

August 3, 2016

The Honorable William E. Smith  
Chief Judge of the United States District Court  
United States District Court  
One Exchange Terrace  
Providence, RI 02903

Re: Annual Report of the Local Rules Review Committee

Dear Chief Judge Smith:

As the co-chairs of the Local Rules Review Committee (LRRC), we hereby submit the enclosed Annual Report of the LRRC. Pursuant to LR Gen 113(b)(1), this report constitutes the LRRC's Annual Report to the Court on the proposed amendments to the Local Rules. This Annual Report was adopted by a vote of the LRRC via email.

The LRRC began its work with a call for suggested changes to the Local Rules from the Bar and public during the month of February. During this month-long suggestion period, the LRRC did not receive any suggested changes from the Bar or the public. The LRRC later met on March 16, 2016, to consider six Court-proposed amendments and one holdover proposal from the previous local rules review cycle. At that meeting, the full LRRC referred these proposals to the General Rules, Civil Rules, and Criminal Rules Subcommittees for review and report in advance of the meeting of the full LRRC on May 18, 2016.

At the May 18<sup>th</sup> meeting, the LRRC reviewed the work of the General Rules, Civil Rules, and Criminal Rules Subcommittees. The full LRRC ultimately recommended adoption of seven amendments, which include six Court-proposed amendments and one amendment proposed by a LRRC member. Following the May 18<sup>th</sup> meeting, the LRRC adopted two additional Court-proposed amendments to LR Gen 111 and LR Gen 112 regarding the use of electronic devices in the courthouse by email. Of the nine total amendments recommended by the LRRC, most were technical or procedural amendments, but the proposed amendments to LR Gen 102 (Sealed Documents) and LR Cv 55 (Default and Default Judgments) are substantive in nature, and will affect practice if adopted by the Court.

The LRRC also tabled the proposal that the Court adopt a rule requiring *pro se* filers to certify that their pleadings have not been ghostwritten by an attorney. The LRRC plans to reconsider this suggestion once the Rhode Island Supreme Court issues a final ghostwriting policy.<sup>1</sup> In addition, the General Rules Subcommittee rejected a proposal to shift the LRRC's reporting period under LR Gen 113 from annually to every two years.

All of the LRRC's actions on the proposed rule amendments, along with explanations on the modification of certain proposed amendments, are set forth in the attached Annual Report table.

If you have any questions, feel free to contact us.

Respectfully submitted,

Matthew Oliverio  
Michael Daly  
Co-Chairs, LRRC

Enclosure

cc: David DiMarzio  
Frank Perry  
Michael Simoncelli

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<sup>1</sup> The Rhode Island Supreme Court issued a decision in three related ghostwriting cases on June 8, 2015. (See, *FIA Card Services, NA v. Pichette*, No. 2012-272-Appeal.) In that decision, they put forth a policy regarding the scope and nature of assistance that attorneys may provide to *pro se* litigants. The Supreme Court invited public comment on the policy earlier this year, but has not issued a final ghostwriting policy as of this date.

