Me. Dec. 29, 2016), R. & R. adopted, 2017 WL 2222912 (D. Me. May 19, 2017). The same is true of a motion to dismiss. "[U]nder First Circuit authority, the Court may not grant [Defendant]'s motion without conducting an independent examination of the Amended Complaint to determine whether it is formally sufficient to state a claim. See Pomerleau v. W. Springfield Pub. Sch., 362 F.3d 143, 145 (1st Cir. 2004) ("the mere fact that a motion to dismiss is unopposed does not relieve the district court of the obligation to examine the complaint itself to see whether it is formally sufficient to state a claim" Fannie Mae v. Pomelow, No. 1:19-cv-00342-JAW, 2019 U.S. Dist. LEXIS 172704, at *3 (D. Me. Oct. 4, 2019).

(3) Although Local Rule 7(b) provides that if a party fails to file an objection within 21 days of the filing of a motion (here a motion to strike a motion for summary judgment), the "party shall be deemed to have waived objection," the court need not grant the motion to strike if "not appropriate." Inman v. Riebe, 2016 WL 1170973, at *1 n.1, 2 (D. Me. Mar. 24, 2016).

(4) Although Local Rule 7(b) allows 21 days to file a memorandum opposing a motion, where the motion was filed many months earlier (albeit without some attachments) and was only a single-issue 4-page motion and plaintiff's expedited response to it was "detailed" and "replete with citations," there were no "concrete suggestions of what he would have done with additional time; he has not mentioned any arguments he would have made, cases he would have cited, or issues he now fears he forfeited," he did not need the full 21 days. Widi v. McNeil, 2013 WL 1873215, at *4 (D. Me. May 3, 2013).

(5) On motion for judgment on the administrative record, even though Local Rule 7(b) provides that a party who fails to file an objection to a motion waives objection to the motion, the failure "does not, however, necessarily entitle the movant to the requested relief. The Court is still obligated to ascertain whether judgment is appropriate as a matter of law." Gagnon v. Lincoln Nat'l Life Ins. Co., 2010 WL 2399355, at *1 (D. Me. June 10, 2010).

(6) It is improper to file a motion to strike and wait for the court's ruling before responding to the motion. Randall v. Potter, 366 F. Supp. 2d 120, 122 (D. Me. 2005).

(7) "Given the potential tension between Rule 56(e) and local rules such as the District of Maine's Rule 7(b), we have recognized the need to interpret local waiver rules . . . so as to preserve their scope and validity without running afoul of the requirements of Rule 56 . . . . To that end, in the summary judgment context we read the 'deemed waiver' provision of the local rules to extend only to waiver of objection to the moving party's factual assertions." NEPSK, Inc. v. Town of Houlton, 283 F.3d 1, 8 (1st Cir. 2002).

(8) If a memorandum is not filed along with the objection to a motion to dismiss, the court can grant the motion to dismiss. United Transp. Union v. Maine Cent. R. Co., 107 F.R.D. 383, 383–84 (D. Me. 1985).

Rule 7(c)

(1) "Neither the Federal Rules nor the Local Rules permits a party to file a surreply to the moving party's reply. Local Rule 7 instead reflects the Court's need for finality and only allows parties to file a motion, a response, and a reply "strictly confined to replying to new matter raised in the objection or opposing memorandum." D. Me. Loc. R. 7. The Court therefore grants leave to file a surreply only in rare instances. "A surreply is appropriate where a party has not had the opportunity to contest matters introduced for the first time in the opposing party's reply." Animal Welfare Inst. v. Martin, 588 F. Supp. 2d 70, 81 (D. Me. 2008). However, "[t]he matter must be truly new." Id. "Absent highly unusual circumstances, sur-replies are not favored." In re Light Cigarettes Mktg. Sales Practices Litig., 832 F. Supp. 2d 74, 78 (D. Me. 2011). Aero Union Corp. v. Aircraft Deconstructors Int'l LLC, 2012 WL 3679627, at *9 (D. Me. Aug. 24, 2012).

(2) Despite Rule 7's restriction on the content of reply briefs, a jurisdictional issue can be raised at any time. "Even though this issue is technically not before the Court because it appears for the first time in [movant]'s reply, see D. Me. Loc. R. 7(c), the Court addresses it because a party is able to raise jurisdictional questions at any time. United States v. Nóbrega, 2019 U.S. Dist. LEXIS 210005, at *21-22 (D. Me. Dec. 5, 2019).

Rule 7(d) *(formerly Rule 7(e))*

(1) Although motions to exceed the page limitations in Rule 7 shall be filed no later than 3 business days in advance of the due date, and not simultaneously with the overlong memorandum, the court did not apply the requirement where a multidistrict transfer was pending to a different district that might have a different rule. Instead, the court allowed the overlong memorandum and an extended surrebuttal. United States v. Adams, 2006 WL 3841512, at *1 (D. Me. Dec. 29, 2006).

Rule 7(e) *(formerly Rule 7(f))*

(1) Under Rule 7(e), the Court has discretion on allowing oral argument and can deny it when it "concludes the issues presented by the written submissions are sufficiently clear without oral argument." Houlton Band of Maliseet Indians v. Ryan, 2006 WL 897660, at *1 n.1 (D. Me. Apr. 6, 2006), aff'd, 484 F.3d 73 (1st Cir. 2007).

Rule 7(f) *(formerly Rule 7(g))*

(1) Although Local Rule 7 allows a motion for reconsideration, "[t]he standard for a motion for reconsideration is whether the order 'was based on a manifest error of fact or law.' D. Me. Loc. R. 7(g). A party may present newly discovered evidence in a motion for reconsideration; however, the standard for newly discovered evidence is that the evidence be not only new to the litigant but not previously available." Murphy v. Corizon, 2012 WL 5258492 *3 (D. Me. 2012); Kourembanas v. InterCoast Colls., 2019 U.S. Dist. LEXIS 73215, at *3, 2019 WL 1937562 at *1 (D. Me. May 1, 2019) (same).

RULE 7.1 – CORPORATE DISCLOSURE

To enable the Court to evaluate possible disqualification or recusal, counsel for all non-governmental parties shall file with their first appearance a Notice of Interested Parties, which shall list all persons, associations of persons, firms, partnerships, limited liability companies, joint ventures, corporations (including parent or affiliated corporations, clearly identified as such), or any similar entities, owning 10% or more of the named party. Counsel shall be under a continuing obligation to file an amended Notice if any material change occurs in the status of an Interested Party, such as through merger, acquisition, or new/additional membership.

RULE 7A - FILING SEALED DOCUMENTS AND PLEADINGS

(Amended January 1, 2013)

A document or pleading may be filed under seal only upon order of the Court, in accordance with the following procedures:

(a) Motion to Seal and Sealed Documents

To obtain an order allowing one or more documents or pleadings to be sealed, a party shall electronically file on ECF a motion to seal together with the separate document(s) or pleading(s) sought to be sealed. The motion shall propose specific findings as to the need for sealing and the duration the document(s) should be sealed. The motion shall include a statement whether there is agreement of the parties to the sealing. The ECF system will generate and send a Notice of Electronic Filing (NEF) to counsel of record notifying them of the filing, but counsel will be unable to view the document. If service is required, all counsel must be served in a manner other than through ECF.

(b) Objection to Sealing and Reply

Unless otherwise ordered by the Court, any objection to a motion to seal and any reply thereto shall be filed electronically under seal and in accordance with Local Rule 7.

(c) Order

In making specific findings as to the need for sealing and the duration the document(s) shall be sealed, the Court may incorporate by reference the proposed findings in the motion to seal. If the motion to seal is denied, the motion to seal and any supporting document(s) tendered under provisional seal shall remain in the ECF system, sealed indefinitely, unless the Court orders otherwise. The parties should anticipate that the Court's order granting or denying the motion to seal will not be filed under seal and will be publicly available.

(d) Public Notice

The docket entry noting the filing of the motion to seal, and of any objection and reply thereto, and of the filing of the Court's order thereon, and of the filing of any sealed document(s) or pleading(s) shall be publicly available on ECF, but the document(s) or pleading(s) themselves shall only be available to the Court.

(e) Exceptions

(1) No motion or order is required for the filing of a document that has been redacted solely to remove personal identifiers pursuant to Fed. R. Civ. P. 5.2 or that is included within a category of pleadings and documents deemed sealed or authorized to be filed ex parte pursuant to a federal statute, the federal rules of procedure, or the local rules of this Court. Any filing of a redacted document shall reference the authority for such redaction.

(2) Documents marked confidential pursuant to an existing protective order may not automatically be filed under seal. The parties must confer and attempt to redact the exhibit in order to remove "confidential" material that is not essential for the Court's use in rendering a decision. If the exhibit cannot be redacted by agreement to remove confidential information, the party claiming that the document should be under seal shall file a motion in compliance with paragraphs (a-b) above.

(3) Sealed pleadings and documents, such as deeds, photographs, or bulky exhibits, which cannot be filed electronically, shall be filed in accordance with the provisions of the ECF User Manual.

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Annotations

Rule 7A

(1) "As Local Rule 7A states, 'a party shall . . . file a motion to seal together with the separate document(s) or pleading(s) sought to be sealed.' [Plaintiff] has included hyperlinks to several opinions he requests be redacted of personally identifying information but has not filed these opinions as separate documents together with the motion to seal. The Court cannot access hyperlinks contained in a motion docketed electronically as a scanned document, nor will the Court do the work of the party requesting redaction and comb through the docket in search of personal identifiers. 'The responsibility to redact filings rests with counsel and the party or nonparty making the filing.' D. Me. Loc. Rules, Appendix IV, Administrative Procedures Governing the Filing and Service by Electronic Means, (i), Privacy Protection for Filings Made with the Court." Flanders v. Maine, 2019 U.S. Dist. LEXIS 112660, *8-9, 2019 WL 2929500 at *3 (D. Me. July 8, 2019).

RULE 9 - PLEADING SPECIAL MATTERS

(Amended July 1, 2011)

(a) Request for Three-Judge District Court

To enable the Court to comply with the provisions of 28 U.S.C. § 2284, in any action or proceeding which a party believes is required to be heard by a three-judge district court, the words "THREE-JUDGE DISTRICT COURT REQUESTED" or the equivalent shall be included directly beneath the designation of the pleadings.

(b) Request for Injunctive Relief

If a pleading or motion seeks injunctive relief, in addition to the prayer for such relief, the words "INJUNCTIVE RELIEF SOUGHT" or the equivalent shall be included on the first page.

RULE 10 - FORM OF PLEADINGS, MOTIONS AND OTHER PAPERS

(Amended July 1, 2011)

All pleadings, motions and other papers filed with the Clerk or otherwise submitted to the Court, except exhibits, shall bear the proper case number and shall contain on the first page a caption as described by Fed. R. Civ. P. 10(a) and immediately thereunder a designation of what the document is and the name of the party in whose behalf it is submitted. All such documents shall be typed in a font of no less than size 12 point, and shall be double-spaced or printed on 8-1/2 x 11 inch paper. Footnotes shall be in a font of no less than size 10 point, and may be single spaced. All pages shall be numbered at the bottom. Ancillary papers shall be attached at the end of the document to which they relate.

Documents Signed Under Oath. Affidavits, declarations, verified complaints, or any other document signed under oath shall be filed electronically. The electronically filed version shall contain the typed name of the signatory, preceded by a "/s/" in the space where the signature would otherwise appear indicating that the paper document bears an original signature. The filing attorney shall retain the original for future production, if necessary, for a period of not less than two (2) years after the expiration of the time for filing a timely appeal. Any party may, following the filing of an electronically signed document under oath, request a copy of the original document on which the electronic document is based.

RULE 16.1 - CASE MANAGEMENT TRACKS

(Amended July 1, 2018)

(a) Civil Case Tracks

Each civil case shall be assigned to one of the following tracks:

1. Administrative
2. Standard
3. Complex
4. Prisoner Civil Rights
5. Individuals With Disabilities Education Act
6. Employee Retirement Income Security Act

(b) Definitions

(1) Administrative Track. Contains those cases in which discovery is prohibited entirely unless specific approval is obtained from a judicial officer. Cases on this track include cases filed under 28 U.S.C. §§ 2254, 2255 (habeas corpus cases); social security disability cases; government collections of student loans and VA benefits; government foreclosures; and bankruptcy appeals. Administrative track cases shall ordinarily be resolved within six (6) months after filing.

(2) Standard Track. Contains all civil cases, unless otherwise provided for in this Rule, in which discovery is limited to not more than 30 interrogatories per opposing side (subparts not permitted); 30 requests for admission per opposing side; 2 sets of requests for production per opposing side; and 5 depositions per opposing side. In standard track cases, discovery shall ordinarily be completed within 5 months and the case scheduled for trial within 7 months after issuance of the scheduling order. Cases on this track shall include cases such as vehicle collision cases involving only negligence claims; slip and fall cases; Fair Labor Standards Act and False Claim Act cases; personal injury litigation; civil rights cases other than prisoner civil rights; statutory forfeiture cases; simple contract cases; declaratory judgments regarding insurance coverage; FELA cases; Jones Act cases; foreclosure of first preferred ship mortgages; and complaints for copyright violations for unauthorized musical performances.

(3) Complex Track. Contains those cases that require special attention because of the number of parties, complexity of the issues, scope of discovery, and/or other comparable factors. Cases that are transferred or returned to Maine by the Multi-District Litigation Panel shall be placed on the complex track. The scope of discovery, motion practice, ADR and other matters will be discussed with the parties or their lawyers.

(4) Prisoner Civil Rights Track. Contains civil rights cases filed by prisoners pursuant to Title 42 U.S.C. § 1983. Discovery and motion practice in prisoner track cases shall ordinarily be completed within 4 months of the issuance of the scheduling order.

(5) Individuals With Disabilities Education Act Track. Contains those cases filed under the Individuals With Disabilities Education Act, 20 U.S.C. § 1400 et seq. (IDEA).

(6) Employee Retirement Income Security Act Track. Contains those cases filed pursuant to § 502(a)(1)(B) of The Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a)(1)(B) (ERISA).

(c) Assignment

Each case shall be assigned to a track by the Clerk based on the initial pleading. The Court may on its own initiative, or upon good cause shown by a party, change the track assignment of any case.

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Annotations

(1) "This District's Local Rules illustrate the unique procedural approach the Court undertakes in ruling on motions for judgment on the administrative record." Carter v. Aetna Life Ins. Co., 2019 WL 80434, at *13 n.21 (D. Me. Jan. 2, 2019) (citing D. Me. Loc. R. 16.1(a)(6) and 16.2(c)(4)) (ERISA case).

(2) Despite the small number of parties (three), "the Court will assign this case to the complex track. The Court credits the Respondents' assertion that the issues relating to the DALRP may become convoluted. Moreover, FERC's claim that it has already collected all the relevant evidence is grounded in assumption that the Respondents are not entitled to discovery. The Court holds that the Respondents are entitled to discovery; hence, it remains to be seen whether FERC has collected all the relevant evidence. Finally, the Court predicts that unique discovery issues may arise given the distinctive procedural backdrop of this case. As such, the Court will avail itself of the flexibility that the complex track affords." FERC v. Silkman, 233 F. Supp. 3d 201, 227- 28 (D. Me. 2017).

RULE 16.2 - SCHEDULING ORDER

(Amended July 1, 2018)

(a) Applicable Cases

A proposed scheduling order shall issue in all cases except social security disability cases, habeas corpus petitions, bankruptcy appeals, and any other case or category of cases as a judicial officer may order.

(b) Track Designation

The proposed scheduling order shall identify the case management track to which the case is assigned.

(c) Contents of Scheduling Order

(1) The proposed scheduling order in administrative track cases shall establish the deadline (1) to join other parties and to amend the pleadings; and (2) to file motions. The order shall also direct the parties to exchange written settlement papers by dates certain and it shall identify the month in which the case shall be ready for trial.

(2) The proposed scheduling order in standard track cases shall establish the deadline (1) for initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1); (2) to join other parties and to amend the pleadings; (3) to file motions; (4) to disclose experts and complete discovery; and (5) to complete other pretrial preparation. The order shall also direct the parties to exchange written settlement papers by dates certain and it shall identify the month in which the case shall be ready for trial.

(3) The proposed scheduling order in prisoner civil rights track cases shall establish the deadline (1) to join other parties and to amend the pleadings; (2) to file motions; (3) to complete discovery; and (4) to complete other pretrial preparation. This order shall also direct the parties to exchange written settlement papers by dates certain and it shall identify the month in which the case shall be ready for trial.

(4) The proposed scheduling order in ERISA track cases shall establish the deadline (1) for establishing the administrative record; (2) for filing motions to modify the administrative record and/or for discovery; (3) for

amendment of the pleadings and joinder of parties; and (4) for filing motions for judgment on the record for judicial review.

(d) Issuance

The proposed scheduling order in administrative, standard track, prisoner civil rights track, and ERISA cases shall issue immediately upon the appearance of defendant(s) but in no event more than 90 days after defendant has been served with the complaint or 60 days after any defendant has appeared unless the judge finds good cause for delay. The scheduling order in complex cases shall issue after an initial conference with counsel at which discovery, motion practice, ADR and other matters will be discussed. The scheduling order in IDEA track cases shall issue after an initial conference with counsel at which the administrative record, additional evidence, if any, motion practice, and other matters will be discussed.

(e) Objections

Unless a party files an objection to the proposed scheduling order within twenty-one (21) days of its filing, fourteen (14) days in ERISA track cases, the proposed order shall thereupon become the Scheduling Order of the Court as required by Fed. R. Civ. P. 16(b). A party wishing to alter any deadline or any discovery limitation of a scheduling order must file a detailed explanation of the reasons for each requested alteration with the objection or request a scheduling conference with a judicial officer, or both. A conference, if deemed necessary by the Court, will be scheduled promptly.

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Annotations

Rule 16.2(c)

(1) "In this District, the deadline for expert designations in most cases, including patent cases, is established by a scheduling order." Marical, Inc. v. Cooke Aquaculture, Inc., 2017 U.S. Dist. LEXIS 140466, at *3 (D. Me. Aug. 31, 2017) (citing to D. Me. Loc. R. 16.2(c)).

RULE 16.3 - MANAGEMENT TRACK PROCEDURES

(Amended December 1, 2018)

(a) Administrative Track

(1) Habeas Corpus Petitions. Proceedings on applications for habeas corpus under 28 U.S.C. § 2254 and proceedings on motions to vacate sentence under 28 U.S.C. § 2255 shall be referred to a magistrate judge in accordance with 28 U.S.C. § 636(b)(1)(B) and processed in accordance with the Rules Governing Section 2254 Cases, 28 U.S.C. § 2254, and the Rules Governing Section 2255 Proceedings, 28 U.S.C. § 2255 respectively.

(2) Social Security Disability Cases. These matters are referred upon filing to a magistrate judge for further proceedings as follows:

(A) Within thirty (30) days of the filing of the transcript and answer, counsel for the plaintiff shall file with the Court an itemized statement of the specific errors upon which the plaintiff seeks reversal of the Commissioner's decision, and complete and file a Fact Sheet available in the Clerk's Office. Plaintiff's itemized statement of the specific errors shall not exceed twenty (20) pages in length. On a showing of good cause, the plaintiff may move to extend the 30-day deadline by an additional fifteen (15) days.

(B) The Commissioner shall file an opposition to the Plaintiff's itemized statement of specific errors no later than thirty (30) days after the Plaintiff files his/her statement of errors. The Commissioner's opposition shall not exceed twenty (20) pages in length. No further briefing will be permitted. On a showing of good cause, the Commissioner may move to extend the 30-day deadline by an additional fifteen (15) days.

(C) The case, then being ready for the entry of judgment upon the pleadings and transcript of the record, will be scheduled for oral argument.

(D) At oral argument, each party will be given 15 minutes to present its position to the Court. Counsel for the plaintiff shall set forth the specific errors about which the plaintiff complains. Counsel for the

Commissioner shall then set forth reasons why the Commissioner's decision should be affirmed. Counsel are required to cite statute, regulation, and case authority to support their respective positions. Any factual assertions must be supported by transcript references. Additional time for oral argument or the presentation of briefs following argument will be permitted only for good cause shown and on such terms as the Court may direct.

(E) If the oral argument is conducted before a magistrate judge and the parties have not consented to the magistrate judge's jurisdiction pursuant to 28 U.S.C. § 636(c), the magistrate judge will issue a recommended decision. Any party desiring to object to the recommended decision shall do so in accordance with Fed. R. Civ. P. 72(b) and must provide a transcript of the oral argument.

(F) The Court has the discretion to waive oral argument, either on its own, or at the request of one of the parties.

(3) Bankruptcy Appeals. Upon the filing of a bankruptcy appeal the Clerk shall issue a notice setting forth the briefing schedule as required by Bankruptcy Rule 8009 and the appeal shall be processed as follows:

(A) An appeal from a final judgment, order or decree of the bankruptcy court shall be assigned for hearing as soon after briefs have been filed as the Court's calendar permits. The provisions of Bankruptcy Rule 8012 shall govern whether an appeal is decided on the written submissions or following oral argument. Any party requesting oral argument shall file with its brief a separate statement setting forth the reason why oral argument should be allowed.

(B) Local Rule 7 shall govern any motion practice arising from the filing of a bankruptcy appeal.

(C) All briefs shall be filed in accordance with Bankruptcy Rules 8009(a), 8010(a) and 8010(b). Except by leave of Court, principal briefs shall not exceed 30 pages, and reply briefs shall not exceed 10 pages, exclusive of pages containing the table of contents, table of citations and any addendum containing photocopies of any statutes, rules or regulations.

(4) Other Cases. The case management of all other cases on the administrative track shall be governed by the scheduling order.

(b) Standard Track

(1) The case management of all cases on the standard track shall be governed by the scheduling order.

(2) When a scheduling conference is requested, it may be conducted by telephone at the discretion of the judicial officer. In those instances, the Clerk will inform the lawyers or unrepresented parties of the date and time of the conference. It shall be the responsibility of the party who requested the conference to initiate the telephone conference call to chambers.

(3) Prior to the requested scheduling conference, the lawyers must confer and discuss the following topics: voluntary exchange of information and discovery; a discovery plan; the various alternative dispute resolution options; consenting to trial before the magistrate judge; the legal issues in the case; a plan for raising and disposing of serious and legitimate dispositive motions; settlement; and stipulations.

(4) The Court may require counsel to file a joint proposed discovery and motion plan prior to the scheduling conference.

(5) The agenda for the scheduling conference shall include the following topics: narrowing the case to its essential issues; sequencing and limiting discovery and motion practice; settlement; ADR options; and consent to trial before the magistrate judge.