**United States District Court  
for the District of Rhode Island**

**PROPOSED AMENDMENTS TO LOCAL RULES**

**August 3, 2016**

General/Attorney Rules

<u>Rule Number</u>	<u>Suggestion Received*</u>	<u>Subcommittee Recommendation</u>	<u>Full Committee Action</u>	<u>Court Action</u>
LR Gen 102	<p><b>LR Gen 102 DOCUMENTS CONTAINING CONFIDENTIAL INFORMATION</b></p> <p>*****</p> <p><b>(b) Sealed Documents Generally.</b></p> <p>(1) Documents filed with the Court may not be sealed unless ordered by the Court. If a party or non-party filing a document has a good faith basis for believing that a document should be sealed, the document shall be accompanied by a motion to seal, which explains why the document should be sealed.</p> <p>(2) Unless the Court otherwise permits, if a party or non-party has good reason to believe that a document that such party or non-party proposes to file contains material that another party or non-party would maintain is confidential, the document shall not be filed until such other party or non-party has been notified and afforded an opportunity to file a motion to seal.</p> <p>(3) If only a portion of a document contains confidential information, the party or non-party requesting sealing shall file both an unredacted version of the document and a redacted version that excises the confidential information.</p> <p>(4) The motion to seal shall not be filed electronically, but shall be filed by hand or by mail, together with the documents or materials which are the subject of the motion.</p> <p><b>(e) Filing of Sealed Documents in Civil Cases.</b> Upon receipt of a motion to seal in a civil case, the clerk shall docket the motion but not the documents which are the subject of the motion and shall immediately transmit the motion and documents to the chambers of the judge to whom the case has</p>	<p>The General Rules Subcommittee recommended adoption of the proposed amendment with the following changes to (b)(1) and (b)(3) of the rule:</p> <p>1. Filing of Sealed Documents. Documents may be sealed by order of the Court only upon the filing of a motion to seal. The motion to seal, a separate memorandum stating the basis for the sealing as required by LR Cv 7 and LR Cr 47, and the document(s) subject to the motion to seal must be filed electronically and will remain provisionally under seal until the Court rules on the motion. Documents submitted by a party under seal, provisionally or otherwise, must be stamped or labeled by the party on the cover page "FILED UNDER SEAL."</p> <p>If the Court denies the motion to seal, the document(s) subject to the motion to seal will not be accepted for filing in the case.</p> <p>*****</p> <p>3. Limited Sealed Filings and Redactions. Rather than automatically requesting the sealing of an entire motion or other filing, parties should consider whether redaction would be sufficient. argument relating to sealed</p>	<p><b>PROPOSED CHANGE ACCEPTED AS MODIFIED BY THE GENERAL RULES SUBCOMMITTEE.</b></p>	

\* Unless otherwise indicated, the suggestion was made by the Court.

General/Attorney Rules

<u>Rule Number</u>	<u>Suggestion Received*</u>	<u>Subcommittee Recommendation</u>	<u>Full Committee Action</u>	<u>Court Action</u>
	<p>been assigned. If the Court grants the motion to seal and unless otherwise ordered by the Court, the sealed documents shall be retained by the clerk in a secure location until further order of the Court. If the Court denies the motion to seal, the order denying the motion to seal shall be docketed, and the memorandum and the documents accompanying the motion shall be returned to the filer, unless otherwise ordered by the Court.</p> <p><del>(d) Filing of Sealed Documents in Criminal Cases.</del> Upon receipt of a motion to seal in a criminal case, the clerk shall immediately transmit the motion and the documents which are the subject of the motion to the chambers of the judge to whom the case has been assigned. If the Court grants the motion to seal and unless otherwise ordered by the Court, the motion to seal, the order granting the motion to seal, and the sealed documents shall be retained by the clerk in a secure location until further order of the Court. If the Court denies the motion to seal, the motion to seal and the order denying the motion to seal shall be docketed, and the memorandum and the documents accompanying the motion shall be returned to the filer, unless otherwise ordered by the Court.</p> <p><u>1. Filing of Sealed Documents. Documents may be sealed by order of the Court only upon the filing of a motion to seal. The motion to seal, a separate memorandum stating the basis for the sealing as required by LR Cv 7 and LR Cr 47, and the document(s) subject to the motion to seal must be filed electronically and will remain provisionally under seal until the Court rules on the motion. Documents submitted by a party under seal, provisionally or otherwise, must be stamped or labeled by the party on the cover "FILED UNDER SEAL."</u></p>	<p>materials may be contained in a separate supplemental motion or filing, which may then be sealed in accordance with the procedures in (b)(1). If only a portion of a document contains confidential information, the party requesting sealing pursuant to (b)(1) shall file both an unredacted version of the document and a redacted version that excises the confidential information.</p>		

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General/Attorney Rules

<u>Rule Number</u>	<u>Suggestion Received*</u>	<u>Subcommittee Recommendation</u>	<u>Full Committee Action</u>	<u>Court Action</u>
	<p><u>If the Court denies the motion to seal, the document(s) subject to the motion to seal will not be accepted for filing in the case.</u></p> <p>2. <u>Service of Motions to Seal.</u></p> <p><u>A. Civil Cases. A motion to seal in a civil case may be served electronically if the party has consented to electronic filing pursuant to LR Gen 304(c) and LR Gen 309(b). Parties who are ineligible to file and receive documents electronically or exempt from electronic filing must be served conventionally pursuant to LR Cv 5.1(b).</u></p> <p><u>B. Criminal Cases. A motion to seal in a criminal case must be conventionally served on all parties in the case pursuant to LR Cv 5.1(b).</u></p> <p>3. <u>Limiting Sealed Filings and Redactions. Rather than automatically requesting the sealing of an entire motion or other filing, parties should consider whether argument relating to sealed materials may be contained in a separate supplemental motion or filing, which may then be sealed in accordance with the procedures in (b)(1). If only a portion of a document contains confidential information, the party requesting sealing shall file both an unredacted version of the document and a redacted version that excises the confidential information.</u></p> <p><del>(e)</del><b>(c)Unsealing of Documents.</b> Documents sealed by the Court may be unsealed at any time upon motion of a party or non-party or by the Court <i>sua sponte</i>, provided that the parties first are given notice and an opportunity to be heard.</p>			

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General/Attorney Rules

<u>Rule Number</u>	<u>Suggestion Received*</u>	<u>Subcommittee Recommendation</u>	<u>Full Committee Action</u>	<u>Court Action</u>
LR Gen 103	<p><b>LR Gen 103 COURTROOM PRACTICE</b></p> <p>*****</p> <p><b>(d) Exhibits.</b></p> <p><b>(1) Custody.</b> Unless otherwise ordered by the Court, the Clerk shall maintain custody of all exhibits marked for identification and/or admitted into evidence in any proceeding <u>except for sensitive exhibits. Sensitive exhibits, including but not limited to, narcotics and other controlled substances, firearms, ammunition, explosive devices, jewelry, liquor, poisonous or dangerous chemicals, money or articles of high monetary value, counterfeit currency, and biological hazards shall be retained by the party offering the exhibit prior to, throughout, and after the trial or proceeding.</u></p> <p><del><b>(2) Preservation.</b> When necessary in order to complete the record, the Court shall permit a party to photograph or otherwise copy a chalk, or print or otherwise reproduce any electronic images and markings thereon, or to preserve any other item shown to the fact-finder.</del></p> <p><del><b>(3)</b></del><b>(2) Disposition.</b> Unless otherwise ordered by the Court, within 30 days after the appeal is concluded or the time for appeal has expired <u>the final disposition of the case, exhibits in the custody of the Clerk may must be removed from the Clerk's office by the party that presented the exhibit. Exhibits not so removed may will be destroyed or otherwise disposed of by the Clerk.</u></p> <p>*****</p>	<p>The General Rules Subcommittee recommended that since the proposed amendment affected all practitioners, it should be discussed by the full LRRC.</p>	<p>PROPOSED CHANGE ACCEPTED.</p>	