(6) During the conference the judicial officer shall explore the advisability and utility of ADR, ascertaining actual discovery needs and costs and imposing discovery limits and deadlines.

(c) Complex Track

(1) Promptly after the pleadings are complete an initial scheduling conference will be held before a judicial officer. If the conference is to be conducted by telephone, the Clerk will inform the lawyers or unrepresented parties of the time and date of the conference and it shall be the responsibility of the plaintiff to initiate the telephone conference call to chambers.

(2) Prior to the conference the lawyers must meet face-to-face unless they are more than 30 miles apart and in that event by telephone and discuss the following issues: voluntary exchange of information and discovery; a discovery plan; the various kinds of alternative dispute resolution; consenting to trial by the magistrate judge; the legal issues in the case; a plan for raising and disposing of serious and legitimate dispositive motions; settlement; and stipulations.

(3) Not less than two (2) business days before the conference the lawyers shall file a joint proposed discovery and motion plan and any proposal for ADR.

(4) The agenda for the initial conference shall include the following topics: narrowing the case to its essential issues; sequencing and limiting discovery and motion practice; a trial date; all legal issues; settlement; ADR options; consenting to trial before the magistrate judge; and the date of the next conference.

(5) During the conference the judicial officer shall explore the advisability and utility of ADR, ascertaining the actual discovery needs and costs and imposing discovery limits and deadlines.

(6) During the initial conference the judicial officer will ordinarily schedule further settlement discussions as part of the next conference and will determine whether clients or client representatives should be required to attend the next conference. The attendance of the clients (in person or by being available by telephone) will usually be required.

(7) Unless the parties otherwise agree, the settlement conference in a nonjury case will be conducted by a judicial officer other than the one who will preside at trial.

(8) Additional case management and settlement conferences will be scheduled at the discretion of the judicial officer. The judicial officer will regularly hold case management conferences (either in person or by telephone) in those cases in which there is substantial discovery. At each such conference, the lawyers shall be prepared to discuss in a detailed manner the settlement status of the case, ongoing and projected litigation costs, ADR options, and avoidance of unnecessary motion practice.

(d) Prisoner Civil Rights Track

(1) All prisoner civil rights cases are referred upon filing or removal from the state courts to a magistrate judge.

(2) The case management of the cases shall be governed by a scheduling order entered by the magistrate judge.

(e) Individuals With Disabilities Education Act (IDEA) Track

(1) Promptly after the pleadings are complete an initial scheduling conference will be held before a judicial officer. If the conference is to be conducted by telephone, the Clerk will inform the lawyers or unrepresented parties of the time and date of the conference and it shall be the responsibility of the plaintiff to initiate the telephone conference call to chambers.

(2) The agenda for the initial conference shall include the following topics: identifying the essential factual and legal issues of the case; the organization of the administrative record; the mode and sequence for the presentation of additional evidence, if any; and the briefing schedule.

(3) Counsel shall not use the name of the child with a disability in court filings, and shall refer to the child with a disability by initials only, or by the alias of J. Doe.

(4) The administrative record, transcript, and any additional evidence of the administrative proceedings shall be filed under seal.

(f) Employee Retirement Income Security Act (ERISA) Track

(1) All cases brought pursuant to § 502(a)(1)(B) of The Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a)(1)(B) (ERISA), are referred upon filing to a magistrate judge.

(2) The case management of all cases on the ERISA track shall be governed by the scheduling order.

(3) Scheduling conferences, at the discretion of the magistrate judge, may be conducted by telephone. In those instances, the Clerk will inform the lawyers and any unrepresented parties of the date and time of the conference. It shall be the responsibility of the party requesting the conference to initiate the telephone conference call to chambers.

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Annotations

Rule 16.3(a)(2)

(1) In social security cases, Local Rule 16.3(a)(2) "requires the plaintiff to file an itemized statement of the specific errors upon which she seeks reversal of the commissioner's decision and to complete and file a fact sheet available at the Clerk's Office, and the commissioner to file a written opposition to the itemized statement." Local Rule 16.3(a)(2)(D) "require[s] the parties to set forth at oral argument their respective positions with citations to relevant statutes, regulations, case authority, and page references to the administrative record." Roberta M.R. v. Berryhill, 2019 WL 1006225, at *3 n.1 (D. Me. Feb. 28, 2019).

(2) In social security cases, a new point raised at oral argument and not included in the itemized statement of errors required by Local Rule 16.3(a)(2) is considered waived. McCallister v. Astrue, 2009 WL 1885036, at *7 (D. Me. June 30, 2009), R. & R. adopted, 2009 WL 2223418 (D. Me. July 23, 2009).

(3) "Counsel for the plaintiff in this case and the Social Security bar generally are hereby placed on notice that in the future, issues or claims not raised in the itemized statement of errors required by this court's Local Rule 16.3(a) will be considered waived and will not be addressed by this court." Farrin v Barnhart, 2006 WL 549376, at *5 (D. Me. Mar. 6, 2006) (R. & R. adopted, Mar. 28, 2006, No. 2:05-cv-144-DBH (ECF No. 14)).

Rule 16.3(f)

(1) "In the District of Maine, '[t]he case management of all cases on the ERISA track shall be governed by the scheduling order.' D. Me. Loc. R. 16.3(f)(2). Here, in violation of the scheduling order, [Plaintiff] simply filed his reply without seeking prior permission and therefore, the Court GRANTS [Defendant]'s Motion to Strike Plaintiff's Reply Memorandum." Weeman v. Life Ins. Co. of N. Am., 2019 U.S. Dist. LEXIS 165369, at *3 n.1 (D. Me. Sep. 26, 2019).

RULE 16.4 - FINAL PRETRIAL CONFERENCE AND ORDER

(Amended July 1, 2010)

(a) Final Pretrial Conference

A final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The Clerk shall notify counsel of the time and place by mailing to them a written notice.

A final pretrial conference may be conducted by the trial judge or any other judicial officer.

(b) Preparation for Final Pretrial Conference

Not later than 5 business days prior to the final pretrial conference, each party shall file with the Court and serve on every other party a pretrial memorandum, which normally need not exceed 5 pages in length, containing the following information: (1) a brief factual statement of the party's claim or defense, as the case may be, including an itemized statement of any damages claimed; (2) a brief statement of the party's contentions with respect to any controverted points of law, including evidentiary questions, together with supporting authority; (3) proposed stipulations concerning matters which are not in substantial dispute and to facts and documents which will avoid unnecessary proof; (4) the names and addresses of all witnesses the party intends to call at trial, other than those to be used for impeachment and rebuttal, but in the absence of stipulation, the disclosure of a witness shall not constitute a representation that the witness will be produced or called at trial; (5) any proposed use of case-specific juror questionnaires and (6) a list of the documents and things the party intends to offer as exhibits at trial.

Each party shall be prepared at the pretrial conference to discuss the issues set forth in items (1) through (5) above, to exchange or to agree to exchange medical reports, hospital records, and other documents, to make a representation concerning settlement as set forth in this rule and to discuss fully all aspects of the case.

(c) Conduct of Final Pretrial Conference

The Court will consider at the final pretrial conference the pleadings and papers then on file; all motions and other proceedings then pending; and any other matters referred to in this rule or in Fed. R. Civ. P. 16 which may be applicable.

Unless excused for good cause, each party shall be represented at the final pretrial conference by counsel who is to conduct the trial on behalf of such party, who shall be thoroughly familiar with this rule and with the case. Counsel shall be required to make a representation to the Court at the final pretrial conference that counsel has made a recommendation to the client in respect to settlement and that the client has acted on such recommendation. Counsel's inability to make such representations shall be grounds for imposition of sanctions.

(d) Final Pretrial Order

Either at or following the final pretrial conference, the Court shall make a final pretrial order, which shall recite the action taken at the conference, and such order shall control the subsequent course of the action, unless modified by the Court to prevent manifest injustice. Unless otherwise ordered, any objections to the final pretrial order must be made within 14 days after receipt by counsel of a copy thereof. Any discussion at the conference relating to settlement shall not be a part of the final pretrial order. The final pretrial order deadlines shall be such that they do not come into play until after the last settlement conference has been held and it appears that trial is unavoidable. In any case where there is a pending dispositive motion, one item on the final pretrial conference agenda shall be whether the provisions and deadlines of the final pretrial order should be stayed until the motion is resolved. The judicial officer presiding at the final pretrial conference shall tailor the order to the individual case and consider whether certain provisions of the final pretrial order should be waived. (For example, in a simple automobile negligence personal injury case it may not be necessary to list exhibits or summaries of witness testimony. In such cases trial briefs and draft jury instructions may also be unnecessary.) The number of copies of documents to be filed shall be limited. In a jury case, the original set of exhibits is ordinarily sufficient and should not be filed with the Clerk before trial. In a nonjury case, one extra set of exhibits for the judge to review in advance of the trial shall be filed as set forth in the Final Pretrial Order.

Trial briefs, voir dire, jury instructions, etc. should be filed electronically in accordance with the Administrative Procedures Governing the Filing and Service by Electronic Means as set forth in Appendix IV of these rules.

(e) Sanctions

If a party fails to comply with the requirements of Fed. R. Civ. P. 16 or this rule, the Court may impose such penalties and sanctions as are just, including those set forth in Fed. R. Civ. P. 16(f).

(f) Special Circumstances

The Court may provide for a special pretrial procedure in any case when special circumstances warrant.

(g) Settlement

The parties, through their lawyers, shall be prepared to fully engage in meaningful settlement discussions at the conference. If the case will be tried by the judge without a jury, a different judicial officer will conduct the settlement discussions.

A judicial officer may direct that a separate settlement conference be held with party representatives present in person.

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Annotations

(1) Plaintiffs can file a "motion to consolidate [trial] in connection with the filing of their pretrial memoranda required by Local Rule 16.4." Friends of Merrymeeting Bay v. Miller Hydro Grp., 2012 WL 458618, at *2 (D. Me. Feb. 9, 2012).

(2) Under Local Rule 16.4(b), "by the time of the pretrial conference both parties should have disclosed their witness and exhibit lists to the opposing party Defendant cites no case law that supports the proposition that lack of surprise somehow cures violations of Rule 26 and Local Rule 16.4 [re: failure to list witnesses or exhibits]." Skidgell v. Bowlby, 2006 WL 1208026, at *1-2 (D. Me. May 3, 2006).

RULE 22 - INTERPLEADER

See Local Rule 67.

RULE 26 - DISCOVERY

(Amended July 1, 2018)

(a) Filing of Discovery

Unless otherwise ordered by the Court, or as may be otherwise required by these Rules, depositions upon oral examination and interrogatories, requests for documents, requests for admissions, and answers and responses thereto and disclosures made under Fed. R. Civ. P. 26(a)(1)-(3) and pursuant to scheduling orders issued by the Court, shall be served upon other parties but shall not be filed with the Court, except as required by subsection (c) of this Rule. The party that has served notice of a deposition or has served discovery papers shall be responsible for preserving and for insuring the integrity of original transcripts and discovery papers for use by the Court.

(b) Discovery Disputes

No written discovery motions shall be filed without the prior approval of a judicial officer. A party with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party shall file a Request for Hearing Re Discovery Dispute using the Court's form seeking a prompt hearing with a judicial officer by telephone or in person. The party seeking the hearing shall confer with opposing counsel and agree on the relevant discovery materials that should be submitted to the Court with the Request for Hearing. If the hearing is to be conducted by telephone, the Clerk will inform counsel of the time and date of the hearing and it shall be the responsibility of the moving party to initiate the telephone call to chambers, unless the Court, in its discretion, directs otherwise. The recording by counsel of telephone hearings with the Court is prohibited, except with prior permission of the Court. The Court shall conduct the hearing on the record, but that record will not be officially transcribed except on specific request of counsel or the Court. The request for a hearing with a judicial officer carries with it a professional representation by the lawyer that a conference has taken place and that he or she has made a good faith effort to resolve the dispute. The lawyers or unrepresented parties shall supply the judicial officer with the particular discovery materials (such as objectionable answers to interrogatories) that are needed to understand the dispute.

If the judicial officer decides that motion papers and supporting memoranda are needed to satisfactorily resolve the discovery dispute, such papers shall be filed in conformity with Rule 7. Such motions shall (1) quote in full each interrogatory, question at deposition, request for admission or request for production to which the motion is addressed, or otherwise identify specifically and succinctly the discovery to which objection is taken or from which a protective order is sought; and (2) the response or objection and grounds therefor, if any, as stated by the opposing party.

Unless otherwise ordered by the Court, the complete transcripts or discovery papers need not be filed with the Court pursuant to subsection (c) of this rule unless the motion cannot be fairly decided without reference to the complete original.

(c) Use of Depositions and Discovery Material by the Court

If depositions, interrogatories, requests or answers or responses thereto are to be used at trial, other than for purposes of impeachment or rebuttal, the complete original of the transcript or the discovery material to be used shall be filed with the Clerk seven (7) days prior to trial. A party relying on discovery transcripts or materials in support of or in opposition to a motion shall file excerpts of such transcript or materials with the memorandum required by Rule 7 as well as a list of specific citations to the parts on which the party relies.

(d) Confidentiality Order

A party by motion or with the agreement of all parties may submit to the Court a proposed order governing the production and use of confidential documents and information in the pending action. The proposed order shall conform to the Form Confidentiality Order set forth in Appendix II to these Local Rules. Any proposed modification to the Form Confidentiality Order shall be identified with a short statement of the reason for each modification.

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Annotations

Rule 26(b)

(1) Discovery issues such as objections to an expert witness report "are unripe for court resolution in the absence of any indication that the defendant's counsel has made a good-faith effort to address them with the plaintiff's counsel prior to seeking the court's assistance, as required by Local Rule 26(b)." Burton v. S.D. Warren Co., 2019 U.S. Dist. LEXIS 119775, at *14 (D. Me. July 18, 2019).

(2) Summary judgment is not the time to challenge discovery violations. "If Mr. Burnett was unable to obtain the discovery material he needed, he should have followed the local rule by attempting to resolve the matter informally and then requesting a discovery conference. See D. Me. Loc. R. 26(b)." Burnett v. Ocean Props., 327 F. Supp. 3d 198, 213 n.47 (D. Me. 2018).

(3) "By local rule, discovery motions require prior approval from the Court. D. Me. Loc. R. 26(b)." Marical, Inc. v. Cooke Aquaculture Inc., 2017 U.S. Dist. LEXIS 140466, *2 n.1.

(4) Local Rule 26(b) does not apply to criminal matters. United States v. Sanborn, 2013 WL 5571082, at *1 n.1 (D. Me. Oct. 9, 2013).

(5) "To the extent that the parties cannot reach agreement on the consolidation of a specific deposition or the procedures to be used at a specific deposition, they are free to request a conference before the magistrate judge in accordance with District of Maine Local Rule 26(b)." Friends of Merrymeeting Bay v. Miller Hydro Grp., 2012 WL 458618, at *1 (D. Me. Feb. 9, 2012).

(6) A motion to compel is unauthorized until the party seeking it pursues the discovery dispute with the magistrate judge as Local Rule 26(b) requires. Alden v. Office Furniture Distributors of New England, Inc., 2011 WL 1770948, at *2 (D. Me. May 9, 2011).

(7) A request for a settlement conference is not a request for a discovery conference under Local Rule 26(b) and a motion to compel discovery will be denied until the express requirements of the Rule are satisfied. Marcello v. Maine, 2006 WL 3804891, at *1 (D. Me. Dec. 22, 2006).

(8) "[T]he defendants' concern that Tripp first disclosed the existence of Hopkins's testimony only two weeks prior to the discovery deadline, thereby allegedly preventing the defendants from deposing Hopkins, is the kind of concern that should have been raised in the context of Local Rule 26 [i.e. not at summary judgment]." Tripp v. Cole, 2004 U.S. Dist. LEXIS 25124, *9 n.6.

(9) "In this District, written discovery motions may not be presented without prior leave of court. D. Me. Loc. R. 26(b)." Cannon v. UNUM Life Ins. Co. of Am., 219 F.R.D. 211, 212 n.1 (D. Me. 2004).

Rule 26(d)

(1) Although "Local Rule 26(d) directs that '[a]ny proposed modification to the Form Confidentiality Order shall be identified with a short statement of the reason for each modification' and "no such short statement" was provided, "the Court reviewed the parties' drafts and has determined the terms appropriate to protect the respective interests of the parties, the public and the Court." Aero Union Corp. v. Aircraft Deconstructors Int'l LLC, 2012 WL 3679627, at *5 (D. Me. Aug. 24, 2012).

RULE 30 - DEPOSITIONS

(Amended July 1, 2011)

In a video deposition, the camera shall focus from a single stationary position on the witness and any exhibits utilized by the witness, unless the parties otherwise agree or the Court enters an order under Local Rule 26(b).

RULE 32 - USE OF DEPOSITIONS IN COURT PROCEEDINGS

(a) Stipulations Regarding Objections

The Court will not give any effect to a stipulation attempting to preserve for trial those objections which by Fed. R. Civ. P. 32(d)(3)(A) and (B) are waived (unless reasonable objection is made at the taking of the deposition).

(b) Use of Depositions

See Local Rule 26(b).

RULE 33 - INTERROGATORIES

Answers and objections to interrogatories shall set forth in full, immediately preceding the answer or objection, the interrogatory to which answer or objection is being made.

RULE 38 - DEMAND FOR JURY TRIAL

If a demand for jury trial is endorsed upon a pleading pursuant to Fed. R. Civ. P. 38(b), in addition to said endorsement the designation of the pleading shall include the words "AND DEMAND FOR JURY TRIAL" or the equivalent on the first page.

A demand for jury trial in actions removed to this Court from the state courts shall be filed in accordance with the provisions of Fed. R. Civ. P. 81(c).

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Annotations

(1) This District has cases on the timeliness of jury trial demands, especially in cases removed from state court, although the cases do not refer to the Local Rule. See, e.g., Lundy v. Nestle Waters N. Am., Inc., 2009 WL 2767915, at *1 (D. Me. Aug. 28, 2009); Raymond v. Lane Constr. Corp., 2007 WL 3348286, at *1 (D. Me. Nov. 7, 2007); French v. Fleet Carrier Corp., 101 F.R.D. 369 (D. Me. 1984); Bonney v. Canadian National Ry Co., 100 F.R.D. 388 (D. Me. 1983).

RULE 39 - COURTROOM PRACTICE

(Amended July 1, 2016)

(a) Opening Statements

Opening statements shall not be argumentative, and shall not exceed thirty minutes in length, except by leave of Court. Counsel for the defendant may make an opening statement immediately following the plaintiff's opening statement, or counsel may reserve the right to do so until the close of the plaintiff's evidence.

(b) Closing Arguments

The length of closing arguments shall be fixed by the Court. Only one attorney shall argue for each party, except by leave of Court. The plaintiff in a civil action and the claimant in a land condemnation action shall argue first, and may reserve for rebuttal such time as shall be fixed by the Court.

(c) Examination of Witnesses

(1) The examination of a particular witness, and objections relating to that examination, shall be made by one attorney for each party, except by leave of Court.

(2) Upon oral motion of a party or on its own motion, the Court may order on such terms as it may prescribe, that a witness under examination in court shall not discuss the witness's testimony, including during any recess taken during the examination or before the witness is finally excused.

(d) Attorneys as Witnesses

No attorney shall without leave of Court conduct the trial of a jury action in which the attorney is a witness for the party represented at trial.

(e) Trial Day

(1) The presiding judge shall establish the limits of the trial day.

(2) In a civil case, the presiding judge may, after consulting with the trial lawyers, establish the amount of time that each side will have for its case, including its cross-examination of witnesses. Such limits may be exceeded

only for good cause shown, taking into account, among other things, the lawyers' efficient use of the time already allotted.

(f) Exhibits

(1) Custody and Marking. All exhibits shall be marked for identification prior to trial in accordance with the final pretrial order. Unless otherwise ordered by the Court, all exhibits offered in evidence or otherwise used or referred to shall be left by counsel in the custody of the Clerk to be held until released by order of the Court upon motion of a party or until the conclusion of any appellate proceedings, except that exhibits which because of their size or nature require special handling shall remain in the possession of the party introducing them. Exhibits retained by counsel shall be preserved in the form in which they were offered until the proceeding is finally concluded.

(2) Return. Unless otherwise ordered by the Court, at the conclusion of the proceeding, all nondocumentary exhibits shall be returned to the submitting parties who shall keep them in the form in which they had been offered and who shall make them available for the use of other parties, the Court, or an appellate court until the expiration of any appeal. Any documentary exhibits shall be withdrawn by counsel who offered them within 30 days after the final determination of the action by this or any appellate court. Upon counsel's failure to timely remove any exhibits, the Clerk may, after due notice to counsel, dispose of them as necessary.

(3) Valuable or Bulky Exhibits. A party who offers valuable exhibits shall be responsible for their insurance and protection.

(4) Photographs of Chalks. Counsel may photograph or otherwise copy any chalk in order to make a record of it.

(5) Firearms. A party intending to offer a firearm must first deliver it to the Marshal who will ensure that it is not loaded and that it is rendered safe for presentation in court. During the course of the proceedings, the firearm shall remain in the custody and control of a custodian approved in advance by the Court and Marshal. A firearm shall be examined by a deliberating jury only while in the custody of a Court Security Officer, who shall remain, without comment, in the jury room during the examination.

(g) Official Record

The only official record of any court proceeding shall be a record prepared by an authorized court reporter or an electronic sound recording made by court personnel or a transcript prepared therefrom by professional transcription services, when properly certified in each case.

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Annotations

Rule 39(a), (b)

(1) See United States District Court for the District of Maine, Summary of Principles Regarding Opening Statements and Closing Arguments from First Circuit Authority and Local Rules, *available at* https://www.med.uscourts.gov/pdf/OpeningAndClosing.pdf (last visited April 29, 2020).

Rule 39(d)

(1) "[B]efore OMC is allowed to call [attorney] Greif as a witness, they must obtain the Court's permission. D. ME. LOC. R. 39(d) ('No attorney shall without leave of Court conduct the trial of a jury action in which the attorney is a witness for the party represented at trial')." Hinton v. Outboard Marine Corp., 2012 WL 195026, at *1 (D. Me. Jan. 23, 2012).

RULE 41.1 - COMPROMISED ACTIONS

(a) Compromised Actions

Within 30 days after counsel notify the Clerk that an action has been settled, counsel shall execute and file the papers necessary to terminate the action as of record. Upon failure of counsel to do so, unless otherwise ordered by the Court, the Clerk shall enter an order as of course dismissing the action with prejudice but without costs, subject to the right of any party to move to reinstate the action within one year after the entry of the order if the settlement is not consummated.