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General/Attorney Rules

<u>Rule Number</u>	<u>Suggestion Received*</u>	<u>Subcommittee Recommendation</u>	<u>Full Committee Action</u>	<u>Court Action</u>
LR Gen 111	<p><del>LR Gen 111</del> <b>PHOTOGRAPHING; RECORDING; BROADCASTING</b></p> <p>(a) <del>General Prohibition.</del> Except to the extent expressly authorized by the Court, no person shall photograph, record, broadcast, or otherwise transmit any proceeding, event or activity in or from any interior portion of the United States Courthouse or that portion of the John O. Pastore Building that is occupied by the Court. The Court may permit photographing, recording or broadcasting of ceremonial proceedings upon such terms and conditions as the Court may specify.</p> <p>(b) <del>Note Taking.</del> Nothing in subsection (a) of this Rule shall prevent any person from taking notes in the courtroom during a proceeding in Court, provided that such note taking is not disruptive of Court proceedings. *<del>[see Comment, end of Rule]</del></p>		PROPOSED CHANGED ACCEPTED.	
LR Gen 112	<p><b>LR Gen 112 USE OF ELECTRONIC DEVICES</b></p> <p>(a) <b>General Prohibition on Electronic Devices.</b> Except as provided in subsection <del>(b)</del> (c) of this rule or expressly authorized by the Court, no person shall bring into the Courthouse or <del>that</del> portion of the John O. Pastore Building <del>that is</del> occupied by the Court any <u>electronic device of any kind that has the capability</u> <u>capable</u> of sending or receiving communications, making sound or video recordings, or making, recording or transmitting photographs or videos.*<del>[see Comment, end of Rule]</del></p> <p>(b) <b><u>Photographing, Recording, and Broadcasting.</u></b> <u>Except to the extent expressly authorized by the Court, no person shall photograph, record, broadcast, or otherwise transmit any proceeding,</u></p>		<p><b>PROPOSED CHANGE ACCEPTED WITH THE FOLLOWING REVISION TO LR Gen 112(c)(1)(C).</b></p> <p>(C) Unauthorized use of electronic devices may result in <u>the user being required to relinquish the device to the custody of the United States Marshal until released by a judicial officer</u> and/or imposition of sanctions.</p>	

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General/Attorney Rules

<u>Rule Number</u>	<u>Suggestion Received*</u>	<u>Subcommittee Recommendation</u>	<u>Full Committee Action</u>	<u>Court Action</u>
	<p><u>event, or activity held in the Courthouse or portion of the John O. Pastore Building occupied by the Court. The Court may permit photographing, recording or broadcasting of ceremonial proceedings upon such terms and conditions as the Court may specify.</u></p> <p><del>(b)</del>(c) <b><u>Electronic Devices. Exceptions.</u></b> Electronic devices, including but not limited to cellular or smart phones, laptops, and tablets, may be brought into <u>and used within</u> the Courthouse or <del>that</del> portion of the John O. Pastore Building <del>that</del> is occupied by the Court only by <del>attorneys or</del> those <del>having express authorization</del> <u>individuals authorized pursuant to this subsection, and only upon the following conditions:</u></p> <p><b><u>(1) Use of Electronic Devices by Attorneys.</u></b> <u>Unless the Court otherwise orders, attorneys may use electronic devices in the Courthouse and portion of the John O. Pastore Building occupied by the Court, including courtrooms and chambers, upon the following conditions:</u></p> <p style="padding-left: 40px;"><u>(A) Use of electronic devices shall not be disruptive of Court proceedings;</u></p> <p style="padding-left: 40px;"><u>(B) Use of electronic devices does not conflict with (b) or any other provision of the Local Rules, Court order, or statute;</u></p> <p style="padding-left: 40px;"><u>(C) Unauthorized use of electronic devices may result in confiscation of the device and/or imposition of sanctions.</u></p> <p><b><u>(2) Use of Electronic Devices by Media.</u></b> <u>Unless the Court otherwise orders, members of the media who have been authorized to bring</u></p>			

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General/Attorney Rules

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	<p><u>and use electronic devices in the Courthouse and portion of the John O. Pastore Building occupied by the Court, may use those devices under the conditions set forth in (b) and (c)(1) in the courtrooms of those judicial officers who have approved such usage. The Clerk will maintain lists of authorized individuals and those judicial officers who have approved such usage.</u></p> <p><del>(1) Unless the use of the electronic device is expressly authorized by the presiding judicial officer, before entering any courtroom, chambers or Grand Jury room, anyone carrying an electronic device shall at the direction of the presiding judicial officer either:</del></p> <p style="padding-left: 40px;"><del>(A) turn off the device completely and keep the device turned off during all times in the courtroom, chambers or Grand Jury room; or</del></p> <p style="padding-left: 40px;"><del>(B) check it with the courtroom clerk or court security officer at that location.</del></p> <p><del>(2) Upon entering the building, any person carrying an electronic device shall acknowledge and agree that, upon violation of the conditions set forth in paragraph (1) above and/or of any other limitations placed on the use of such instruments, said device may be confiscated.</del></p>			
LR Gen 113	Matthew T. Oliverio suggested that the LRRC consider an amendment to LR Gen 113 to shift the LRRC's reporting period from yearly to every two years.	<b>The General Rules Subcommittee did not recommend adoption of the proposed change.</b>	<b>PROPOSED CHANGE REJECTED.</b>	