(b) Dismissal for Lack of Prosecution

The Court may at any time issue an order to show cause why a case should not be dismissed for lack of prosecution. If good cause is not shown within the time prescribed by the show cause order, the Court may enter a judgment of dismissal with or without prejudice.

(c) Class Actions, etc.

In actions to which Fed. R. Civ. P. 23(e), 23.1, 23.2 or 66 apply, or in which any other rule or any statute of the United States so requires, dismissal under this rule will be made by Court order.

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Annotations

(1) For an example of a case involving this rule, see Kennebunk Savings Bank v. Lollipop Tree, Inc., 2010 WL 3704921, at *1 (D. Me. Sept. 13, 2010), in which the court—post-settlement notice—dismissed the action "with prejudice but without costs in accordance with Federal Rule 41(a)(2) and District of Maine Local Rule 41.1(a)."

(2) In another example, the Court dismissed a pro se plaintiff's case without prejudice under Local Rule 41.1(b) because—despite several extensions—he had "made no further filings, and it appears that no defendant has been served." Salcedo v. King, 2019 U.S. Dist. LEXIS 162514, at *1 (D. Me. Sep. 18, 2019).

RULE 41.2 - COURT APPROVAL OF SETTLEMENTS ON BEHALF OF MINORS

(Amended December 1, 2018)

No approval of settlement of actions on behalf of minors will be given unless a motion is filed signed by the next friend or guardian containing the following information where applicable:

(1) A brief description of the claim and of all damages sustained;

(2) An itemized statement of all damages;

(3) The total amount of the settlement and whether reimbursement of expenses is to be paid out of the total settlement or is being paid in addition as part of the parent's claim. If the parent is being paid anything directly, the motion shall contain a statement of the total amount being paid the parent and a specification of the items covered;

(4) Whether the settlement was negotiated by counsel actually representing the minor and, if so, the amount claimed as attorney's fees; and

(5) Designates a depository of the funds received for the minor and subjects any withdrawals to court approval until the minor reaches majority.

(6) Any deviation from the plan requires approval by the Court upon motion.

(7) Not later than thirty (30) days after entry of the order approving the settlement, the attorney or party to whom the funds are paid shall file a sworn affidavit verifying that the funds paid have been deposited as required by the court order, stating the depository financial institution and account number, and certifying that a copy of the Court's order with restrictions on withdrawal, if any, has been provided to the depository financial institution.

RULE 44 - PROOF OF OFFICIAL OR CERTIFIED RECORDS

(REPEALED December 1, 2015)

Rule 44 is abrogated in its entirety, effective December 1, 2015.

RULE 47 - SELECTION OF JURORS

(a) Number of Jurors

In all civil jury cases the jury shall consist of no fewer than six (6) members unless the parties otherwise consent.

(b) Examination of Jurors

The Court will itself conduct the examination of prospective jurors. At the close of such examination, the Court will afford counsel an opportunity, at the bench, to request that the Court ask additional questions.

(c) Challenges for Cause

Challenges for cause of individual prospective jurors shall be made at the bench, at the conclusion of the Court's examination.

(d) Peremptory Challenges

(1) Manner of Exercise. Peremptory challenges shall be exercised by striking out the name of the juror challenged on the list of the drawn venire prepared by the Clerk. Any party may waive the exercise of any peremptory challenge without thereby relinquishing the right to exercise any remaining peremptory challenge or challenges to which the party is entitled. If all peremptory challenges are not exercised, the Court will strike from the bottom of the list sufficient names to reduce the number of jurors remaining to the number of jurors decided by the Court to sit on the case.

(2) Order of Exercise. In any action in which both sides are entitled to an equal number of peremptory challenges, they shall be exercised one by one, alternately, the plaintiff in a civil action and the claimant in a land condemnation action, exercising the first challenge. In any action in which the Court allows several plaintiffs or several defendants additional peremptory challenges, the order of challenges shall be determined by the Court.

RULE 54.1 - SECURITY FOR COSTS

(Amended December 1, 2009)

Except where 28 U.S.C. §§ 1915, 1916 or any other statute of the United States otherwise provides, the Clerk shall, upon written application by a defendant at any time after the commencement of any civil action, enter an order as of course directing a non-resident plaintiff to furnish, within 21 days after service of said order, security in the amount of Five Hundred Dollars ($500) for the payment of all taxable costs of the action. Upon motion and for good cause shown, the Court may at any time modify or rescind such an order, or direct that additional or other security be furnished.

RULE 54.2 - CLAIM FOR ATTORNEYS' FEES

(Amended January 1, 2015)

An application for attorneys' fees in which no notice of appeal to the Court of Appeals has been filed shall be filed within 30 days of the expiration of the time for filing a timely appeal.

An application for fees in all other cases shall be filed within 30 days of the filing of the appellate mandate providing for the final disposition of any appeal to the Court of Appeals. A claim for fees filed before the final disposition of any appeal to the Court of Appeals shall have no effect and a new application must be filed within the prescribed time as described herein.

The foregoing notwithstanding, any application for fees under 42 U.S.C. § 406(b) in a Social Security appeal pursuant to 42 U.S.C. §405(g) that results in a remand under either sentence four or six of 42 U.S.C. § 405(g) shall be filed within 30 days of the date of the Commissioner of Social Security's notice of award that establishes both that there are past due benefits and the amount thereof.

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Annotations

(1) "[C]ounsel who fail to adhere to the time constraints imposed by Local Rule 54.2 run the risk of forfeiting a fee award." Marion M. v. SSA Comm'r, No. 1:18-CV-00490-LEW, 2019 U.S. Dist. LEXIS 190639, at *3 (D. Me. Nov. 4, 2019) (granting motion for fees, but renewing the admonition to the social security bar of "the importance of observing the deadline imposed under Local Rule 54.2." (citing Richardson v. Astrue, 2010 U.S. Dist. LEXIS 112398, at *8 (D. Me. July 20, 2010)).

(2) "Local Rule 54.2 is designed to avoid directing the parties' and the court's attention to the attorney fee issue until it is clear that the ruling justifying the fee is not subject to alteration in the court of appeals. Although the defendants say that 'plaintiff does not suggest that he intends to appeal the Court's Decision and Order,' the time for such an appeal, if any, has not run because there is not yet a final judgment in the case and therefore the motion for attorney fees is premature." John F. Chase v. Arthur Merson, No. 2:18-cv-165-DBH, at *1 (D. Me. Apr. 1, 2019) (ECF No. 101); see also Chase v. Merson, 2019 U.S. Dist. LEXIS 182290, at *11 (D. Me. Oct. 22, 2019) (denying renewed motion for fees without prejudice under Local Rule 54.2 because, as before, final judgment had not yet been entered).

(3) Although Fed. R. Civ. P. 54(d)(2)(B)(i) sets a 14-day limit after entry of judgment for an attorney fees motion, it makes an exception if "a court order provides otherwise." Fed. R. Civ. P. 54(d)(2)(B). Other courts deem local rules to be standing orders. See, e.g., Planned Parenthood v. Attorney General, 297 F.3d 253, 261 (3d Cir.2002) ("conclud[ing] that District of New Jersey Local Rule 54.2(a) is an order of the court for the purposes of Fed. R. Civ. P. 54(d)(2)(B)"). In this case, the Court ordered Plaintiff to file his motion for attorneys' fees "in accordance with Federal Rule of Civil Procedure 54(d)(2) and District of Maine Local Rule 54.2," and the Local Rule sets a 30-day limit. "Thus, the Court specifically provided for the enlarged time period contemplated in Local Rule 54.2." Spooner v. EEN, Inc., 829 F. Supp. 2d 3, 6 (D. Me. 2010), aff'd, 644 F.3d 62 (1st Cir. 2011).

RULE 54.3 - BILL OF COSTS

(Amended December 1, 2016)

Except in those situations where a party is applying for costs as part of an application for statutorily permitted attorneys' fees under Loc. R. 54.2, Bills of Costs shall be prepared on forms available from the Clerk's Office or on a filing substantially similar and shall be filed with supporting memoranda and documentation within thirty (30) days of the expiration of the time for filing a timely appeal if no notice of appeal has been filed or within 30 days of the filing of the appellate mandate providing for the final disposition of any appeal to the Court of Appeals. Unless within twenty-one (21) days after the filing of a Bill of Costs the opposing party files a written objection thereto, incorporating a memorandum of law, the opposing party shall be deemed to have waived objection and the Clerk shall tax the costs which appear properly claimed. A reply to the opposing party's objection will not be permitted, unless otherwise ordered by the Clerk.

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Annotations

(1) Under Local Rule 54.3, after the prevailing party files a bill of costs, the Clerk taxes the costs properly claimed. The federal rule on costs applies even in diversity cases. Dinan v. Alpha Networks, Inc., 2015 WL 1737734, at *13 (D. Me. Apr. 16, 2015).

(2) "[I]t was more efficient for [the Court], rather than the Clerk, to resolve the contested issue as to which party prevailed." In this case, the Court found that the plaintiff prevailed even though he received a much lower amount in damages than he had demanded. Once the prevailing party is determined, "the Court refers the matter to the Clerk of Court to tax appropriate costs to the Plaintiff in accordance with the local rule." Berry v. WorldWide Language Res., Inc., 811 F. Supp. 2d 520, 523 (D. Me. 2011).

RULE 56 - MOTIONS FOR SUMMARY JUDGMENT

(Amended July 1, 2016)

(a) Motions for Summary Judgment

In addition to the material required to be filed by Local Rule 7, a motion for summary judgment and opposition thereto shall comply with the requirements of this rule.

(b) Supporting Statement of Material Facts

A motion for summary judgment shall be supported by a separate, short, and concise statement of material facts, each set forth in a separately numbered paragraph(s), as to which the moving party contends there is no genuine issue of material fact to be tried. Each fact asserted in the statement shall be simply and directly stated in narrative without footnotes or tables and shall be supported by a record citation as required by subsection (f) of this rule.

Nothing in this Local Rule 56 precludes the parties from filing a stipulated statement of material facts as to all, or some, of the facts underlying a motion for summary judgment, or any opposition thereto. In the event the parties file a stipulated statement of material facts, such stipulated facts shall control and take precedence over any conflicting statement of fact filed by any party to the stipulation.

(c) Opposing Statement of Material Facts

A party opposing a motion for summary judgment shall submit with its opposition a separate, short, and concise statement of material facts. The opposing statement shall admit, deny or qualify the facts by reference to each numbered paragraph of the moving party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation as required by this rule. Each such statement shall begin with the designation "Admitted," "Denied," or "Qualified" and, in the case of an admission, shall end with such designation. The opposing statement may contain in a separately titled section additional facts, each set forth in a separately numbered paragraph and supported by a record citation as required by subsection (f) of this rule.

(d) Reply Statement of Material Facts

A party replying to the opposition to a motion for summary judgment shall submit with its reply a separate, short, and concise statement of material facts which shall be limited to any additional facts submitted by the opposing party. The reply statement shall admit, deny or qualify such additional facts by reference to the numbered paragraphs of the opposing party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation as required by subsection (f) of this rule. Each such reply statement shall begin with the designation "Admitted," "Denied," or "Qualified" and, in the case of an admission, shall end with such designation.

(e) Motions to Strike Not Allowed

Motions to strike statements of fact are not allowed. If a party contends that an individual statement of fact should not be considered by the court, the party may include as part of the response that the statement of fact "should be stricken" with a brief statement of the reason(s) and the authority or record citation in support. Without prejudice to the determination of the request to strike the party shall admit, deny or qualify the statement as provided in this rule. A party may respond to a request to strike either in the reply statement of material facts as provided in this rule or, if the request was made in a reply statement of material facts, by filing a response within 14 days. A response to a request to strike shall be strictly limited to a brief statement of the reason(s) why the statement of fact should be considered and the authority or record citation in support.

(f) Statement of Facts Deemed Admitted Unless Properly Controverted; Specific Record of Citations Required

Facts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted. An assertion of fact set forth in a statement of material facts shall be followed by a citation to the specific page or paragraph of identified record material supporting the assertion. The court may disregard any statement of fact not supported by a specific citation to record material properly considered on summary judgment. The court shall have no independent duty to search or consider any part of the record not specifically referenced in the parties' separate statement of facts.

(g) Facts Admitted for Purpose of Summary Judgment

Facts deemed admitted solely for purposes of summary judgment shall not be deemed admitted for purposes other than determining whether summary judgment is appropriate.

(h) Pre-filing Conference

In all Standard Track cases, except those categories of cases listed in Rule 26(a)(1)(B), Fed. R. Civ. P., a party intending to move for summary judgment shall file no later than seven (7) days after the close of discovery either (1) a joint motion setting forth a proposed schedule agreed to by all the parties and confirming that all of the parties agree that a pre-filing conference with a judicial officer would not be helpful, or (2) a notice of intent to move for summary judgment, and the need for a pre-filing conference with a judicial officer.

(1) By Joint Motion with Proposed Schedule

The parties must jointly propose a schedule for briefing all proposed motions for summary judgment. The proposed schedule shall include:

(A) Proposed page limits and deadlines for filing. If the Motion proposes to exceed the limits set forth in L.R. 7, the parties shall include a brief statement explaining why good cause exists for allowing extra time and/or pages.

(B) The estimated number of statements of material fact and the estimated number of additional statements by any party opposing the motion for summary judgment.

(C) Any stipulations to be filed. The parties shall generally describe any stipulated record or factual stipulations they propose to file and indicate whether stipulations of fact are made solely pursuant to L.R. 56(b). If any such stipulated filings will be made, the proposed schedule shall first set a deadline for this stipulated filing, which shall be at least five (5) calendar days before the deadline for filing the motion for summary judgment.

(D) Proposed page limits and deadlines for filing *Daubert* and/or *Kumho* motions, oppositions to *Daubert* and/or *Kumho* motions, and

replies to oppositions to *Daubert* and/or *Kumho* motions.[2] If the parties propose to exceed the time or page limits set forth in L.R. 7, the parties shall include a brief statement explaining why good cause exists for allowing extra time and/or pages.

The Court may adopt or modify the jointly proposed schedule, or instead may set the matter for a pre-filing conference.

(2) By Notice

Alternatively, absent agreement, the movant shall provide the Court and all other parties to the action with written notice of the intent to seek summary judgment and the need for a pre-filing conference with a judicial officer.

(3) Pre-Filing Conference

At any pre-filing conference, the parties shall be prepared to discuss, and the judicial officer shall consider:

(A) The issues to be addressed by a motion for summary judgment;

(B) The length of any statement of material facts filed pursuant to L.R. 56(b) and (c);

(C) The length of the memoranda filed pursuant to L.R. 7;

(D) The time within which the motion for summary judgment shall be filed;

(E) The use of a stipulated statement of material facts in addition to or in lieu of, separate statements of material fact; and

(F) Whether either party intends to file any *Daubert* and/or *Kumho* motions, and, if so, the issues to be addressed by such motions, the length of any memoranda of law to be filed pursuant to L.R. 7, and the time within which the *Daubert* and/or *Kumho* motions shall be filed.

[2] Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993); Kumho Tire Co. v. Carmichael, 526 U.S. 137(1999).

Following any pre-filing conference, the judicial officer shall issue an order reciting the action taken at the conference.

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Annotations

In general

(1) Even though Local Rule 7(b) provides that if a party fails to file a timely objection to a motion, the party is "deemed to have waived objection," the court "may not automatically grant a motion for summary judgment simply because the opposing party failed to comply with a local rule requiring a response within a certain number of days." Maddocks v. Portland Police Dep't, 2016 WL 7480270, at *1 (D. Me. Dec. 29, 2016), R. & R. adopted, 2017 WL 2222912 (D. Me. May 19, 2017).

(2) "Local Rule 56 requires that factual assertions in support of or in opposition to a motion for summary judgment must be set forth in a separate statement of material facts, that each factual statement be set forth in its own numbered paragraph, and that each factual statement be followed by a citation to record material that supports the statement. D. Me. Loc. R. 56(a), (b), (f). In addition, under Local Rule 7, a party must file a memorandum of law in support of a motion for summary judgment. The rules are designed to ensure an orderly procedure for determining a party's entitlement to summary judgment and compliance is mandatory for both represented and pro se litigants. Doe v. Solvay Pharm., Inc., 350 F. Supp. 2d 257, 260 & n.3 (D. Me. 2004), aff'd 153 Fed. Appx. 1 (1st Cir. 2005). Here, Plaintiff has not filed a statement of material facts in accordance with Local Rule 56, and has not filed a memorandum of law in accordance with Local Rule 7. Because Plaintiff has not complied with the rules governing summary judgment, because Plaintiff has not demonstrated cause as to why the Court should not deny his motion for summary judgment without requiring Defendants to respond to the motion, and because Plaintiff has not otherwise established a basis for summary judgment, Plaintiff is not entitled to summary judgment." Inman v. Riebe, 2016 WL 3102199, at *2 (D. Me. May 5, 2016), R. & R. adopted, 2016 WL 3129115 (D. Me. June 2, 2016).

(3) "The parties seek a resolution to their dispute through cross-motions for summary judgment. To succeed on a motion for summary judgment, a party must establish 'that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.' Fed. R. Civ. P. 56(a). 'Cross-motions for summary judgment do not alter the basic Rule 56 standard, but rather simply require [the Court] to determine whether either of the parties deserves judgment as a matter of law on facts that are not disputed.' Adria Int'l Grp., Inc. v. Ferre Dev., Inc., 241 F.3d 103, 107 (1st Cir.2001)." Monaghan v. Fitzpatrick, 2015 WL 732644, at *5 (D. Me. Feb. 20, 2015).

(4) "It is well-established law in this district that Fed. R. Civ. P. 56 requires the Court to examine the merits of a motion for summary judgment even though a nonmoving party fails to object as required by [then Local Rule 19(c)]. However, a party who fails to object to a motion for summary judgment [within the Rule's time limit] is deemed to have consented to the moving party's statement of facts *to the extent it is supported by appropriate record citations*." MCI Telecommunications Corp. v. Franklin-Centennial Corp., 128 F.R.D. 158, 159 (D. Me. 1989) (emphasis in original; citations omitted) (describing what was then Local Rule 19); accord Gagne v. Carl Bauer Schraubenfabrick, 595 F. Supp. 1081, 1084 (D. Me. 1984); McDermott v. Lehman, 594 F. Supp. 1315, 1320-21 (D. Me. 1984).

(5) "Given the potential tension between Rule 56(e) and local rules such as the District of Maine's Rule 7(b), we have recognized the need to interpret local waiver rules . . . so as to preserve their scope and validity without running afoul of the requirements of Rule 56 . . . . To that end, in the summary judgment context we read the 'deemed waiver' provision of the local rules to extend only to waiver of objection to the moving party's factual assertions." NEPSK, Inc. v. Town of Houlton, 283 F.3d 1, 8 (1st Cir. 2002).

Rule 56(b)

(1) "By rule, a party seeking summary judgment must file, in addition to its summary judgment motion, a supporting statement of material facts setting forth each fact in a separately numbered paragraph, with each factual statement followed by a citation to evidence of record that supports the factual statement. D. Me. Loc. R. 56(b). A party's pro se status does not relieve the party of the obligation to comply with the court's procedural rules." US Bank Tr., N.A. v. Moore, 2020 U.S. Dist. LEXIS 43962, at *2 (D. Me. Mar. 13, 2020) (denying a pro se party's motion for summary judgment for failure to comply with Rule 56(b) and failure to file "an appropriate summary judgment record"); see also Auritt v. Auritt, 2020 U.S. Dist. LEXIS 71886, at *3 (D. Me. Apr. 23, 2020) ("[T]he defendant fails to comply with the requirement of Local Rule 56(b) that a party seeking summary judgment file a statement of material facts citing record evidence in support thereof. This, in itself, is fatal to her bid for summary judgment.").

(2) The plaintiff "is correct that the Local Rule 56(b) requires 'a separate, short, and concise statement of material facts, each set forth in a separately numbered paragraph(s).' D. Me. Loc. R. 56(b). But both parties have consistently violated this rule and in a case as contested and dense as this one, some flexibility is necessary to prevent the parties' statements of fact from containing hundreds of separate assertions. Objection overruled." Richardson v. Mabus, 203 F. Supp. 3d 86, 116 n.58 (D. Me. 2016).

(3) "The non-moving party is entitled to have the summary judgment facts considered in the light most favorable to his cause. Wilson v. Moulison N. Corp., 639 F.3d 1, 6 (1st Cir. 2011). By local rule, summary judgment facts are introduced by means of 'a separate, short, and concise statement of material facts,' which statement must be supported by record citations. D. Me. Loc. R. 56(b), (c), (d)." Thurston v. Cumberland County, 2014 WL 294487, at *1 (D. Me. Jan. 27, 2014).

Rule 56(c)

(1) A Court will refuse to accept qualifications that exceed the scope of the original statement because they are appropriately presented as additional facts, rather than qualifications. Wyman v. United States Surgical Corp., 2020 U.S. Dist. LEXIS 70314, at *8 n.2 (D. Me. Apr. 22, 2020) (refusing to accept a party's qualification of a quoted judicial opinion as "irrelevant" because it was "argument outside the scope of the facts asserted in the statement"); see also Irish v. Fowler, 2020 U.S. Dist. LEXIS 19546, at *13 n.23 (D. Me. Feb. 3, 2020) (noting that when a party's response to a statement of fact is not acceptable under Local Rule 56, the statement is deemed admitted if supported by the citation provided).

Rule 56(d)

(1) "This District's Local Rules concerning the filing of statements of material fact, opposing statements of material fact, additional statements of material fact, and replies to additional statements of material fact have been an endless source of confusion and contention. D. Me. Loc. R. 56(b)-(d). As these Rules are difficult for lawyers to comply with, it is not surprising that Mr. Widi, himself not a lawyer, did not correctly respond to them. The Court has endeavored to apply the Local Rules evenly while at the same time to avoid affecting Mr. Widi's substantive rights as a consequence of his procedural miscues." Widi v. McNeil, 2013 WL 5407457, at *3 (D. Me. Sept. 25, 2013).

(2) The Rule permits a statement of material facts, an opposing statement, and a reply, but not an additional statement. "The clear language . . . requires the movant to limits its reply statement to admitting, denying or qualifying the responsive statement. It does not allow the movant to add new facts at this late stage." Hinton v. Outboard Marine Corp., 828 F. Supp. 2d 366, 373 (D. Me. 2011).

(3) "The overall rationale of the rule is clear: there must be an end point. The Rule requires the movant for summary judgment to set forth those undisputed facts it contends entitle it to summary judgment; it permits the non-movant to put into play any facts, which the non-movant contends require trial. Finally, it permits the movant to respond to the non-movant's facts. But the Rule does not permit the movant to add yet another set of facts. If the movant were allowed to posit new facts in its reply, the movant's final document would be an unanswered set of factual assertions, which would run contrary to the requirement that the facts must be interpreted in a manner most congenial to the non-movant. In other words, if the rule were interpreted in the Defendants' fashion, to comply with Rule 56, the Local Rule would have to permit the non-movant to sur-reply. However there is no provision in the local rule for the non-movant to file a sur-reply precisely because the movant is not allowed to posit a new set of facts with its reply statement. Finally, movants would be encouraged to hide their most salient statements of fact until the very end of the point-counterpoint process so that there would be no counter to their final point." Knowlton v. Shaw, 791 F. Supp. 2d 220, 268 (D. Me. 2011).

Rule 56(e)

(1) "Local Rule 56(e) provides that if there is a request to strike a party's statement of fact, the party may respond 'in the reply statement of material facts as provided in this rule or, if the request was made in a reply statement of material facts, by filing a response within 14 days.' D. Me. Loc. R. 56(e). It adds that the response 'shall be strictly limited to a brief statement of the reason(s) why the statement of fact should be considered and the authority or record citation in support.'" Charron v. Cty. of York, 2020 U.S. Dist. LEXIS 65281, at *6 n.3 (D. Me. Apr. 14, 2020). Although Plaintiff's responses "extend[ed] beyond the limitations of this rule"—neither directly responsive, nor brief—because Defendant did not object "the Court considered them."

Rule 56(f)

(1) "[I]n the District of Maine, to determine whether there is a trialworthy issue, I review the parties' competing summary judgment statements of material fact under the auspices of this District's Local Rule 56, as outlined in Doe v. Solvay Pharms., Inc., 350 F. Supp. 2d 257, 259–60 (D. Me. 2004). In presenting their motion, the defendants have complied with Federal Rule of Civil Procedure 56 and the District of Maine Local Rules of Civil Procedure 7 and 56. In addition to their summary judgment memorandum the defendants have filed a statement of material facts (Docket No. 12) that contains record citations to seven exhibits, including the affidavits of the officers involved in the incident. Apropos the present motion, the Andrewses filed an 'in response to affidavit of Christopher L. Donahue' (Docket No. 19) and their own *pro se* motion for summary judgment (Docket No. 18). Neither pleading complies with subsections (c) and (e) of Local Rule 56. The response to the defendants' summary judgment statement of facts consists of an unsigned document refuting each of the supporting affidavits filed by defendants and it is absolutely devoid of any record citation. (See Docket No. 19). The Andrewses' *pro se* motion for summary judgment does not comply with Local Rule 7 nor does it comply with Local Rule 56(b) and (d). The defendants' summary judgment factual statements have not been properly controverted and, therefore, pursuant to Local Rule 56(f), the material facts set forth by defendants are deemed admitted." Andrews v. City of Calais, 2005 WL 3371080, at *1 (D. Me. Nov. 9, 2005), R. & R. adopted, 2005 WL 3418503 (D. Me. Dec. 12, 2005), aff'd sub nom. Andrews v. City of Calais, Maine, 196 F. App'x 3 (1st Cir. 2006).

(2) If a party fails to respond to s statement of material facts while filing a motion to strike, and the motion to strike is denied, the fact will be deemed admitted. Randall v. Potter, 366 F. Supp. 2d 120, 122 (D. Me. 2005).

(3) "[I]f a party does not file a written objection to his opponent's motion, he is 'deemed to have waived objection.' Local Rule 7(b). In the context of summary judgment, that means that if the moving party's statement of fact is supported by record citations and not properly controverted, I take the statement as undisputed. Local Rule 56(f)." Murray v. Walmart Stores, No. 2:15-CV-00484-DBH, 2019 U.S. Dist. LEXIS 213139, at *14 (D. Me. Dec. 6, 2019).

Rule 56(h)

(1) The 56(h) conference is not pure formality, and the parties are expected to conscientiously adhere to expectations set at those conferences for lengths of statements of material fact and expected stipulations. Despite promising "a fully locked and stipulated record" at the pre-filing conference, the parties in Lauzon v. Dodd were unable to agree upon a stipulated record and filed unnecessarily long statements of "material" facts. 2019 U.S. Dist. LEXIS 113267, at *4 (D. Me. July 9, 2019) (noting that when "the unnecessary length and contested nature of the parties' constellation of facts, more suited to an unabridged anthology than to a Rule 56 filing, has needlessly complicate[d] the summary judgment process …on that ground alone, it would be within my ambit to deny summary judgment"). Although the Court in Lauzon went on to consider the parties' overlength filings, this opinion should serve as a warning that flouting the requirements of Local Rule 56 could result in summary dismissal of a party's motion.

RULE 64 - ATTACHMENT AND TRUSTEE PROCESS

(Amended June 1, 2001)

A party to a civil action, other than an admiralty or maritime claim within the meaning of Fed. R. Civ. P. 9(h), may move for approval of attachment of property, including attachment on trustee process, or dissolution or modification of attachment approved ex parte, within the District of Maine in accordance with state law and procedure as would be applicable had the action been maintained in the courts of the State of Maine, with the exception that the time periods provided in Rule 7 of these rules shall apply to the filing of objections to motions. Upon approval of attachment or trustee process by the Court, the appropriate writ shall be prepared by the moving attorney and submitted to the Clerk for attestation. Service shall be made in accordance with the applicable law and procedure of the State of Maine.

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Annotations

(1) "A party may move for attachment in this court 'in accordance with state law and procedure as would be applicable had the action been maintained in the courts of the State of Maine[.]' Local Rule 64. 'An attachment of property shall be sought by filing with the complaint a motion for approval of the attachment. The motion shall be supported by affidavit . . . meeting the requirements set forth in subdivision (i) of this rule." Me. R. Civ. P. 4A(c). Subdivision (i) requires the affidavit to "set forth specific facts sufficient to warrant the required findings[.]' Id. (i). Under Maine law, attachment and attachment on trustee process are available only for a specified amount, as approved by order of court, and only upon a finding that it is more likely than not that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than the aggregate sum of the attachment and any liability insurance, bond, or other security and attached property or credits shown by the defendant to be available to satisfy the judgment. Id. (c); Maine R. Civ. P. 4B(c)." Sterling Suffolk Racecourse, LLC v. Davric Maine Corp., 2015 WL 4459012, at *1 (D. Me. July 21, 2015) (granting attachment in the larger amount supported by the plaintiff's affidavit which "provides a more extensive, detailed basis for the amount . . . than does the . . . affidavit for the lesser amount advocated by the defendant" and where the defendant's affidavit "does not explain its differences with the component numbers included in the [plaintiff's] affidavit, instead asserting merely that the numbers it lists" are the most that could be awarded).

(2) DiPietro v. Clark, 2015 WL 8664222, at *1 (D. Me. Dec. 11, 2015) (same statement of law and denying attachment where the "undisputed evidence does not establish that it is more likely than not that the plaintiff will recover against the defendant").

(3) Lynch v. Christie, 2012 WL 2367375, at *1, 3 (D. Me. June 21, 2012) (same statement of law and allowing smaller attachment than requested and not including punitive damages because the requested amount, $1 million, is an attachment amount "uncommon in personal injury cases in Maine").

(4) "Local Rule 64 adopts the state procedural rules for attachments. See D. Me. Civ. R. 64; see also Fed. R. Civ. P. 64. Under the state procedural rules, a party seeking to vacate an *ex parte* attachment must file an affidavit that attacks the findings of the judge who issued the attachment. See Me. R. Civ. P. 4A(h); see also Beesley v. Landmark Realty, Inc., 464 A.2d 936, 937 (Me. 1983) ("By failing to challenge *by affidavit* the finding . . . in the ex parte order, defendant was thus precluded from challenging the finding at the hearing on its motion to dissolve . . . ") (emphasis added). The moving parties have filed no such affidavit. Consequently, they are asking me to re-examine Justice Bradford's decision based solely upon the assertions made in their brief and by their lawyer at oral argument. That is both contrary to the Rule and inappropriate as a matter of judicial efficiency." Bath Iron Works Corp. v. Tufts Health Plan of New England, Inc., 1999 WL 33117198, at *1 (D. Me. Dec. 22, 1999) (footnote omitted).

RULE 65.1 - BONDS AND SECURITY

(Amended December 1, 2018)

(a) Approval by Clerk

The Clerk is authorized to approve the form of, and the sureties on, all bonds and undertakings required in any proceeding in this Court and approve any other security offered in lieu of sureties as provided by law; but the Clerk's action may be suspended or altered or rescinded by the Court upon cause shown.

(b) Court Officers as Sureties

No Clerk, Marshal, member of the bar, or other officer of this Court shall be approved as surety on any bond or undertaking.

(c) Bond

A bond or other security staying execution of a money judgment shall be in the amount of the judgment plus ten percent (10%) of the amount to cover interest and any award of damages for delay plus Five Hundred Dollars ($500) to cover costs, unless the Court directs otherwise.

RULE 67 - DEPOSIT OF REGISTRY FUNDS IN INTEREST-BEARING ACCOUNTS

(Amended December 1, 2016)

Whenever a party seeks a court order for money to be deposited by the Clerk in an interest bearing account, the party shall deliver the proposed order specifying the amount to be invested by the Clerk or financial administrator who shall review the proposed order for compliance with this rule prior to signature by judicial officer.

The following procedures apply to deposits into the registry of the Court.

(a) Receipt of Funds

(1) No money shall be sent to the Court or its officers for deposit in the Court's registry without a court order signed by the presiding judge in the case or proceeding.

(2) The party making the deposit or transferring funds to the Court's registry must deliver a copy of the order permitting the deposit or transfer on the Clerk of Court.

(3) Unless provided for elsewhere in the Order, all monies ordered to be paid to the Court or received by its officers in any case pending or adjudicated shall be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. § 2041 through depositories designated by the Treasury to accept such deposit on its behalf.

(b) Investment of Registry Funds

(1) Where, by order of the Court, funds on deposit with the Court are to be placed in some form of interest-bearing account or invested in a court-approved, interest-bearing instrument in accordance with Rule 67 of the Federal Rules of Civil Procedure, the Court Registry Investment System ("CRIS"), administered by the Administrative Office of the United States Courts under 28 U.S.C. § 2045, shall be the only investment mechanism authorized.

(2) Interpleader funds deposited under 28 U.S.C. § 1335 meet the IRS definition of a "Disputed Ownership Fund" (DOF), a taxable entity that requires tax administration. Unless otherwise ordered by the Court, interpleader funds shall be deposited in the DOF established within the CRIS and administered by the Administrative Office of the United States Courts, which shall be responsible for meeting all DOF tax administration requirements.

(3) The Director of the Administrative Office of the United States Courts is designated as custodian for all CRIS funds. The Director or the Director's designee shall perform the duties of custodian. Funds held in the CRIS remain subject to the control and jurisdiction of the Court.

(4) Money from each case deposited in the CRIS shall be pooled together with those on deposit with Treasury to the credit of other courts in the CRIS and used to purchase Government Account Series securities through the Bureau of Public Debt, which will be held at Treasury, in an account in the name and to the credit of the Director of the Administrative Office of the United States Courts. The pooled funds will be invested in accordance with the principals of the CRIS Investment Policy as approved by the Registry Monitoring Group.

(5) An account will be established in the CRIS Liquidity Fund titled in the name of the case giving rise to the invested deposit in the fund. Income generated from fund investments will be distributed to each case based on the ratio each account's principal and earnings has to the aggregate principal and income total in the fund after the CRIS fee has been applied. Reports showing the interest earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in the CRIS and made available to litigants and/or their counsel.

(6) For each interpleader case, an account shall be established by the CRIS Disputed Ownership Fund, titled in the name of the case giving rise to the deposit invested in the fund. Income generated from fund investments will be distributed to each case after the DOF has been applied and tax withholdings have been deducted from the fund. Reports showing the interest earned and the principal amounts contributed in each case will be available through the FedInvest/CMS application for each court participating in the CRIS and made available to litigants and/or their

counsel. On appointment of an administrator authorized to incur expenses on behalf of the DOF in a case, the case DOF funds should be transferred to another investment account as directed by court order.

(c) Fees and Taxes

(1) The custodian is authorized and directed by this rule to deduct the CRIS fee of an annualized 10 basis points on assets on deposit for all CRIS funds, excluding the case funds held in the DOF, for the management of investments in the CRIS. According to the Court's Miscellaneous Fee Schedule, the CRIS fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases.

(2) The custodian is authorized and directed by this rule to deduct the DOF fee of an annualized 20 basis points on assets on deposit in the DOF for management of investments and tax administration. According to the Court's Miscellaneous Fee Schedule, the DOF fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases. The custodian is further authorized and directed by this rule to withhold and pay federal taxes due on behalf of the DOF.

(d) Withdrawal of Deposit

To withdraw money deposited with the Court under Federal Rule of Civil Procedure 67 and these rules, a party must file a motion for withdrawal of the funds and simultaneously submit a proposed order and completed IRS Form W-9.

(e) Transition from Former Investment Procedure

(1) This rule is effective on December 1, 2016, but the Disputed Ownership Fund provisions will become effective on the date the DOF begins to accept deposits. The Disputed Ownership Fund Pool is scheduled to be established on April 1, 2017.

(2) Between December 1, 2016 and continuing up until establishment of the DOF, interpleader funds received on or after December 1, 2016 will be deposited in the CRIS Liquidity Fund and will be subject to the fees specified in subsection (c)(1) of this rule. Existing interpleader deposits in the CRIS Liquidity Fund deposited prior to establishment of the DOF will not be transferred to the DOF. Only new deposits pursuant to 28 U.S.C. §

1335 will be placed in the CRIS DOF when that fund has been established.

(3) Upon establishment of the DOF, all new interpleader funds received by the Clerk for deposit pursuant 28 U.S.C. § 1335, will be deposited in the DOF pursuant to the provisions of this rule.

RULE 72 - DUTIES OF UNITED STATES MAGISTRATE JUDGES

(Amended December 1, 2019)

(a) Authority of Full-time Magistrate Judge

Any Magistrate Judge is authorized to exercise all powers and perform all duties conferred upon Magistrate Judges by 28 U.S.C. §§ 636(b), (c) and (g); U.S.C. § 340(i); to exercise the powers enumerated in Rules 5, 8, 9 and 10; and Rules Governing Section 2254 and 2255 Proceedings in accordance with the standards and criteria established in 28 U.S.C. § 636(b)(1) .

(b) Assignment of Social Security Act Cases and Prisoner Cases

All complaints filed pursuant to 42 U.S.C. § 405(g) and 42 U.S.C. § 1383(c)(3), for benefits under Title II, XVI and XVIII of the Social Security Act shall ordinarily be referred for all further proceedings in accordance with Local Rule 16.3 to a Magistrate Judge.

All applications for post-trial relief filed by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement shall ordinarily be referred to the full-time Magistrate Judge in accordance with 28 U.S.C. § 636(b)(1)(B).

RULE 72.1 - OBJECTIONS TO PRETRIAL ORDERS

(Amended July 1, 2018)

(a) Within 14 days after being served a copy of an order, report, proposed findings or a recommended decision of a United States Magistrate Judge entered under 28 U.S.C. § 636(b)(1), a party seeking review shall file an objection with an incorporated memorandum of law to those specific portions for which review is sought. Within 14 days of being served with an objection, a party opposing the objection may file a response with an incorporated memorandum of law. Neither the objection nor response shall exceed 10 pages in length for objections to nondispositive orders or 20 pages for objections to recommended dispositive orders. Except by prior order of the Court, no reply memorandum shall be filed.

(b) A party objecting, pursuant to Federal Rule of Civil Procedure 72 and Local Rule 72.1, to a decision of a Magistrate Judge regarding a discovery dispute, must file with its objection a separate stipulated record containing only those discovery materials relating to what the Magistrate Judge ordered in connection with the dispute. To the extent that the stipulated record should be filed under seal, counsel shall file a motion to seal together with the stipulated record in accordance with Local Rule 7A.

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Annotations

(1) Failure to file an objection within the time permitted under Local Rule 72.1 results in forfeiture of the objection. United States v. Sayer, 450 F.3d 82, 89 (1st Cir. 2006) (dictum).

(2) "The Court denies Ms. Daigle's motion for jurisdictional discovery. The Magistrate Judge previously ruled against the same request, but Ms. Daigle failed to object and she has waived the right to do so now. See Fed. R. Civ. R. 72; D. Me. Loc. R. 72.1." Daigle v. Stulc, 694 F. Supp. 2d 30, 36 (D. Me. 2010).

(3) The court does not consider a Reply to an objection, when filed without permission. Stile v. Somerset County, 2015 U.S. Dist. LEXIS 18561, *6; see also Patrick S. v. Saul, 2019 U.S. Dist. LEXIS 217525, at *2 (D. Me. Dec. 18, 2019) (reducing attorney fee award because counsel had filed an "unnecessary and unpermitted reply brief" in violation of Local Rule 72.1(a)).

(4) "District of Maine Local Rule 72.1 does not permit a party objecting to the order of a Magistrate Judge to file a reply in response to the non-moving party's opposition brief. A party desiring to reply to an opposition brief must move the Court for leave to do so. D. Me. Loc. R. 72.1." SurfCast, Inc. v. Microsoft Corp., 2014 WL 1203244, at *1 n. 2 (D. Me. Mar. 24, 2014).

(5) There is no inconsistency between Local Rule 7(c), permitting a Reply, and Local Rule 72.1, prohibiting a Reply without prior leave of court. "Local Rule 7(c) allows a reply because the moving party has not had a chance to respond to the specific arguments being made by the non-movant. After the Recommended Decision, however, the situation is markedly different. . . . The Local Rules contemplate that for objections to recommended decisions, an objection should be sufficient and no reply warranted, since the parties are fully aware of what each other has contended and, more to the point, what the magistrate judge has recommended. Ordinarily, no new matters should arise that require a reply." Shaw v. 500516 N.B. Ltd., 668 F. Supp. 2d 237, 248-49 (D. Me. 2009).

(6) The court strikes a reply filed without leave of court and "will not consider the reply." Millay v. Surry Sch. Dep't, 584 F. Supp. 2d 219, 224 (D. Me. 2008).

RULE 73 - CONSENT TO ORDER OF REFERENCE

(Amended May 1, 1999)

Each full-time Magistrate Judge for the District of Maine is authorized to conduct jury trials of issues triable of right by a jury where a jury trial has been demanded.

At the time a civil action or notice of removal is filed, the Clerk shall deliver to the filing party or counsel (i) a notice of the party's right to consent to the exercise of a Magistrate Judge's jurisdiction to conduct any or all proceedings and order the entry of judgment, and (ii) a consent form for execution by all the parties or their counsel. The notice shall instruct the parties or their counsel that the consent form is to be returned to the Clerk only if all parties or their counsel consent to the exercise of such jurisdiction. If any party or counsel declines to consent, neither the Clerk, nor any Magistrate Judge nor any Judge of the Court shall be informed of the identity of the declining party. However, a Judge or a Magistrate Judge may again advise the parties of the availability of the Magistrate Judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequence. Upon the consent of the parties, each full-time Magistrate Judge may conduct any and all proceedings in a jury or non-jury civil matter, including determination of all pretrial, post-trial and dispositive motions, and order the entry of judgment in the case without further order of the Court.

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Annotations

(1) "[T]he pleading does not comply with Local Rule 73, which establishes a procedure by which the parties may consent to the exercise of Magistrate Judge jurisdiction. D. Me. Loc. R. 73. Once a civil action is filed, the Clerk delivers to the filing party a notice of the party's right to consent and a consent form 'for execution by all the parties.' Id. The Rule provides that the parties may return the form for filing 'only if all parties or counsel consent to the exercise of such jurisdiction.' Id. If a party declines Magistrate Judge jurisdiction, the Court is not to be informed 'of the identity of the party.' Id. The plaintiff's one-sided consent to the Magistrate Judge violates the Local Rule by filing the consent without execution by all the parties and in so doing she has implicitly informed the Court of the other party's failure to consent." Fickett v. Golden Eagle Rest., 2011 WL 666879, at *1 (D. Me. Feb. 11, 2011).

RULE 77 - ORDERS BY THE CLERK OF COURT

(Amended December 1, 2018)

The Clerk and deputy clerks of this Court are authorized to issue the following orders without further direction of the Court:

(1) orders granting assented-to nondispositive motions that do not alter any previously established trial date;

(2) orders allowing extensions of not more than 5 pages of the page limitations established in Local Rule 7.

RULE 79 - CUSTODY OF PAPERS AND RECORDS

(Amended December 17, 2007)

Except upon order of Court, no paper or record on file with the Clerk shall be removed from the Clerk's custody other than by authorized court personnel or for transmission to an appellate court; but any person may inspect and copy such matter unless otherwise provided by statute, rule or order of Court.

At the discretion of the Clerk of Court, persons whose copy requests are large and/or burdensome to the Clerk's Office may be allowed to bring portable copying or scanning equipment to the Clerk's Office to make copies of requested papers or records.

Such arrangements must be made with the Clerk's prior approval and all copying by the requestor will be done under the supervision of the Clerk's Office.

RULE 81 - JURY DEMAND IN REMOVED ACTIONS

See Local Rule 38.

RULE 83.1 - ATTORNEYS - ADMISSION

(Amended December 1, 2017)

(a) Eligibility for Admission

Any attorney who is of good personal and professional character, who is an active member in good standing of the bar of the State of Maine, who is not conditionally admitted to the bar of the State of Maine, and who is not currently under any order of disbarment, suspension or any other discipline in any court of record in the United States, is eligible for admission to the bar of this Court upon compliance with the provisions of subsection (b).

(b) Procedure for Admission

Each applicant for admission to the bar of this Court shall file with the Clerk an application on a form to be furnished by the Clerk. The application shall include the applicant's state bar number and a certification that the applicant has read and will comply with the Local Rules of this Court. The Clerk shall cause to be made such investigation of the applicant's eligibility under subsection (a) as necessary.

If the Clerk is satisfied that the applicant is eligible under subsection (a), a member of the bar of this Court shall move the applicant's admission. The Court will grant the motion if it is satisfied that the applicant is eligible under subsection (a), and the applicant shall take and subscribe to the following oath, or affirmation in lieu thereof:

> I solemnly [swear or affirm] that I will conduct and demean myself as an attorney and counselor of this the United States District Court for the District of Maine uprightly and according to law; that I will support the Constitution of the United States and the Constitution of the State of Maine; that I will maintain the respect due to Courts of Justice and judicial officers; that I will never reject, for any personal considerations, the cause of the defenseless or oppressed; and that I will strive at all times to uphold the honor and maintain the dignity of the legal profession, and to serve justice, [SO HELP ME GOD or and I do this under the pains and penalty of perjury].

The applicant shall then be a member of the bar of this Court.

(c) Attorneys Who Are Not Members of the Bar of this Court

No person who is not a member in good standing of the bar of this Court shall appear or practice before this Court on behalf of another person except in accordance with the following:

(1) Visiting Lawyers. Leave of Court is granted to any attorney who is not a member of the bar of this Court to appear and practice in this Court provided that the attorney files with the Clerk a certificate for admission to be admitted pro hac vice for each case in which the attorney will enter an appearance on a form to be provided by the Clerk certifying that he/she is admitted to practice in any other United States federal court or the highest court of any State and is not currently under any order of disbarment, suspension or any other discipline in any court of record in the United States and that no proceedings that might lead to such discipline are pending before a court, bar association, grievance committee or any other administrative body. Visiting attorneys who will appear pro hac vice in the District Court must also pay the Clerk a fee in the amount of $100.00. Visiting attorneys who will appear pro hac vice in the Bankruptcy Court are not required to pay a fee. The Clerk shall cause to be made such an investigation of the requesting attorney's eligibility as necessary. Any such attorney shall have at all times associated with him/her a member of the bar of this Court, upon whom all process, notices and other papers may be served and who shall sign all papers filed with the Court. Local counsel's attendance at any proceeding before a judicial officer is required unless excused by the Court, which should freely grant such leave upon request. The Court may at any time for good cause and without hearing revoke the right of a visiting lawyer to practice.

(2) Government Attorneys and Federal Public Defenders. Any member in good standing of the bar of any court of the United States or of the highest court of any State, who is employed by the United States or by the State of Maine, or any department or agency thereof, and whose duties involve the representation of the United States or of the State of Maine, or any department or agency thereof, or indigent criminal defendants, in actions in courts of the United States, is permitted to practice before this court in any such action. The Court may at any time for good cause revoke such permission without hearing.

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Annotations

(1) See, e.g. United States Grand Jury Tribunal v. United States, 2019 U.S. Dist. LEXIS 161689, at *2 (D. Me. Sep. 23, 2019) (recommending dismissal of unincorporated association's complaint, in part, because its "filing does not appear to have been signed by a member of the bar of this Court. See District of Maine Local Rule 83.1(c)").

(2) "[A] member of the California bar in good standing, would have been required to associate with local counsel in order to be admitted pro hac vice because he is not a member of the bar of this District. D. Me. Loc. R. 83.1(c)(1)." Treadwell v. Vescom Corp., 2018 WL 2142982, at *4 n.4 (D. Me. May 9, 2018).

(3) "A primary purpose of the requirement of local counsel [in Local Rule 83.1] is so that local counsel will apprise the visiting lawyer of applicable local rules and the need to comply with them. The Court expects in the future that the visiting lawyer in this case will consult with the local lawyer and vice versa to assure compliance with the requirements of the local rules for the remainder of this case. Future violations of the local rules may subject the visiting and local lawyer to sanctions." Mason v. Intercoast Career Inst., 2017 U.S. Dist. LEXIS 7305, *5 n.1 (a case where a number of Local Rule violations occurred).

(4) Out-of-District counsel who relied on the practices in the District from which counsel came rather than this District's Local Rules "demonstrated an unacceptable nonchalance toward the procedures of a court in which he is a guest. See D. Me. Loc. R. 83.1(c). The Court does not condone an attorney's 'lackadaisical attitude toward the rules of procedure. See Grover v. Commercial Ins. Co., 108 F.R.D. 366, 371 (D. Me. 1985)." Lucerne Farms v. Baling Techs., Inc., 208 F.R.D. 463, 465-66 (D. Me. 2002) (finding the default not willful, however).

RULE 83.2 - ATTORNEYS - APPEARANCES AND WITHDRAWALS

(Amended December 1, 2009)

(a) Appearances

An attorney's signature to a pleading shall constitute an appearance for the party filing the pleading. Otherwise, an attorney who wishes to participate in any manner in any action must file a formal written appearance identifying the party represented. An appearance whether by pleading or formal written appearance shall be signed by an attorney in his/her individual name and shall state his/her office address.

(b) Prohibition on Limited Appearances

No appearance shall be allowed purporting to limit the attorney's representation to less than all issues and proceedings.

In any case removed from state court where a lawyer has entered a limited appearance, the appearance shall be treated as a general appearance, but counsel shall have 14 days in which to move to withdraw altogether on the basis that his/her/its scope of representation was limited.

(c) Withdrawals

No attorney may withdraw an appearance in any action except by leave of Court.

RULE 83.3 - ATTORNEYS - RULES OF DISCIPLINARY ENFORCEMENT

(Amended December 1, 2017)

(a) Appointment of Special Counsel

This Court may at any stage appoint special counsel to investigate and/or prosecute proceedings undertaken under this Rule. Whenever special counsel is to be appointed pursuant to these Rules, this Court shall have discretion to appoint as special counsel Bar Counsel to the Board of Overseers of the Bar of the State of Maine or such other attorney or attorneys who are members of the bar of this Court. For good cause, the respondent-attorney may move to disqualify special counsel so appointed. Special counsel, once appointed, may not resign unless permission to do so is given by this Court. The term special counsel refers to any attorney appointed by the Court to perform the investigative and/or prosecutorial functions of this Rule.

(b) Attorneys Convicted of Crimes

(1) Upon receipt by this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending that attorney, until final disposition of a disciplinary proceeding to be commenced upon such conviction, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict, after trial or otherwise, and regardless of the pendency of any appeal. A copy of such order shall immediately be served upon the attorney as provided in Section (i) of this rule. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

(2) The term "serious crime" shall include any felony; and any lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or any crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves interference with the administration of justice, false swearing, misrepresentation,

fraud, deceit, bribery, extortion, misappropriation, theft; or an attempt, conspiracy or solicitation of another to commit a "serious crime."

(3) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

(4) Upon receipt of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court shall in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to special counsel for the institution of a disciplinary proceeding before one or more Judges of the Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

(5) Upon receipt of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the Court may refer the matter to special counsel for whatever action special counsel may deem warranted, including the institution of a disciplinary proceeding before the Court; provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

(6) An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed, but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

(7) Any attorney admitted to practice before this Court shall promptly, upon being convicted of a serious crime, as defined herein, in any court of the United States, the District of Columbia, or of any state, territory, commonwealth, possession of the United States, or any foreign tribunal, inform the Clerk of this Court in writing of such conviction.

(c) Action Taken by Other Courts or Tribunals

(1) **Attorney Duty to Inform of Suspension/Disbarment.** Any attorney admitted to practice before this Court shall promptly inform the Clerk of this Court in writing upon being subjected to suspension or disbarment, or upon being found incapacitated from continuing practice by reason of mental infirmity or addiction to drugs or intoxicants by any other Court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, or by any other duly authorized tribunal.

(2) **Immediate Disciplinary Suspension.** Upon receipt of a certified or exemplified copy of a judgment or order demonstrating that any attorney admitted to practice before this Court has been disbarred or suspended from the practice of law by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, or by any other duly authorized tribunal, this Court, in its discretion, may enter an order immediately suspending that attorney from practice in this Court.

Upon suspension, the Court shall forthwith issue a notice directed to the attorney containing:

(A) a copy of any order entered by this Court suspending the attorney from practice;

(B) a copy of the judgment or order from the other court or tribunal; and

(C) an order to show cause directing that the attorney inform this Court within 14 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in Subsection (c)(6) hereof that the imposition of the identical discipline or finding of incapacity by the Court would be unwarranted and the reasons therefor.

(3) **Other than Immediate Disciplinary Suspension.** In cases other than an immediate suspension under Subsection (c)(2), upon the receipt of a certified or exemplified copy of a judgment or order demonstrating that any attorney admitted to practice before this Court who has been disciplined other than by suspension or disbarment, or has been found to

be incapacitated by another court, or by any other duly authorized tribunal, this Court may forthwith issue a notice directed to the attorney containing:

(A) a copy of the judgment or order from the other court or tribunal; and

(B) an order to show cause directing that the attorney inform this Court within 14 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in Subsection (c)6 hereof that the imposition of the identical discipline or finding of incapacity by the Court would be unwarranted and the reasons therefor.

(4) **Administrative Suspension.** Any attorney admitted to practice before this Court who has been administratively suspended by the Maine Board of Overseers of the Bar pursuant to the Maine Bar Rules shall be immediately and administratively suspended from practice in this Court in reciprocal fashion for 14 days. The Court shall immediately issue a notice directed to the attorney of the following:

(A) that the attorney has been administratively suspended for a period of 14 days;

(B) that the attorney is to provide proof of reinstatement by the Maine Board of Overseers of the Bar, or assert an additional basis to practice in this Court as permitted by Local Rule 83.1(c)(2) within those 14 days; and

(C) that, if no reply is made within 14 days, the Court will suspend the attorney from practice in this Court.

If the Court receives notice during the 14-day suspension period from the Maine Board of Overseers of the Bar that the attorney has been reinstated, the Court shall immediately reinstate the attorney to the bar of this Court.

(5) **Stay of Action.** In the event the action imposed in the other jurisdiction has been stayed there, any reciprocal action taken by this Court shall be deferred until such stay expires.

(6) **Identical Discipline Absent a Claim.** Upon the expiration of 14 days from service of the notice issued pursuant to the provisions of Subsections (c)(2) and (c)(3) above, this Court shall impose the identical discipline or make the identical finding of incapacity unless the respondent-attorney demonstrates, or this Court finds, that the record in the other jurisdiction clearly shows:

(A) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(B) that there was such an infirmity of proof establishing the misconduct or incapacity as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(C) that the imposition of the same discipline or the making of the same finding by this Court would result in grave injustice; or

(D) that the conduct at issue is deemed by this Court to warrant substantially different action.

Where this Court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

(7) **Establishing Misconduct/Incapacity.** In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct or found incapacitated shall establish conclusively the misconduct or incapacity for purposes of any proceeding under this Rule in this Court.

(d) Disbarment on Consent or Resignation in Other Courts

(1) Any attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other Court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct or incapacity is pending, shall,

upon receipt by this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court.

(2) Any attorney admitted to practice before this Court shall, upon being disbarred on consent or having resigned from the bar of any other Court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct or incapacity is pending, promptly inform the Clerk of this Court in writing of such disbarment on consent or resignation.

(e) Standards for Professional Conduct

(1) This Court adopts as its standard for professional conduct the Maine Rules of Professional Conduct adopted by the Supreme Judicial Court of Maine, as amended from time to time by that Court.

(f) Disciplinary and Other Proceedings

(1) When misconduct or allegations of misconduct or incapacity which, if substantiated, would warrant discipline or other corrective action against an attorney admitted to practice before this Court shall come to the attention of a Judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the Judge may in his or her discretion, refer the matter to special counsel for investigation and the prosecution of a formal proceeding or the formulation of such other recommendation as may be appropriate, including proceedings pursuant to Maine Bar Rule 13 – Disciplinary Rules of Procedure, which may include proceedings before the Grievance Commission, or proceedings before the Maine Supreme Judicial Court, or other proceedings under the Maine Bar Rules.

(2) Should special counsel conclude after investigation and review pursuant to this Rule that a formal proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of the special counsel should be awaited before further action by this Court is considered or for any other valid reason, special counsel shall file with the Court a recommendation

for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise, setting forth the reasons therefore.

(3) To initiate formal proceedings, a complaint shall be promptly filed pursuant to Section (i) of this Rule.

(4) The respondent-attorney shall file an answer to the complaint within 20 days of service. If any issue of fact is raised in the answer or if the respondent-attorney wishes to be heard in mitigation, this Court shall set the matter for prompt hearing before one or more Judges of this Court, provided however, that if the proceeding is predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before another Judge of this Court, or, if there is no Judge of this Court eligible to serve, before a District Judge of this Circuit appointed by the Chief Judge of the Court of Appeals.

(5) Nothing in this Rule prohibits the Court from taking other appropriate action as it deems appropriate, including without limitation referring any matter to another Judge of this Court for making determinations in accordance with these Rules.

(g) Discipline by Consent

(1) Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct or incapacity may tender to the Court a conditional admission to the misconduct or incapacity alleged in exchange for a stated form of discipline, such as disbarment, suspension or surrender of the right to practice in this Court.

(2) The Court may approve or reject the tendered admission and proceed with a disciplinary hearing if the Court rejects the stated form of discipline as specified in Subsection (f)(1). If rejected, the tendered admission shall be withdrawn and not used against the respondent attorney in subsequent hearings.

(3) A lawyer who wishes to tender a conditional admission to misconduct or incapacity shall deliver an affidavit stating that the attorney desires to consent to discipline and that:

(A) the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

(B) the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline or for the finding of incapacity, the nature of which the attorney shall specifically set forth;

(C) the attorney acknowledges that the material facts so alleged are true or could be proven;

(D) the attorney so consents because the attorney knows that if formal proceedings were held the attorney could not successfully contest the allegations; and

(E) The attorney acknowledges that sufficient evidence exists to support a finding of misconduct and the imposition of the stated discipline.

(4) Upon receipt of the required affidavit and approval of the stated discipline, this Court shall enter an order disciplining the attorney.

(5) The order imposing the stated discipline on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

(h) Reinstatement

(1) **After Disbarment, Surrender, or Suspension.** An attorney suspended for six months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the Court of an affidavit of compliance with the provisions of the order of suspension and after retaking the attorney's oath. An attorney suspended for more than six months, or who has been disbarred or surrendered the right to practice, may not resume practice until reinstated by order of this Court, which shall require the retaking of the attorney's oath.

(2) **Time of Application Following Disbarment/Surrender.** A person who has been disbarred after hearing or by consent, or surrendered the

right to practice in this Court, may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment or surrender.

(3) **Hearing on Application.** Petitions for reinstatement by an attorney who has been suspended for more than six months, disbarred, or has surrendered the right to practice in this Court shall be filed with the Chief Judge of the Court. The Chief Judge shall screen the petition to determine, whether in the discretion of the Chief Judge, its contents justify a hearing. For those petitions where the Chief Judge determines that no further information is required, the Chief Judge may rule on the merits of the petition based on its contents or such further information as the Chief Judge may order produced. For those petitions where the Chief Judge has ordered a hearing, the Chief Judge shall refer the petition to special counsel and assign the matter for hearing before one or more Judges of this Court, provided however, that if the disciplinary or other proceeding that led to the suspension, disbarment or surrender was predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before one or more other Judges of this Court, or, if there are not Judges of this Court eligible to serve, before a District Judge of this Circuit appointed by the Chief Judge of the Court of Appeals. Within 30 days after referral, the Judge or Judges assigned to the matter shall schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that petitioner no longer has any incapacity and possesses the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

(4) **Duty of Special Counsel.** In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by special counsel.

(5) **Conditions of Reinstatement.** If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed and the Court may impose the costs of the proceedings, or a portion thereof. If the petitioner is found fit to resume the practice of law, a judgment of reinstatement shall enter, provided that the judgment may include such conditions as

the Court deems necessary to protect the public interest as well as making reinstatement conditional upon the payment of all or part of the costs of the proceedings and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment.

(6) **Successive Petitions.** No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

(i) Attorneys Specially Admitted

Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

(j) Service of Complaint, Papers and Other Notices

Upon the filing of a complaint instituting a disciplinary proceeding, the Clerk shall forthwith issue a summons and deliver the summons and a copy of the complaint to the U. S. Marshal for service in the manner provided in Fed. R. Civ. P. 4(c)(3) or, if such service cannot be made, by registered or certified mail addressed to the respondent-attorney at the attorney's last-known address. The summons shall direct the respondent-attorney to serve an answer within 21 days after service. An order of suspension shall be served in the same manner as a summons and complaint instituting a disciplinary proceeding. Service of any other papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the attorney's last known address; or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

(k) Duties of the Clerk

(1) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a

certificate has not been so forwarded, the Clerk of this Court shall promptly obtain a certificate and file it with this Court.

(2) Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline or found incapacitated by another court, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

(3) Whenever any person who is a member of the bar of any other court is convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court, the Clerk of this Court shall transmit to the other court, a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

(4) The Clerk of this Court shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

(l) Jurisdiction

Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

(m) Applicability of Rules

Except as otherwise expressly provided in this Rule, the Federal Rules of Civil Procedure do not apply to attorney disciplinary proceedings. In addition, the Federal Rules of Evidence, do not apply to disciplinary proceedings, except that Fed. R. Evid. 501 and 502 pertaining to privileges do apply to attorney disciplinary proceedings.

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Annotations

Rule 83.3(d)

(1) "Under Local Rule 83.3(d)(2), acts or omissions by an attorney admitted to practice before the United States District Court for the District of Maine that violate the Maine Code of Professional Responsibility constitute misconduct and are grounds for discipline. D. ME. R. 83.3. At issue in this case is Maine Bar Rule 3.6(f), which states:

> (f) *Communicating With Adverse Party.* During the course of representation of a client, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so.

Me. Bar R. 3.6(f). Although Defendant's brief implies that the rule is aimed at ensuring the presence of opposing counsel at interviews with witnesses whose conduct is at issue in the litigation, the plain language of the rule makes it clear that the rule is intended to ensure notice to the *witness's* attorney, if any. Where a witness is not represented by an attorney, a party is under no obligation whatsoever to inform anyone of contact with the witness. Thus, in order for Defendant to succeed in its Motion for Sanctions, it must demonstrate that Mark Allen, a *former* employee of L.L. Bean at the time of the interview, was somehow within the scope of Defense Counsel's representation of its client, L.L. Bean. They cannot make such a showing." Frank v. L.L. Bean Inc., 377 F. Supp. 2d 233, 235 (D. Me. 2005).

Rule 83.3(e)

(1) Because, Local Rule 83.3(e)(1) states that the Maine Rules of Professional Conduct adopted by the Supreme Judicial Court of Maine set the standard for professional conduct, the conflict-of-interest rules of the Maine Code of Professional Responsibility apply in federal court. In re Compact Disc Minimum Advertised Price Antitrust Litig., 2001 WL 243494, at *2 (D. Me. Mar. 12, 2001).

Rule 83.3(g)

(1) "Unlike the Maine Bar Rules which allow a more-or-less automatic reinstatement for suspensions of six months or less, see Me. Bar. Rule 28, the Local Rules for the District of Maine require, for suspensions of more than three months, that the Court hold a hearing to determine whether a petitioner seeking reinstatement has demonstrated 'by clear and convincing evidence that [he] no longer has any incapacity and possesses the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that [his] resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.' D. Me. Loc. R. 83.3(g)(3)." In re Campbell, 2016 U.S. Dist. LEXIS 166380, *3-4.

Rule 83.3(h)

(1) Under a prior version of the reinstatement subsection (now subsection (h)), the court held that "[t]he Court has the inherent and express authority to relax its own rules 'when justice requires.' D. Me. Loc. R. 1(a), that it was not required to refer the petition for reinstatement to counsel and assign the matter for hearing before a judge, because it was apparent from the face of the petition that the petitioner was not a member of the bar of the State of Maine, and the chief judge had authority to screen the petition and assign it to himself and that no hearing was necessary in light of the record generated in the state court proceeding. In re Williams, 775 F. Supp. 2d 210, 225-26 (D. Me. 2011).

RULE 83.4 - LEGAL ASSISTANCE BY CERTIFIED LAW STUDENTS

(Amended July 1, 2010)

(a) In General

A law student certified pursuant to subsection (b) may, with the permission of the Court and subject to the requirements of subsection (c), engage in the activities specified in subsections (d), (e) and (f).

(b) Certification

The Dean of any ABA accredited school of law may certify a law student who meets the following requirements:

(1) Has completed legal studies amounting to at least 4 semesters;

(2) Is of good character and competent legal ability and is adequately trained to perform as a legal intern;

(3) Promises to neither ask for nor receive any compensation or remuneration of any kind for his/her services from the person on whose behalf service is rendered, but this shall not prevent a legal aid bureau, law school, or government from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require; and

(4) Certifies in writing that the law student has read and is familiar with the Maine Code of Professional Responsibility (Maine Bar Rule 3), the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence and the Rules of this Court.

The certification:

(1) Shall be filed with the Clerk of this Court;

(2) May be withdrawn by the Dean at any time by mailing notice to that effect to the Clerk of Court. It is not necessary that the notice state the cause for withdrawal; and

(3) May be terminated by the Court without notice or hearing and without any showing of cause. Notice of such termination shall be filed with the Clerk of Court.

(c) Supervision

A member of the Bar of this Court shall appear in court with any certified law student who appears in court pursuant to subsections (d) or (e) of this Rule. The member of the Bar shall file in the record of the case a written approval of the certified law student's appearance.

A member of the Bar of this Court shall supervise a certified law student in connection with any activities permitted by this Rule and shall:

(1) Assume personal professional responsibility for the student's guidance in any work undertaken and shall supervise the quality of the student's work; and

(2) Assist the student in preparation to the extent necessary.

(d) Court Appearance on Behalf of Indigent Person

A certified law student may appear in court in any civil or criminal proceeding on behalf of an indigent person receiving legal assistance from a law school clinical practice program, if the person on whose behalf the student is appearing consents in writing to that appearance. The written consent shall be filed in the record of the case.

(e) Court Appearance on Behalf of Local, State, or Federal Government

A certified law student may appear in court in any criminal or civil proceeding on behalf of any local, state or federal governmental agency with the written approval of the supervising government lawyer. The written approval shall be filed in the record of the case.

(f) Other Activities

A certified law student may prepare pleadings, briefs, and other documents to be filed in the Court in any matter in which the student is eligible to appear pursuant to subsections (d) or (e). The document must be signed by the supervising lawyer.

Each pleading, brief, or other document must contain the name of the certified law student who participated in drafting it. If the student has participated in drafting only a portion of it, that fact may be mentioned.

(g) Limitation

Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything that might otherwise lawfully be done.

RULE 83.5 - ASSIGNMENT OF REMANDED CASES

A case remanded from the First Circuit Court of Appeals for further proceedings shall be assigned as follows, unless the judge originally assigned finds that the interests of justice or the appearance of justice warrant assignment of the case to another judge, after giving due consideration to the rights and convenience of the parties, the conservation of litigant and judicial resources, and the fair and expeditious administration of justice:

(1) Further Proceedings. A case remanded for further proceedings following a vacation of any pretrial order or judgment shall be assigned to the judge who acted in the matter.

(2) Nonjury Trial. Unless the parties otherwise agree, a case remanded for a new nonjury trial shall be assigned to a judge other than the judge who conducted the earlier nonjury trial unless remand was predicated solely on errors of law.

(3) Jury Trial. A case remanded for a new jury trial shall be assigned to the judge who conducted the earlier jury trial.

(4) Resentencing. A case remanded for resentencing shall be assigned to the judge who imposed the vacated sentence.

RULE 83.6 - BANKRUPTCY

(Amended December 1, 2017)

(a) Reference to Bankruptcy Court

All cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 are referred to the bankruptcy judges of this district pursuant to 28 U.S.C. § 157(a).

(b) Jury Trial

Each bankruptcy judge for the District of Maine is specially designated to conduct jury trials pursuant to 28 U.S.C. § 157(e).

(c) Bankruptcy Appellate Panel

The Bankruptcy Appellate Panel for the First Circuit is hereby authorized to hear and determine the bankruptcy appeals originating in the District of Maine pursuant to 28 U.S.C. § 158(b)(6).

(d) Statement of Interested Parties

Statement Regarding Interested Parties. Any party, other than governmental parties, filing in either the United States Bankruptcy Court for the District of Maine or the United States District Court for the District of Maine, as the case may be, a notice of appeal, a motion for leave to appeal, an election to the United States District Court for the District of Maine, or an appellate brief, under Federal Rules of Bankruptcy Procedure Rules 8003, 8004, 8005, or 8014, must file along with the first such filing a Statement indicating whether it knows of any Interested Party who is not listed in the notice of appeal, or motion for leave to appeal if no such notice of appeal has been filed. An "Interested Party" includes all persons, associations of persons, firms, guarantors, partnerships, insurers, affiliates, limited liability companies, joint ventures, corporations (including parent or affiliated corporations, clearly identified as such), or any similar entity owning 10% or more of any corporate party to the appeal, that are financially interested in the outcome of the appeal. Parties shall be under a continuing obligation to file an amended Statement of Interested Parties if any material change occurs in the status of an Interested Party, such as through merger, acquisition, or a new/additional membership. The Statement of Interested Parties must include the names of attorneys who have previously

appeared for a party in the case or proceeding below, but who have not entered an appearance in the appeal to this Court.

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Annotations

(1) Most cases that mention this provision do so briefly in connection with "jurisdiction and venue." See, e.g., In re Getchell Agency, 2017 WL 2703522, at *1 (Bankr. D. Me. June 22, 2017) (noting, in the context of a bankruptcy matter, that the court had jurisdiction over the subject matter and the parties pursuant to, among other things, District of Maine Local Rule 83.6(a)); see also In re Oak Knoll Associates, L.P., 525 B.R. 175, 178 (Bankr. D. Me. 2015); In re Foster, 574 B.R. 19, 21 (Bankr. D. Me. 2017); In re Kirby, 589 B.R. 456, 458 (Bankr. D. Me. 2018); TD Bank, N.A. v. Sewall, 419 B.R. 103, 105 n.13 (D. Me. 2009) (reiterating the text of Local Rule 83.6(a)).

(2) "Pursuant to Local Rule 83.6(a), '[a]ll cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 are' automatically referred to the Bankruptcy Court. D. Me. Loc. R. 83.6(a); see 28 U.S.C. § 157(a)." In re Parco Merged Media Corp., 489 B.R. 323, 324 (D. Me. 2013).

(3) "District courts have jurisdiction over bankruptcy actions under 28 U.S.C. § 1334(b). Section 157(a) of Title 28 permits referral to the Bankruptcy Court, and by local rule, all cases and civil proceedings under Title 11 filed in Maine are automatically referred to the bankruptcy judges for the District of Maine. *See* D. ME. LOC. R. 83.6(a)." Howison v. Milo Enters., 2012 U.S. Dist. LEXIS 70308, *14 (D. Me. 2012).

RULE 83.7 - CORPORATE DISCLOSURE STATEMENT

(Amended December 19, 2002)

Inasmuch as Fed. R. Civ. P. 7.1, governing the filing of corporate disclosure statements, took effect on December 1, 2002, Local Rule 83.7 is hereby abrogated effective December 19, 2002.

RULE 83.8 - SECURITY

(Amended December 23, 2008)

(a) Courthouse Security

(1) Screening and Search. All persons entering federal courthouse facilities in this District and all items carried by them are subject to appropriate screening and search by a deputy U.S. Marshal, or any other designated law enforcement officer. Persons may be requested to provide identification and to state the nature of their business in the courthouse. Anyone refusing to cooperate with these security measures may be denied entrance to the courthouse.

(2) Deposit Firearms. All persons, including all law enforcement personnel not employed by the United States Marshals Service, shall deposit any firearm or other weapon with a deputy U. S. Marshal or any other law enforcement officer designated by the U. S. Marshal, directly upon entering federal courthouse facilities, unless otherwise specifically authorized by the United States Marshal.

(3) Cellular Telephones, Photographs, Recording and Transmission. In the Edward T. Gignoux U.S. Courthouse in Portland, including its courtyard, and in those parts of the Margaret Chase Smith Federal Building occupied or used by the United States District Court and in any other space occupied or used by the United States District Court, the Bankruptcy Court, the Probation Office or the U.S. Marshal, the possession and use of cellular telephones or other wireless communication devices, computers and recording devices, the creation of photographs, including digital or video images, the recording or transmission of information, sound or images by any means, or the possession and use of radio, television or broadcasting equipment is prohibited without prior approval of the Court. Without prior approval of the Court, parties may not use electronic devices to access the internet or electronic mail. Nothing in this rule restricts the Court's inherent power to prohibit or restrict the use of any such devices at any time.

(4) Cellular Phones, Computers, Other Wireless Communication Devices and Recording Devices for Use by Members of the Bar. Subject to the Court's

inherent power to prohibit or to restrict the use of such devices, members of the bar of this Court are permitted to use and possess cellular telephones, other wireless communication devices, computers and recording devices in the court facilities identified in subdivision (a)(3), provided that such use is silent or otherwise does not interfere with the proceedings and provided that no photographic, digital, video or audio transmission or recording of any court proceeding or facility occurs in violation of subdivision (a)(3). A member of the bar may authorize a person providing services to that member of the bar in connection with a case to use a cellular telephone, wireless communication device, computer or recording device in the court facilities on the same basis as a member of the bar. The member of the bar authorizing such use is responsible for that person's compliance with the rules of this Court. No voice telephone or audible electronic communications are permitted in any courtroom at any time or in any location where a Court proceeding or conference is being held.

(b) Courtroom Security

Weapons Prohibited. No weapons are permitted in any courtroom, except in the following circumstances:

(1) when carried by U. S. Marshals Service personnel;

(2) when used as exhibits. Upon entering the courthouse, the custodian of the weapon must submit it to the United States Marshal's office for a determination that the weapon is inoperative to the Marshal's satisfaction.

(c) Grand Jury Security

In order to maintain the secrecy of the Grand Jury proceedings and to assure that those witnesses who come before the Grand Jury have a right to have their appearances before the Grand Jury kept secret and that they be protected from any unwanted interference with regard to their coming and going to the Grand Jury, the only persons permitted on the second floor of the U. S. Courthouse in Bangor and on the third floor of the U. S. Courthouse in Portland while the Grand Jury is in session are law enforcement officers, attorneys for the government, witnesses called by the Grand Jury, attorneys for witnesses, employees and invitees of government agencies located on the premises, and other persons with business with those government agencies.

(d) Other Security Measures

This rule sets out established security procedures. It does not preclude either the Court or a security officer from imposing additional security restrictions in particular cases.

RULE 83.9 - COMPLAINTS OF JUDICIAL MISCONDUCT OR DISABILITY

Complaints alleging judicial misconduct or disability are governed by the Judicial Conduct and Disability Act, 28 U.S.C. § 372 and by the Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability. Any such complaint shall be filed with the Clerk of the First Circuit Court of Appeals.

RULE 83.10 - CERTIFICATE OF APPEALABILITY

(Amended January 1, 2014)

A petitioner wishing to appeal from the denial of a § 2254 or § 2255 petition should promptly apply to the district judge for a certificate of appealability. The application will be directed in the first instance to the district court judge who refused the writ. A timely notice of appeal must be taken thereafter from the final order entered by the Court.

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Annotations

(1) "Local Rule 83.10 provides that '[a] petitioner wishing to appeal from the denial of a . . . § 2255 petition must file a timely notice of appeal and should promptly apply to the district judge for a certificate of appealability.' D. Me. Loc. R. 83.10." Stone v. U.S., 2013 WL 183708, at *41 (D. Me. Jan. 17, 2013).

RULE 83.11 - ALTERNATIVE DISPUTE RESOLUTION (ADR)

(Adopted April 4, 2000)

(a) In General

Litigants are authorized and encouraged to employ, at their own expense, any available ADR process on which they can agree, including early neutral evaluation, settlement conferences, mediation, non-binding summary jury trial, corporate mini-trial, and arbitration proceedings.

(b) Consideration of ADR

Litigants in civil cases shall consider the use of ADR as follows:

(1) Standard Track Cases. In accordance with the requirements of the scheduling order issued in all standard track cases, counsel shall consult with each other and their clients concerning all available ADR processes and shall consider all ADR options.

(2) Complex Track Cases. In accordance with the provisions of Local Rule 16.3(c), prior to the initial scheduling conference in all complex track cases, counsel shall consult with each other and with their clients concerning all available ADR processes and shall be prepared to fully discuss all such options with the presiding judicial officer at the initial scheduling conference.

(3) Exempted Actions. Exempted from the requirement are actions assigned, in accordance with Local Rule 16.1, to the Administrative Track, Toxic Tort Track, Prisoner Civil Rights Tract, and the State of Maine/Pine Tree Legal Protocol Track.

(c) Court-Annexed ADR

To implement section 652(a) of the Alternative Dispute Resolution Act of 1998, 28 U.S.C. § 651 et seq., the Court provides the following forms of ADR: the district and magistrate judges of the Court shall be available throughout the pretrial phase of all civil litigation to conduct early neutral evaluation and settlement conferences with counsel and the parties. To the extent their dockets permit, bankruptcy judges shall also be available. This court-annexed ADR is voluntary and nonbinding, unless the parties agree otherwise. The neutrals

recognized under this rule for court-annexed ADR are the judicial officers of the Court. They are subject to disqualification in accordance with federal statutes such as 28 U.S.C. § 455 and the Canons of Judicial Ethics.

(d) Confidentiality

All ADR processes are confidential. Thus, no disclosure shall be made to anyone, including any judicial officer not serving as a neutral in the matter, of any confidential dispute resolution communication that in any respect reveals the dispute resolution positions of the parties or advice or opinions of neutrals, and no such communication shall be admissible in any subsequent proceeding, including trial of the matter, except as the Federal Rules of Evidence may permit otherwise.

***

Annotations

(1) "I do not accept the plaintiff's contention that the District of Maine's local rules are adequate to replicate the state mediation program (I have no authority to order the parties to mediate in a similar fashion with a mediator of my choosing who would have such specialized knowledge, see Local Rule 83.11) I recognize that the state justices of Maine may well be more competent at mediating and settling these cases and that the Foreclosure Diversion Program is undoubtedly far more sophisticated than any that this federal court can offer, but that difference does not justify denying an out-of-state plaintiff its right to a federal forum." Residential Mortg. Loan Tr. 2013-TT2 v. Lloyd, 183 F. Supp. 3d 189, 195 (D. Me. 2016).

RULE 83.12 - PROCEDURES GOVERNING CASES REFERRED TO OR FROM NEW HAMPSHIRE OR RHODE ISLAND

(Amended January 10, 2007)

When, due to recusal of the judges of this District, a case is referred to a judge in either the District of New Hampshire or the District of Rhode Island, or when a judge of this District is assigned to preside over a case filed in the District of New Hampshire or the District of Rhode Island, the following procedures shall apply:

a) The originating court shall retain jurisdiction over the case and enter final judgment. Local rules of the originating court shall govern the case unless otherwise ordered by the judge who is presiding by designation.

b) Conferences and hearings may be held in either district. Jury trials will be held in the district of the originating court.

c) Parties must make original filings with the clerk's office in the originating court.

RULE 83.13 - RESTRICTIONS UPON LAW PRACTICE AFTER TERMINATION OF A CLERKSHIP

(Adopted April 11, 2002)

No one serving as a law clerk to a member of this Court shall engage in the practice of law while continuing in such position. Nor, for a period of six months after separating from that position, shall a former law clerk appear as counsel before the judicial officer for whom the attorney previously clerked. A former law clerk shall not practice as an attorney in connection with any case the judicial officer acted on during the law clerk's tenure, even if the clerk did not actually have any involvement with the case.

APPENDIX I - MODEL COMPLAINT IN SOCIAL SECURITY APPEAL

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

_____	)	
Plaintiff	)	
v.	)	Complaint
_____	)	Civil Action No. _____
Commissioner, Social Security	)	
Administration,	)	
Defendant	)	

The above-named plaintiff, [name] makes the following representations to this Court for the purpose of obtaining judicial review of a decision of the defendant adverse to the plaintiff:

1. The plaintiff (whose Social Security account number is ***-**-[4-digits]) is a resident of [city/town], Maine.

2. The plaintiff complains of a decision which adversely affects the plaintiff in whole or in part. The decision has become the final decision of the Commissioner for purposes of judicial review and bears the following caption:

   In the Case of: Claim for:

   (Claimant)

   (Wage Earner)

3. The plaintiff has exhausted administrative remedies in this matter and this Court has jurisdiction for judicial review pursuant to 42 U.S.C. § 405(g).

WHEREFORE plaintiff seeks judicial review by this Court and the entry of a judgment for such relief as may be proper, including costs.

Dated: (Attorney for Plaintiff)

(Address)

(Telephone)

APPENDIX II - FORM CONFIDENTIALITY ORDER

(Amended January 1, 2013)

[This Form Confidentiality Order shall be submitted under L.R. 26 (d). The form is available on the Court's website under "Forms" at http://www.med.uscourts.gov]

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No.
	)	**[Consent]**[3] Confidentiality Order
	)	
Defendant	)	

[if by consent] The parties to this Consent Confidentiality Order have agreed to the terms of this Order; accordingly, it is ORDERED:

[if not fully by consent] A party to this action has moved that the Court enter a confidentiality order. The Court has determined that the terms set forth herein are appropriate to protect the respective interests of the parties, the public, and the Court. Accordingly, it is ORDERED:

1. **Scope**. All documents produced in the course of discovery, including initial disclosures, all responses to discovery requests, all deposition testimony and exhibits, other materials which may be subject to restrictions on disclosure for good cause and information derived directly therefrom (hereinafter collectively

[3]Counsel should include or delete language in brackets as necessary to the specific case.

"documents"), shall be subject to this Order concerning confidential information as set forth below. This Order is subject to the Local Rules of this District and of the Federal Rules of Civil Procedure on matters of procedure and calculation of time periods.

2. **Form and Timing of Designation**. A party may designate documents as confidential and restricted in disclosure under this Order by placing or affixing the words "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" on the document in a manner that will not interfere with the legibility of the document and that will permit complete removal of the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation. Documents shall be designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER prior to or at the time of the production or disclosure of the documents [**optional**: except for documents produced for inspection under the "Reading Room" provisions set forth in paragraph 4 below]. The designation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order.

3. **Documents Which May be Designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.** Any party may designate documents as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER but only after review of the documents by an attorney[2] or a party appearing *pro se* who has in good faith determined that the documents contain information protected from disclosure by statute or that should be protected from disclosure as confidential personal information, trade secrets, personnel records, or commercial information. The designation shall be made subject to the standards of Rule 11 and the sanctions of Rule 37 of the Federal Rules of Civil Procedure. Information or documents that are available in the public sector may not be designated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.

4. **[This Reading Room paragraph may be appropriate only in cases involving extensive documents] Reading Room**. In order to facilitate timely disclosure of a large number of documents that may contain confidential documents, but that have not yet been reviewed and designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER, the following "Reading Room" procedure may be used at the election of the producing party.

(a) **Reading Room Review**. Documents may be produced for review at a party's facility or other physical or electronic controlled location ("Reading Room") prior to designation as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER. After review of the documents, the party seeking discovery may specify those for which copies are requested. If the producing party elects to designate any documents CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER, the copies shall be so marked prior to further production.

(b) **No Waiver of Confidentiality**. The production of documents for review within the Reading Room shall not be deemed a waiver of any claim of confidentiality, so long as the reviewing parties are advised that pursuant to this Order the Reading Room may contain confidential documents that have not yet been designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.

(c) **Treatment of Produced Documents as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.** The reviewing party shall treat all documents reviewed in the Reading Room as designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER at the time reviewed. Documents copied and produced from the Reading Room that are not designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER are not subject to this Order.

(d) **Production of Documents**. Unless otherwise agreed or ordered, copies of Reading Room documents shall be produced within thirty days after the request for copies is made. Production may be made by providing electronic copies of the documents so long as copies reasonably as legible as the originals may be produced therefrom.

5. **Depositions**. Deposition testimony shall be deemed CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER only if designated as such. Such designation shall be specific as to the portions to be designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER. Depositions, in whole or in part, shall be designated on the record as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER at the time of the deposition. Deposition testimony so designated shall remain CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER until seven days after delivery of the transcript by the court reporter. Within seven days after delivery of the transcript, a designating party may serve a Notice of Designation to all parties of record as to specific portions of the transcript to be designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER. Thereafter, those portions so designated shall be protected as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER pending objection under the terms of this Order. The failure to serve a Notice of Designation shall waive the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation made on the record of the deposition. If deposition excerpts have not been designated as confidential pursuant to this order, they are not to be treated as sealed documents when filed with the court.

6. **Protection of Confidential Material**.

(a) **General Protections**. Documents designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Order shall not be used or disclosed by the parties, counsel for the parties or any other persons identified in ¶ 6(b) for any purpose whatsoever other than to prepare for and to conduct discovery and trial in this action [adversary proceeding], including

any appeal thereof. **[INCLUDE IN PUTATIVE CLASS ACTION CASE:** The parties shall not disclose documents designated as confidential to putative class members not named as plaintiffs in putative class litigation unless and until one or more classes have been certified.]

(b) **Limited Third-Party Disclosures**. The parties and counsel for the parties shall not disclose or permit the disclosure of any CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents to any third person or entity except as set forth in subparagraphs (1)-(6). Subject to these requirements, the following categories of persons may be allowed to review documents that have been designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER:

(1) **Counsel**. Counsel for the parties and employees of counsel who have responsibility for the preparation and trial of the action;

(2) **Parties**. Parties and employees of a party to this Order [OPTIONAL: If the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents contain trade secrets or other competitive, personnel or confidential information and disclosure to another party could be harmful to the disclosing party, then add language: but only to the extent counsel determines that the specifically named individual party or employee's assistance is reasonably necessary to the conduct of the litigation in which the information is disclosed].

(3) **Court Reporters and Recorders**. Court reporters and recorders engaged for depositions;

(4) **Contractors**. Those persons specifically engaged for the limited purpose of making copies of documents or organizing or processing documents but only after each such person has completed the

certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

(5) **Consultants and Experts**. Consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of this action [adversary proceeding] but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound; and

(6) **Others by Consent**. Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

(c) **Control of Documents**. Counsel for the parties shall make reasonable efforts to prevent unauthorized disclosure of documents designated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of six years from the date of signing.

(d) **Copies**. Prior to production to another party, all copies, electronic images, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as "copies") of documents designated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Order, or any individual portion of such a document, shall be affixed with the designation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" if the word does not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Order. The term "copies" shall not include indices, electronic databases or lists of documents provided these indices, electronic

databases or lists do not contain substantial portions or images of the text of confidential documents or otherwise disclose the substance of the confidential information contained in those documents.

7. **Filing of CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER Documents**. Before any document marked as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER is filed with the Clerk the party filing the document shall make reasonable efforts to ensure that the document is protected from public disclosure or has been redacted to remove nonessential confidential information. The filing party shall first consult with the party which originally designated the document as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER to determine whether, with the consent of that party, a redacted document may be filed with the Court not under seal. Where agreement is not possible or adequate, a confidential document may be electronically filed under seal only in accordance with Local Rule 7A. Other than motions to seal and memoranda governed by Local Rule 7A, if the contents of CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents are incorporated into memoranda or other pleadings filed with the court, counsel shall prepare two versions of the pleadings, a public and a confidential version. The public version shall contain a redaction of references to CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents and shall be filed with the Clerk. The confidential version shall be a full and complete version of the pleading, including any exhibits which the party maintains should be under seal and shall be filed with the Clerk attached to a motion to seal filed in accordance with Local Rule 7A. The public version shall plainly indicate the exhibits (both by number and description of the exhibit) that have been filed under seal with the confidential version. In the event the confidential exhibit must be filed under seal because the parties cannot reach agreement on redaction, the filing party, if not the party seeking to maintain confidentiality status, shall describe the document and give it an Exhibit Number, indicating that it will be filed separately under seal by the opposing party. The party seeking to maintain confidential status shall file a

motion to seal in accordance with Local Rule 7A within 3 business days of the filing of the opposing party's pleading. Failure to file a timely motion to seal could result in the pleading/exhibit being unsealed by the court without further notice or hearing.

8. **No Greater Protection of Specific Documents**. No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an order providing such special protection.

9. **Challenges by a Party to Designation as Confidential**. Any CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation is subject to challenge by any party or non-party (hereafter "party"). The following procedure shall apply to any such challenge.

(a) **Objection to Confidentiality**. Within 30 days of the receipt of any document designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER or of the refusal to produce a document on the ground of such designation, a party may serve upon the designating party an objection to the designation. The objection shall specify the documents to which the objection is directed and shall set forth the reasons for the objection as to each document or category of documents. CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents to which an objection has been made shall remain CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER until designated otherwise by waiver, agreement or order of the Court.

(b) **Obligation to Meet and Confer**. The objecting party and the party which designated the documents to which objection has been made shall have fifteen (15) days from service of the objection to meet and confer in a good faith effort to resolve the objection by agreement. If agreement is reached confirming or waiving the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation as to any documents subject to the objection, the

designating party shall serve on all parties a notice specifying the documents and the nature of the agreement.

(c) **Obligation to File Motion**. If the parties cannot reach agreement as to any documents designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER, for the purpose of discovery, the designating party shall file within 30 days of the service of the objection a motion to retain the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation. The moving party has the burden to show good cause for the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation. The failure to file the motion waives the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation of documents to which an objection was made, but the fact that the parties have agreed that the document will remain confidential for all purposes other than use in court does not mean that the item will necessarily be ordered sealed by the Court, even in the absence of objection by the opposing party.

10. **Action by the Court**. Applications to the Court for an order relating to documents designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER shall be by motion under Local Rule 7. Nothing in this Order or any action or agreement of a party under this Order limits the Court's power to make orders concerning the disclosure of documents produced in discovery or at trial.

11. **Use of Confidential Documents or Information at Trial**. A party which intends to present or which anticipates that another party may present at trial CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents or information derived therefrom shall identify the issue, not the information, in the pretrial memorandum. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at trial.

12. **Obligations on Conclusion of Litigation**.

(a) **Order Remains in Effect**. Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

(b) **Return of CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER Documents.** Within thirty days after dismissal or entry of final judgment not subject to further appeal, all documents treated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Order, including copies as defined in ¶ 6(d), shall be returned to the producing party unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction in lieu of return; or (3) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the documents and certifies to the producing party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including an index which refers or relates to information designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER, so long as that work product does not duplicate verbatim substantial portions of the text or images of confidential documents. This work product shall continue to be CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose or use CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents.

(c) **Deletion of Documents Filed under Seal from ECF System**. Filings under seal shall be deleted from the ECF system only upon order of the Court.

13. **Order Subject to Modification**. This Order shall be subject to modification by the Court on its own motion or on motion of a party or any other

person with standing concerning the subject matter. Motions to modify this Order shall be served and filed under Local Rule 7.

14. **No Prior Judicial Determination**. This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any documents or information designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER by counsel or the parties is subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

15. Persons Bound. This Order shall take effect when entered and shall be binding upon all counsel and their law firms, the parties, and persons made subject to this Order by its terms.

So Ordered.

Dated: _____

_____

U.S. District Judge
U.S. Magistrate Judge
U.S. Bankruptcy Judge

[Delete signature blocks if not wholly by consent]

WE SO MOVE and agree to abide by the terms of this Order	**WE SO MOVE/CONSENT and agree to abide by the terms of this Order**
_____	_____
Signature	Signature
_____	_____
Printed Name	Printed Name
Counsel for:_____	Counsel for: _____
Dated:	Dated:

ATTACHMENT A

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

	)	
	)	Civil No.
Plaintiff	)	
	)	
	)	
	)	
Defendant	)	

ACKNOWLEDGMENT
AND
AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Confidentiality Order dated_____in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the District of Maine in matters relating to the Confidentiality Order and understands that the terms of the Confidentiality Order obligate him/her to use documents designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such documents or information derived directly therefrom to any other person, firm or concern.

The undersigned acknowledges that violation of the Confidentiality Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

_____

_____

Date: _____ _____

Signature

APPENDIX III - AGREEMENT ON ACCEPTANCE OF SERVICE

To facilitate and assure timely service of process and to provide adequate time to answer civil complaints filed by *in forma pauperis* litigants and habeas corpus petitions under 28 U.S.C. § 2254, the Clerk of Court of the United States District Court for the District of Maine and the Attorney General of the State of Maine agree to the following procedures. This agreement addresses cases in which the United States District Judge or Magistrate Judge determines that service documents are to issue when a plaintiff has been granted *in forma pauperis* status in a civil action involving the State of Maine or its employees and in all cases where a petitioner has filed a habeas corpus petition under 28 U.S.C. § 2254, regardless of whether or not the filing fee has been paid.

1. General Provisions

A. At case opening, the case manager will add an appropriate entity specified by the Attorney General as a "Notice Only Party" to the court's Case Management and Electronic Case Filing System (CM/ECF). The Attorney General's Office will thereby receive electronic notice of all case filings and activity, including the case initiating documents, to any e-mail accounts specified by that office in their "Notice Only" designation. If the Attorney General ultimately enters an appearance on behalf of one or more defendants in the case, the "Notice Only Party" will be terminated and the attorney/(s) who enters his/her appearance will be designated as the counsel to whom notice is sent.

B. These procedures shall take effect for any case filed after May 1, 2009, and remain in effect until terminated by the Attorney General or the Clerk.

2. Habeas Corpus Petitions

Pursuant to the Rules 4 and 5 Governing § 2254 Cases, following preliminary review by the Court, the respondent is only required to answer or otherwise respond to the petition if ordered to do so by the court. In its order the Court will fix the time by which response must be made, normally allowing 60 days. The Attorney General agrees that entry of the order to respond on the docket by the clerk complies with the requirement of service of the petition on the respondent, the Attorney General, or other appropriate officer and will accept service of the same.

3. Prisoner IFP Complaints wherein Maine Employees and/or the Department of Corrections are Defendants

Pursuant to 28 U.S.C. § 1915A all prisoner complaints will be subject to mandatory screening before the Court will order service of complaint. The Attorney General shall file no pleadings in the case until after the Court completes its preliminary review. If the Court determines that the complaint should be served, the clerk will enter the following notice on the docket:

NOTICE: The court has completed its preliminary review and ordered the complaint to be served. Pursuant to the Agreement on Service between the Clerk of Court and the Maine Attorney General, this Notice constitutes service as directed by the court. The Maine Attorney General shall file notice of acceptance or declination of acceptance of service within thirty (30) days.

A. If service is accepted, it shall constitute both proof of service and acceptance of service under Federal Rule of Civil Procedure 4, and the clerk shall commence the 60 day answer period from the date the Notice was entered on the docket, as though service had been made by mailing a request for a waiver to the defendant pursuant to the provisions of Federal Rule of Civil Procedure 4(d)(3).
B. If service is declined, the Attorney General, shall to the extent able, explain the reason for declination, e.g., the defendant is no longer employed by the State of Maine, there is a conflict of interest, or the defendant has declined representation by the Attorney General. A notice of acceptance or declination of service shall be filed in every case where the Attorney General has been listed as a "Notice Only Party."
C. In those cases where service is declined, the Court shall immediately order in-hand service by the United States Marshals Service on behalf of any indigent prisoner and shall further order the Attorney General to provide the last known address of the defendant to the United States Marshals Service to be used only for the purpose of attempting to effectuate in-hand service.
D. If the Court determines that a shortened response time is required because the plaintiff has filed a preliminary motion for injunctive relief, or for any other reason requiring an expedited response, it shall notify the Attorney General of any shortened response date by a specific order.

4. Nonprisoner IFP cases wherein Maine Employees and/or Maine Agencies or Departments are Defendants

A. The Attorney General shall file no pleadings in a non-prisoner IFP case until after the Court issues an order on the plaintiff's IFP status. If the plaintiff is granted IFP status and service documents are to issue, the clerk will enter the following notice on the docket:
NOTICE: The court has granted IFP status and ordered the complaint to be served. Pursuant to the Agreement on Service between the Clerk of Court and Maine Attorney General, this Notice constitutes service as directed by the court. The Maine Attorney General shall file notice of acceptance or declination of acceptance of service within thirty (30) days.

B. Following entry of the Notice, the procedures applicable to prisoner IFP cases, outlined above, shall apply.

DATE: 4/27/2009.....
.....
..... _/s/_____
Janet Mills
Attorney General
State of Maine

DATE: 4/27/2009

_/s/_____
Linda L. Jacobson
Clerk of Court
District of Maine

APPENDIX IV - ADMINISTRATIVE PROCEDURES GOVERNING THE FILING AND SERVICE BY ELECTRONIC MEANS

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

(Revised December 1, 2018)

ELECTRONIC FILING and PDF

Electronic Filing is the process of uploading a document from the registered user's computer, using the Court's Internet-based Electronic Case Files (ECF) system, to file the document in the Court's case file. The ECF system only accepts documents in a portable document format (PDF). Although there are two types of PDF documents - electronically converted PDF's and scanned PDF's - only electronically converted PDF's may be filed with the Court using the ECF System, unless otherwise authorized by local rule or order.

Electronically converted PDF's are created from word processing documents (MS Word, WordPerfect, etc.) using Adobe Acrobat or similar software. They are text searchable and their file size is small.

Scanned PDF's are created from paper documents run through an optical scanner. Scanned PDF's are not searchable and have a large file size.

Software used to electronically convert documents to PDF which includes proprietary or advertisement information within the PDF document is prohibited.

ADMINISTRATIVE PROCEDURES

(a) General Information

(1) All documents submitted for filing in civil and criminal cases, regardless of case commencement date, except those documents specifically exempted in subsection (g) of these procedures, shall be filed electronically using the Electronic Case Filing System (ECF).

(2) The official Court record in ECF cases shall be the electronic file maintained on the Court's servers together with any disks, DVDs, other media, and paper attachments and exhibits filed in accordance with these procedures.

(3) All documents filed by electronic means must comply with technical standards, if any, established by the Judicial Conference of the United States or by this Court.

(4) Documents filed with the Clerk's Office will normally be reviewed no later than the close of the next business day. It is the responsibility of the filing party to promptly notify the Clerk's Office via telephone of a matter that requires the immediate attention of a judicial officer.

(5) An attorney may apply to the Court for permission to file paper documents.

(b) Registration

(1) Attorneys admitted to the bar of this Court, including visiting attorneys, shall register as filing users of the Court's ECF system prior to filing any pleadings. Registration shall be on an Attorney Registration Form, a copy of which is on the Court's web page (www.med.uscourts.gov).

(2) A non-prisoner who is a party to a civil action and who is not represented by an attorney may register to receive service electronically and to electronically transmit their documents to the Court for filing in the ECF system. If during the course of the action the person retains an attorney who appears on the person's behalf, the Clerk shall terminate the person's registration upon the attorney's appearance.

(3) A registered user shall not allow another person to file a document using the user's log-in and password, except for an authorized agent of the filing user. Use of a user's log-in and password by a staff member shall be deemed to be the act of the registered user.

(4) Registration constitutes consent to service of all documents by electronic means as provided in these procedures.

(c) Filing and Service of Civil Case Opening Documents

(1) Civil case opening documents, such as a complaint, petition, or notice of removal, together with a properly completed summons and civil cover sheet, shall be filed by e-mail in PDF, so that the documents can be added to ECF.
(2) The Clerk's Office will imprint the seal of the Court and the Clerk's signature on the summons and issue the summons electronically to counsel. A party

may not electronically serve a civil complaint but shall print the embossed summons and effect service in the manner in accordance with Fed.R.Civ.P.4.

(d) Electronic Filing

(1) Electronic transmission of a document to the ECF system, together with the transmission of a Notice of Electronic Filing (NEF) from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure and constitutes entry of the document on the docket maintained by the Clerk pursuant to Fed.R.Civ.P.58, Fed.R.Civ.P.79, Fed.R.Crim.P.49 and Fed.R.Crim.P.55).

(2) A document filed electronically shall be deemed filed at the time and date stated on the Notice of Electronic Filing received from the Court.

(3) All pleadings filed electronically shall be titled in accordance with the approved dictionary of civil or criminal events of the ECF system of this Court.

(e) Service of Electronically Filed Documents

(1) Whenever a non-sealed pleading is filed electronically, the ECF system will automatically generate and send a Notice of Electronic Filing (NEF) to the filing user and registered users of record. The user filing the document should retain a paper or digital copy of the NEF, which shall serve as the Court's date-stamp and proof of filing.

(2) Although the filing of sealed documents in civil cases produces an NEF, the document itself cannot be accessed and counsel shall be responsible for making service of the sealed documents.

(3) Attorneys who have not yet registered as users with ECF and pro se litigants who have not registered with ECF shall be served a paper copy of any electronically filed pleading or other document in accordance with the provisions of Fed.R.Civ.P.5.

(f) Deadlines.

Filing documents electronically does not in any way alter any filing deadlines. All electronic transmissions of documents must be completed prior to midnight, Eastern Time, in order to be considered timely filed that day. Where a specific time of day deadline is set by Court order or stipulation, the electronic filing must be completed by that time.

(g) Special Filing Requirements and Exceptions

(1) Generally, all documents are filed electronically in civil cases, to include the following:
   (A) Motions to file documents under seal and sealed documents;
   (B) Ex parte motions and applications;
   (C) Unredacted documents;
   (D) The state court record and other Rule 5 materials in habeas corpus cases filed in 28 U.S.C. §2254 proceedings may be filed electronically or in paper; and
   (E) Administrative records in Social Security Disability cases.

(2) The following documents **may be filed in paper**:
   (A) Administrative review proceeding records other than administrative records in Social Security Disability cases.

(3) The following documents **shall be filed in paper** with the Clerk's Office, which **will also be scanned and uploaded** into ECF (Note that sealed documents in **criminal** cases will not generate an NEF and the docket entry and documents will not be accessible):
   (A) Motions to file documents under seal and documents filed under seal in criminal cases;
   (B) Ex parte motions and applications filed in criminal cases;
   (C) Pleadings and documents filed in sealed cases, both civil and criminal;
   (D) The charging document in a criminal case, such as the complaint, indictment, or information;
   (E) Any pleading or document in a criminal case containing the signature of a defendant, such as a waiver of indictment, or plea agreement; and
   (F) Affidavits for search and arrest warrants.

(4) The following documents **shall be filed in paper**, which **may also be scanned** into ECF by the Clerk's Office:
   (A) All handwritten pleadings; and
   (B) All pleadings and documents filed by pro se litigants who are incarcerated or who are not registered filing users in ECF.

(5) The following documents must **be scanned by counsel** and filed using ECF:
   (A) Rule 4 executed service of process documents; and
   (B) The state court record filed in 28 U.S.C. § 1446 removal proceedings.

(6) Attachments to filings (See subsection (j))

(7) The following documents may be received by the Clerk's Office, but are not filed, electronically or otherwise, unless ordered by the Court:

(A) Presentence reports, character letters and general documents in support of sentencing (excluding Sentencing Memoranda);

(B) Hearing and trial exhibits; and

(C) Letters in support of Downward Departure Motions.

(8) Any document or exhibit to be filed or submitted to the Court shall not be password-protected or encrypted.

(h) Signature

(1) Attorneys. The user log-in and password together with a user's name on the signature block constitutes the attorney's signature pursuant to the Federal Rules of Civil Procedure and the Local Rules of this Court. All electronically filed documents must include a signature block and must set forth the attorney's name, address, telephone number and e-mail address. The name of the ECF user under whose log-in and password the document is submitted must be preceded by a "/s/" in the space where the signature would otherwise appear.

(2) Multiple Signatures. The filer of any document requiring more than one signature (e.g., pleadings filed by visiting lawyers, stipulations, joint status reports) must list thereon all the names of other signatories, preceded by a "/s/" in the space where the signatures would otherwise appear. By submitting such a document, the filing attorney certifies that each of the other signatories has expressly agreed to the form and substance of the document and that the filing attorney has their actual authority to submit the document electronically. The filing attorney shall retain any records evidencing this concurrence for future production, if necessary, until two (2) years after the expiration of the time for filing a timely appeal. A non-filing signatory or party who disputes the authenticity of an electronically filed document containing multiple signatures must file an objection to the document within ten days of the date on the Notice of Electronic Filing.

(3) Affidavits. Except as provided in subsection (g)(3)(F), affidavits shall be filed electronically; however, the electronically filed version must contain the typed name of the signatory, preceded by a "/s/" in the space where the signature would otherwise appear indicating that the paper document bears

an original signature. The filing attorney shall retain the original for future production, if necessary, for two (2) years after the expiration of the time for filing a timely appeal.

(i) Privacy Protection for Filings Made with the Court

The Clerk is not required to review documents filed with the court for compliance with Rule 5.2 of the Rules of Civil Procedure or Rule 49.1 of the Federal Rules of Criminal Procedure. The responsibility to redact filings rests with counsel and the party or nonparty making the filing.

(j) Attachments

Attachments to filings and exhibits must be filed in accordance with the Court's ECF User Manual, unless otherwise ordered by the Court.

(1) When there are 50 or fewer attachments to a pleading, the attachments must be filed by counsel electronically using ECF.

(2) When there are more than 50 attachments, the attachments must be filed in one of the following ways:

(A) Using ECF, simply attach them to the pleading being filed;
(B) Using ECF, use the "Additional Attachments" menu item;
(C) On paper; or
(D) On a properly labeled 3.5" floppy disk, CD or DVD.

Attachments filed on paper or on disk must contain a comprehensive index that clearly describes each document.

(3) A filing user must submit as attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. Users who file excerpts of documents do so without prejudice to their right to timely file additional excerpts or the complete document, as may be allowed by the Court. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane.

(4) Filers shall not attach as an exhibit any pleading or other paper already on file with the Court in that case, but shall merely refer to that document.

(k) Orders and Judgments

(1) Proposed orders shall not be filed unless requested by the Court. When requested by the Court, proposed orders shall be filed by e-mail in word processing format.

(2) A judge, or any authorized member of the Court staff, may grant routine orders by a text-only entry upon the docket. In such cases, no PDF document will issue; the text-only entry shall constitute the Court's only order on the matter and counsel will receive a system generated NEF.

(3) 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 and it had been entered on the docket in a conventional manner.

(l) Transcripts

(1) Proceedings of this Court.

(A) A transcript of a proceeding of this Court shall be filed electronically using ECF. The transcript shall be available at the Clerk's Office, for inspection only, for a period of 90 days after it is filed. During this 90 day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference. The transcript will be available at the public terminal at the courthouse and remotely electronically available to any attorneys of record who have purchased a copy from the court reporter or transcriber.

(B) In compliance with the policy of the Judicial Conference of the United States and to address privacy concerns outlined in Section (i) of this order:

i. Parties must file a Notice of Intent to Redact within seven (7) calendar days of the filing of the official court transcript;

ii. If redaction is requested, parties must submit to the court reporter a Redaction Request within 21 days from the filing of the official court transcript;

iii. Parties must move the Court for any additional redactions beyond those identified in section (i) of this order;

iv. Any redacted transcript shall be filed electronically using ECF within 31 days from the filing of the official court transcript;

v. After the 90-day inspection-only period has ended, the original transcript, or redacted transcript, if so filed, will be publicly available through PACER.

(C) The Judicial Conference of the United States Policy on Privacy and Public Access to Electronic Case Files states that documents in **criminal** cases containing identifying information about jurors or potential jurors shall not be included in the public case file and shall not be made available to the public at the courthouse or via remote electronic access. Transcripts of proceedings may become public record; therefore, counsel are advised to use juror numbers instead of juror names during court hearings.

(2) Transcripts from other Courts. A transcript of a proceeding of another court shall be filed electronically in PDF if possible and otherwise in paper.

(3) Depositions. Excerpts of depositions in support of or in opposition to a motion shall be filed electronically using ECF, unless otherwise permitted by the Court. Full transcripts of depositions to be used at trial should be filed in paper.

(m) Facsimile Transmissions

No pleadings or other documents shall be submitted to the Court for filing by facsimile transmission without prior leave of Court.

(n) Technical Failures

A filing user whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

A technical failure of the Court's ECF system is deemed to have occurred when the Court's ECF site cannot accept filings continuously or intermittently over the course of any period of time greater than one hour. Known system outages will be posted on the Court's website along with guidance on how to proceed, if applicable.

(o) Pro Se Litigation

Non-prisoner pro se litigants in civil actions may register with ECF or may file (and serve) all pleadings and other documents in paper. The Clerk's Office will scan into ECF any pleadings and documents filed on paper in accordance with subsection (g) of these procedures.

(p) Access to Documents

(1) **Electronically Stored Documents.** The public may review at the Clerk's Office all filings that have not been sealed. Except for Social Security cases, the public may access civil filings made after January 1, 2003 and criminal filings made after November 1, 2004 in ECF at the Court's Internet site (www.med.uscourts.gov) by obtaining a PACER log-in and password. Access to documents filed in Social Security cases shall be restricted to the attorneys of record. However, the public may access judgments, opinions and orders filed on or after December 1, 2007 in Social Security cases.

(2) Sealed Cases and Documents

(A) **In General**: In both civil and criminal actions, cases may be sealed in their entirety, or only as to certain documents. Sealing may be required when a case is initiated or at various times during the proceedings. Cases and documents can only be sealed by statute, local rule, or an order of the Court. A sealed case or document cannot be examined except by order of the Court, or by certain judicial employees.*

(B) **Criminal**: In a criminal case which is not sealed in its entirety, when an individual document is sealed, neither the docket entry nor the document is available to be examined by the public without a Court order, unless the Local Rules provide otherwise.

(C) **Civil**: In a civil case which is not sealed in its entirety, when an individual document is sealed, the docket entry remains publicly available, unless the Local Rules provide otherwise. However, the sealed document itself is not available to be examined by the public except by Court order.

(D) Judicial Employees with access to sealed documents include the Clerk of Court, Chief Deputy, Information Systems Analysts, Case Managers, Chambers Staff and Probation Office employees.

(q) Synopsis of Revisions

Date	Description of Revision
5/19/08	Added Paragraph 4 to ELECTRONIC FILING and PDF
5/19/08	Section (i)(5) added text "in **criminal** cases only"
5/19/08	Added list of redaction requirement exemptions
5/19/08	Modifications and additions to Section (l)(1)
7/1/08	Paragraph (e)(4) added
4/1/09	Section (g)(6) "Appearance bonds" removed; and Section (g)(6) "Letters from defendants" removed
12/1/09	Section (b)(2) non-prisoner pro se language updated Section (e)(7) removed language re: adding 3 days for service by mail Section (g)(2)(D) moved to Section (g)(1)(D) Section (n) 2nd paragraph added
4/1/10	Section (g)(1)(E) added Section (g)(2)(C) modified Section (g)(3)(C) removed language re: criminal synopsis form Section (g)(3) removed item re: Fed.R.Crim.P.20 and 5 papers language; Section (g)(3)(F) renumbered to (g)(3)(E) Section (p) (2) added
3/11/11	Section (a)(4) was renumbered to (a)(5) and a new (a)(4) was added.
12/13/11	Section (d)(1) – added citation for Fed.R.Crim.P. 49 Section (g)(1) – added clarifying language Section (g)(2) and (g)(3) – moved subsections from one into the other for clarification and reworded (g)(3) to say "will also be scanned…" and added parenthetical note regarding sealed criminal documents Section (g)(4) [previously(g)(3)]–moved subsections (C) and (D) to section (g)(3) Section (g)(7) [previously (g)(6)] – added two subsections for categories of documents and clarified language Section (j)(2)(A) & (B) – revised for clarity Section (k)(3) – this is new section, added to explain court-issued orders
1/1/15	Sections (A)&(B) of (g)(7) were deleted, as PTS reports and Psych reports are filed under seal now
12/1/15	Section (g)(2) – "shall" changed to "may," and "only" deleted, as these may now be filed electronically. Section (g)(8) added

CRIMINAL RULES

RULE 110 - TRIAL DATE

A trial date shall ordinarily be set at the arraignment.

RULE 111 - PLEA AGREEMENTS

(Amended July 1, 2014)

(a) Time Limits

Counsel shall file with the Clerk's Office any plea agreement at least two (2) business days prior to a scheduled change of plea.

RULE 117 - FINAL PRETRIAL CONFERENCE

At the discretion of the Court, a pretrial conference may be held pursuant to Fed. R. Crim. P. 17.1.

RULE 123 - COURTROOM PRACTICE

(Amended December 1, 2009)

(a) Opening Statements

Opening statements shall not be argumentative, and shall not exceed thirty minutes in length, except by leave of Court.

(b) Closing Arguments

The length of closing arguments shall be fixed by the Court. Only one attorney shall argue for each party, except by leave of Court. The Government shall argue first and may reserve for rebuttal such time as shall be fixed by the Court.

(c) Examination of Witnesses

(1) The examination of a particular witness, and objections relating to that examination, shall be made by one attorney for each party, except by leave of Court.

(2) Upon oral motion of a party or on its own motion, the Court may order on such terms as it may prescribe, that a witness under examination in court shall not discuss the witness's testimony, including during any recess taken during the examination or before the witness is finally excused.

(d) Attorneys as Witnesses

No attorney shall without leave of Court conduct the trial of a jury action in which the attorney is a witness for the party represented at trial.

(e) Trial Day

The presiding judge shall establish the limits of the trial day.

(f) Exhibits

(1) Custody and Marking. All exhibits shall be marked for identification prior to trial in accordance with the final pretrial order. Unless otherwise ordered by the Court, all exhibits offered in evidence, whether admitted or excluded, shall be held in the custody of the Clerk during the pendency of

the proceedings, except that exhibits which because of their size or nature require special handling shall remain in the possession of the party introducing them. Exhibits retained by counsel shall be preserved in the form in which they were offered until the proceeding is finally concluded.

(2) Return. Unless otherwise ordered by the Court, at the conclusion of the proceeding, all nondocumentary exhibits shall be returned to the submitting parties who shall keep them in the form in which they had been offered and who shall make them available for the use of other parties, the Court, or an appellate court until the expiration of any appeal. Any documentary exhibits shall be withdrawn by counsel who offered them within 30 days after the final determination of the action by this or any appellate court. Upon counsel's failure to timely remove any exhibits, the Clerk may, after due notice to counsel, dispose of them as necessary.

(3) Valuable or Bulky Exhibits. A party who offers valuable exhibits shall be responsible for their insurance and protection.

(4) Photographs of Chalks. Counsel may photograph or otherwise copy any chalk in order to make a record of it.

(5) Firearms. A party intending to offer a firearm must first deliver it to the Marshal who will ensure that it is not loaded and that it is rendered safe for presentation in court. During the course of the proceedings, the firearm shall remain in the custody and control of a custodian approved in advance by the Court and Marshal. A firearm shall be examined by a deliberating jury only while in the custody of a Court Security Officer, who shall remain, without comment, in the jury room during the examination.

(g) Official Record

The only official record of any court proceeding shall be a record prepared by an authorized court reporter or an electronic sound recording made by court personnel or a transcript prepared therefrom by professional transcription services, when properly certified in each case.

***

Annotations

Rule 123(a), (b)

(1) On (a) and (b), Openings and Closings, this District's Summary of Principles Regarding Opening Statements and Closing Arguments from First Circuit Authority and Local Rules, *available at* https://www.med.uscourts.gov/pdf/OpeningAndClosing.pdf (last visited April 29, 2020), summarizes the cases from this District and the First Circuit that regulate opening statements and closing arguments in criminal cases.

Rule 123(f)

(3) On (f) Exhibits, it is not ineffective assistance for counsel to fail to offer all defense exhibits marked for identification: "[The] fact that exhibits were marked 'Defense Exhibit,' does not establish that counsel definitively intended to offer each exhibit in evidence." Jones v. United States, 2015 WL 413816, at *7 (D. Me. Jan. 30, 2015) (involving a § 2255 motion).

RULE 124.1 - PROPOSED QUESTIONS FOR JURY VOIR DIRE

(Amended December 1, 2009)

Proposed questions for jury voir dire shall be served and submitted to the Court at least 3 days prior to jury impanelment.

***

Annotations

(1) The voir dire checklist for criminal trials is available on the District of Maine website, and provides useful, District-specific context. See United States District Court, District of Maine, *Voir Dire* Checklist for Criminal Trials, *available at* https://www.med.uscourts.gov/pdf/Voir_Dire_Checklist.pdf (last visited April 29, 2020). It lists the questions that judges ordinarily will ask without a specific request and those the judges will not ask because the information is otherwise available.

RULE 124.2 - TRIAL JURY

(a) Number of Jurors

In all criminal jury trial cases, the jury shall consist of twelve (12) members.

(b) Examination of Jurors

The Court will itself conduct the examination of prospective jurors. At the close of such examination, the Court will afford counsel an opportunity, at the bench, to request that the Court ask additional questions.

(c) Challenges for Cause

Challenges for cause of individual prospective jurors shall be made at the bench, at the conclusion of the Court's examination.

(d) Peremptory Challenges

(1) Manner of Exercise. Peremptory challenges shall be exercised by striking out the name of the juror challenged on the list of the drawn venire prepared by the Clerk. Any party may waive the exercise of any of his peremptory challenges without thereby relinquishing his right to exercise any remaining peremptory challenge or challenges to which he is entitled. If all peremptory challenges are not exercised, the Court will strike from the bottom of the list sufficient names to reduce the number of jurors remaining to twelve (12).

(2) Order of Exercise. In a criminal case in which the government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges, they shall be exercised as follows:

Government 1
Defendant(s)2

Government 1
Defendant(s)2

Government 1
Defendant(s)2

Government 1
Defendant(s)2

Government 1
Defendant(s)1

Government 1
Defendant(s)1

In any action in which the Court allows several defendants additional peremptory challenges, the order of challenges shall be determined by the Court.

(3) Alternate Jurors in Criminal Cases. Peremptory challenges to alternate jurors in a criminal case shall be exercised one by one, alternately, the government exercising the first challenge.

RULE 130 - REQUESTS FOR JURY INSTRUCTIONS

(As amended December 1, 2009)

Written requests for jury instructions pursuant to Fed. R. Crim. P. 30 shall be served and submitted to the Court at least 3 days prior to jury impanelment, subject to the right of the parties to submit at the close of the evidence any additional requests the need for which might not reasonably have been foreseen. No requests need be submitted for usual and common instructions. Requests for instructions shall be numbered and shall include supporting citations.

***

Annotations

(1) For pattern jury instructions used in this District, see United States District Court, District of Maine, 2018 Revisions to Pattern Criminal Jury Instructions for the District Courts of the First Circuit, *available at* https://www.med.uscourts.gov/pdf/crpjilinks.pdf (last visited April 29, 2020).

RULE 132 - GUIDELINE SENTENCING

(Amended December 1, 2019)

(a) Time for Filing Objections to Presentence Report

The United States Probation Office will make initial disclosure of the presentence report (PSR) to both counsel and to the defendant. Any objections either counsel or the defendant may have as to any material information, sentencing classification, sentencing guideline ranges or policy statements contained in or omitted from the report shall be made in writing to the probation officer within 14 days after receipt of the report.

(b) Submission of Revised Presentence Report

Within 14 calendar days of receiving any objections, the probation officer shall conduct any further investigation and make any revisions to the PSR that may be necessary and shall submit the PSR to the sentencing judge and to counsel for both parties and the defendant no more than 77 days after the verdict or finding of guilt. The PSR shall include an addendum setting forth any objections counsel may have, together with the submission of the officer's comments thereon.

(c) Presentence Conference

Upon receipt of the PSR the Court may schedule a presentence conference with all counsel and the probation officer present and with the defendant if proceeding pro se. Any such conference shall be conducted upon the record but not transcribed except on specific request of counsel, for discussion of the application of the Guidelines to the case and for identification of all remaining contested issues.

(d) Disputed Issues

Except with regard to any unresolved objection made under subsection (a), the PSR may be accepted by the Court as accurate. The Court, however, for good cause shown, may allow objections to be raised at any time before the imposition of sentence.

(e) Modification of Time Limits

The times set forth in this rule may be modified by the Court for good cause shown, except that the 14 day period set forth in subsection (a) may be diminished only with consent of the defendant.

(f) Disclosure

Nothing in this rule requires the disclosure of any portions of the PSR that are not disclosable under Fed. R. Crim. Proc. 32. The recommendations of the probation officer as to the sentence to be imposed shall not be disclosed without the Court's permission.

The PSR shall be deemed to have been disclosed to counsel and the defendant when a copy of the report is physically delivered, (2) one day after oral communication of the availability of the report for inspection, or (3) three days after a copy of the report or written notice of its availability is mailed, whichever is earlier.

(g) Sentencing Exhibits and Documents (formerly Local Rule 159)

Unless ordered otherwise by the assigned judge, sentencing exhibits and documents shall be submitted as follows:

1. **Motions for Cooperation Departures or Cooperation Variances:** These documents shall be filed with the Court as sealed docket entries and sealed documents five (5) business days prior to the sentencing hearing. They must be accompanied by a motion to seal, which shall specify the duration of sealing in accordance with Local Rule 157.6.

2. **Documents in Support of Motions for Cooperation Departures or Cooperation Variances:** These documents shall be submitted to the U.S. Probation Office which shall, in turn, provide them to the assigned judge five (5) business days prior to the sentencing hearing. The documents shall be returned to the Probation Office after the sentencing hearing.

3. **Sentencing Exhibits:** Courtesy copies of exhibits that will be referenced to or moved into evidence at the sentencing hearing shall be submitted to the Court five (5) business days prior to the sentencing hearing either by e-mail to newcases.portland@med.uscourts.gov in PDF format or in hard copy with an index as directed by the assigned judge in the presentence conference order to allow the Court time to review the proposed exhibits. When transmitting courtesy copies of exhibits to the Court, counsel shall include the U.S. Probation Office and opposing counsel in the e-mail. Courtesy copies of exhibits

will not be docketed or treated as the official Court exhibit. It is the responsibility of counsel to provide the Court with marked paper exhibits at the sentencing hearing.

In cases in which a presentence conference will not be held, the docket entry reflecting the scheduling of the sentencing hearing shall reflect that courtesy copies of sentencing exhibits to be used at sentencing be submitted to the Court in accordance with this Rule five (5) business days prior to the sentencing hearing.

RULE 132.1 - REVOCATION OF PROBATION OR SUPERVISED RELEASE

(Adopted July 1, 2011)

(a) Time for Filing Revocation Report

Unless otherwise ordered by the Court, the probation officer shall file a revocation report with the Court not more than 10 calendar days after either (1) a finding of or waiver of probable cause that a violation of supervised release or probation has been committed, in the case of an arrested defendant; or (2) an initial appearance by a defendant who has been summonsed. When filed, the revocation report shall be disclosed to counsel for both parties and the defendant.

(b) Contents of the Revocation Report

The revocation report disclosed to counsel for both parties and the defendant shall contain information about the defendant's compliance while on supervision, sentencing options, and a dispositional recommendation. The probation officer's justification for the recommended disposition shall be disclosed to the Court only. Objections to the revocation report will be addressed orally at the time of the revocation hearing.

RULE 145 – TIME

(Adopted December 1, 2017)

(a) Computation of Time

Federal Rule of Criminal Procedure 45 applies when computing any period of time stated in these rules.

RULE 147 - MOTIONS AND MEMORANDA OF LAW

(Amended December 1, 2019)

(a) Submissions of Motions and Supporting Memoranda

Every motion shall incorporate a memorandum of law, including citations and supporting authorities. Any affidavits and other documents setting forth or evidencing facts on which the motion is based shall be filed with the motion.

(b) Objections to Motions

Unless within 21 days after the filing of a motion the opposing party files written objection thereto, incorporating a memorandum of law, the opposing party shall be deemed to have waived objection.

Any objections shall be filed in duplicate and shall include citations and supporting authorities and affidavits and other documents setting forth or evidencing facts on which the objection is based. The deemed waiver imposed herein shall not apply to motions filed during trial.

(c) Reply Memorandum

Within 14 days of the filing of any objection to a motion, the moving party may file a reply memorandum, which shall not exceed 7 pages in length and which shall be strictly confined to replying to new matter raised in the objection or opposing memorandum.

(d) Form and Length

All memoranda shall be typed, double-spaced on 8-1/2 x 11 inch paper or printed. All pages shall be numbered at the bottom. Except by prior leave of Court, memorandum of law in support of or in opposition to a dispositive motion or a motion to suppress evidence shall not exceed 20 pages. Memoranda in support and in opposition to all other motions shall not exceed 10 pages.

(e) Written Submissions and Oral Argument

All motions shall be decided by the Court without oral argument unless otherwise ordered by the Court on its own motion or, in its discretion, upon request of counsel.

***

Annotations

(1) A Lack of case citations or statement of facts is not necessarily grounds to strike a party's motion. See, e.g. United States v. Pemberton, 2020 U.S. Dist. LEXIS 5, at *2 n.1 (D. Me. Jan. 2, 2020) (noting that it "orally denied" the government's motion to strike defendant's motion to suppress for failure to comply with Rule 147(a)).

(2) The reference in (a) to affidavits does not require that affidavits be filed with every motion, but rather directs that if they *are* filed, they must be filed with the motion. Compare id. with D. Me. Loc. R. 7(a). United States v. Stroman, 2006 WL 83404, at *8 (D. Me. Jan. 9, 2006), R. & R. adopted, 2006 WL 348321 (D. Me. Feb. 14, 2006).

(3) Likewise, any memorandum that is to be filed must be filed with the motion. United States v. Nelsen, 2006 WL 752778, at *3 (D. Me. Mar. 22, 2006) (but overlooking the lapse there because government counsel took the position that a late memorandum properly put in dispute the factual issues), R. & R. adopted sub nom. United States v. Nelson, 2006 WL 980752 (D. Me. Apr. 11, 2006).

(4) Local Rule 147(d) requires all pages of memoranda of law to be numbered at the bottom. United States v. Pulk, 2007 WL 268711, at *3 n.3 (D. Me. Jan. 24, 2007), aff'd, 2007 WL 869599 (D. Me. Mar. 20, 2007) (reminding counsel that all memoranda pages must be numbered at the bottom under then Local Rule 147(e), now (d)).

RULE 157.1 - AUTHORITY OF UNITED STATES MAGISTRATE JUDGES

Any Magistrate Judge is authorized to exercise all powers and perform all duties conferred upon Magistrate Judges by 28 U.S.C. §§ 636(b), (c) and (g); 18 U.S.C. § 3401(i); and to exercise the powers enumerated in Rules 5, 8, 9 and 10, Rules Governing Section 2254 and 2255 Proceedings in accordance with the standards and criteria established in 28 U.S.C. § 636(b)(1).

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Annotations

(1) "Local Rule 157.1 gives the Magistrate Judges in this District the authority allowed by federal statutes. Under 28 U.S.C. § 636(b)(1) (and other provisions of law), [the Magistrate Judge] is authorized to conduct all the proceedings he has conducted in this case, *without* the consent of the defendant." United States v. Friel, 436 F. Supp. 2d 187, 188-89 (D. Me. 2006) (emphasis in original).

RULE 157.2 - TRIAL BRIEFS

At least 3 days prior to the date set for trial, unless otherwise ordered by the Court, each party shall serve and file a trial brief identifying, with citation to appropriate authorities, the legal basis of the claims and defenses to be asserted at trial. All pages shall be numbered at the bottom. Except by prior leave of Court, a trial brief shall not exceed 20 pages in length.

RULE 157.3 - SPECIAL ORDERS FOR THE PROTECTION OF THE ACCUSED IN WIDELY PUBLICIZED AND SENSATIONAL CRIMINAL CASES

In a widely publicized or sensational criminal case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extra-judicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

RULE 157.4 - RELEASE OF INFORMATION BY ATTORNEYS AND COURTHOUSE PERSONNEL IN CRIMINAL CASES

(a) Attorneys

(1) It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which the lawyer or the firm is associated, if there is a reasonable likelihood that such dissemination will seriously interfere with a fair trial.

(2) With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extra-judicial statement which a reasonable person would expect to be disseminated by means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise aid in the investigation.

(3) From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extra-judicial statement, relating to that matter and concerning the areas enumerated below, which a reasonable person would expect to be disseminated by means of public communication, if there is a reasonable likelihood that such dissemination will seriously interfere with a fair trial:

(A) the prior criminal record (including arrests, indictments or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information

necessary to aid in the accused's apprehension or to warn the public of any dangers the accused may present;

(B) the existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(C) the performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(D) the identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(E) the possibility of a plea of guilty to the offense charged or a lesser offense; and

(F) any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of the lawyer's or firm's official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the pending charges.

(4) During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extra-judicial statement or interview, relating to the trial or the parties or issues in the trial, which a

reasonable person would expect to be disseminated by means of public communication, if there is a reasonable likelihood that such dissemination will seriously interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public records of the Court in the case.

(5) Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him/her.

(b) Courthouse Personnel

All court supporting personnel, including among others, marshals, deputy marshals, court clerks, court security officers, court reporters, and employees or subcontractors retained by the court reporters, are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the Court. The divulgence of information concerning grand jury proceedings, in camera arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

RULE 157.5 - ATTORNEYS - APPEARANCES AND WITHDRAWALS

(Amended December 5, 2000)

(a) Appearances

An attorney's signature to a pleading shall constitute an appearance. Otherwise, an attorney who wishes to participate in any manner in any action must file a formal written appearance. An appearance whether by pleading or formal written appearance shall be signed by an attorney in his/her individual name and shall state his/her office address and telephone number.

(b) Withdrawals in General

No attorney may withdraw an appearance in any action except by leave of Court. A defense attorney in any criminal case shall continue the representation until relieved by order of this Court or the Court of Appeals. A motion to withdraw shall be accompanied by a notice of appearance of substitute counsel. In the absence of the appearance of substitute counsel, a motion to withdraw shall set forth sufficient information to enable the Court to rule. Such information may be filed under seal, submitted to the Court in camera, and shall not be made part of the public record, except by order of the Court. After sentencing, the Court will grant leave to withdraw only upon the appearance of substitute counsel.

After a notice of appeal has been filed, a motion to withdraw must be directed to the Court of Appeals. See First Circuit Local Rules 12 and 46.6.

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Annotations

(1) "[I]f a private-paying client fails to pay, the lawyer has the alternative of moving to withdraw as the client's lawyer or continuing to represent the client under the terms of their financial arrangement." United States v. Cain, 2020 U.S. Dist. LEXIS 2409, at *20 (D. Me. Jan. 7, 2020) (denying retained counsel's motion to withdraw and request that the Court appoint him as CJA counsel when paying-client's financial circumstances changed).

RULE 157.6 - SEALED DOCUMENTS AND PLEADINGS

(Amended July 1, 2014)

A pleading or document listed in subsection (a) that is designated in the caption of the document or pleading as being filed pursuant to Local Rule 157.6(a) (Sealed Document) shall be accepted as filed under seal without prior approval from the Court. Otherwise, parties seeking to seal a pleading or document shall file a motion to seal in accordance with subsection (b).

(a) Automatic Sealing

The following pleadings and documents shall be sealed upon filing. They shall remain sealed until further order of the Court, unless otherwise provided below.

(1) search warrant and tracking warrant applications, supporting affidavits and resulting warrants, which shall be sealed until the warrant is executed and returned to the Court;

(2) arrest warrants, which shall be sealed until the warrant is executed;

(3) motions, orders, and notices concerning matters occurring before the grand jury;

(4) applications and orders for pen/trap devices, or wire, oral or electronic communication interceptions;

(5) applications and orders for the disclosure of tax information;

(6) motions and orders involving the Classified Information Procedures Act;

(7) requests for authorization of investigative, expert or other services pursuant to the Criminal Justice Act, and resulting orders, which shall be sealed until 30 days after final determination of the action by this or any appellate court;

(8) all ex parte requests; and

(9) motions, orders or any other pleadings and documents involving the Juvenile Delinquency Act.

(b) Motions to Seal

A party seeking to obtain an order sealing any pleading or document not listed in subsection (a) of this Rule, or seeking to continue the sealing of any pleading or document already sealed shall file a motion pursuant to this subparagraph (b). The motion shall state the basis for sealing, the period of time during which the document(s) are to be sealed, and shall set forth specific findings as to the need for sealing and the duration thereof. The motion itself shall be filed under seal, and remain sealed pending order of the Court pursuant to subsection (e) of this Rule. The documents or pleadings for which sealing is sought will be accepted provisionally under seal. Unless the motion is filed ex parte, the motion shall include a statement whether there is agreement of the parties to the sealing.

(c) Objections

Any objection to a motion to seal pursuant to subparagraph (b), and any reply thereto, shall be filed under seal. Unless otherwise ordered by the Court, the objection and reply shall be filed in accordance with Local Rule 147.

(d) Captions and Attachments to Motions

The caption for a motion to seal, and any objections thereto, shall clearly identify the pleading as relating to sealed matters. Any documents submitted along with the motion to seal shall bear the proper case number and contain the words "Filed Under Seal" in the caption.

(e) Orders

(1) If the Court grants a motion to seal filed under subsection (b), it shall state its findings supporting the issuance of an order to seal, and shall specify the duration of sealing. In making specific findings as to the need for sealing and the duration the document(s) shall be sealed, the Court may incorporate by reference the proposed findings in the motion to seal.

(2) If the Court denies a motion to seal filed under subsection (b), the motion to seal and any proposed paper documents tendered under provisional seal with that motion to seal shall be returned to the moving party. Any electronic versions of the proposed pleadings or documents shall remain in the ECF system, sealed indefinitely, unless otherwise ordered by the

Court. The denied motion to seal shall remain sealed indefinitely, unless otherwise ordered by the Court.

(f) Form of Filing

Filings under seal, and motions to seal and objections and replies thereto, shall be in paper, unless otherwise directed by the Clerk.

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Annotations

(1) United States v. Kilmartin, 2018 WL 1702403 (D. Me. April 6, 2018), extensively discusses sealing practices in light of the First Circuit decision in United States v. Kravetz, 706 F.3d 47 (1st Cir. 2013). Although the opinion does not cite the Local Rule, it should be considered in any interpretation of the Rule.

RULE 158 - PETTY OFFENSES

(Adopted July 1, 2010)

a) A person who is charged with a petty offense as defined in 18 U.S.C. § 19, or with violating any regulation promulgated by any department or agency of the United States government, may, in lieu of appearance, waive appearance and pay the fine amount indicated in the summons and as identified by the fee schedules promulgated by the Chief Judge of this Court and made publicly available on the Court's website.

b) For all other petty offenses the person charged must appear before a magistrate judge.

RULE 159 – SENTENCING EXHIBITS AND DOCUMENTS

See Local Rule 132