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General/Attorney Rules

<u>Rule Number</u>	<u>Suggestion Received*</u>	<u>Subcommittee Recommendation</u>	<u>Full Committee Action</u>	<u>Court Action</u>
LR Gen 202	<p><b>LR Gen 202 ELIGIBILITY AND PROCEDURE FOR ADMISSION</b></p> <p>(a) <b>Requirements for Admission.</b> In order to be eligible for membership in the Bar of this Court, an attorney must:</p> <p>(1) Be a member in good standing of the Bar of the Supreme Court of the State of Rhode Island; and</p> <p>(2) Either:</p> <p>(A) Have completed the course of instruction on Federal Practice and Procedure given by this Court’s Board of Bar Admissions, or</p> <p>(B) Have at least 5 years of <del>experience in practicing before federal courts</del> <u>practice experience, or a combination of 5 years of federal practice and federal law clerk experience,</u> and certify that he or she has read and understands these Local Rules;</p> <p>and</p> <p>(3) Establish to the satisfaction of this Court, that he or she is of good moral character and otherwise qualified and fit to be admitted to the Bar of this Court.</p> <p>*****</p>	The General Rules Subcommittee recommended adoption of the proposed change by the LRRC.	<p><b>PROPOSED CHANGE ACCEPTED WITH THE FOLLOWING REVISIONS.</b></p> <p>(B) Have at least 5 years of <del>experience in practicing before federal courts</del> <u>practice experience, or a combination of federal practice and federal law clerk experience that totals at least five years,</u> and certify that he or she has read and understands these Local Rules;</p>	

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General/Attorney Rules

<u>Rule Number</u>	<u>Suggestion Received*</u>	<u>Subcommittee Recommendation</u>	<u>Full Committee Action</u>	<u>Court Action</u>
LR Gen 309	<p><b>LR Gen 309 SERVICE OF DOCUMENTS BY ELECTRONIC MEANS</b></p> <p>*****</p> <p><del>(e) — <b>Time.</b> Service by electronic means shall be treated the same as service by mail for the purpose of adding 3 days to the prescribed period to respond.</del></p> <p>****</p>	<p>The General Rules Subcommittee recommended adoption of the proposed change by the LRRC.</p>	<p><b>PROPOSED CHANGE ACCEPTED.</b></p>	

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Civil Rules

<u>Rule Number</u>	<u>Suggestion Received*</u>	<u>Subcommittee Recommendation</u>	<u>Full Committee Action</u>	<u>Court Action</u>
LR Cv 54	<p style="text-align: center;"><b>LR Cv 54 COSTS</b></p> <p style="text-align: center;">*****</p> <p>(c) <b>Taxation by Clerk.</b> On or after 14 days following the filing of a bill of costs, the Clerk <del>shall</del> <u>may</u> tax those costs which appear to be properly claimed. <u>The Clerk and</u> shall notify all parties of the costs allowed.</p> <p style="text-align: center;">*****</p>	<p><b>The Civil Rules Subcommittee recommended adoption of the proposed amendment with the following revision to section (c):</b></p> <p>(c) <b>Taxation by Clerk.</b> <u>The taxation of costs shall be in accordance with Fed. R. Civ. P. 54(d)(1).</u> The Clerk shall notify all parties of the costs allowed.</p>	<p><b>PROPOSED CHANGE ACCEPTED AS MODIFIED BY THE CIVIL RULES SUBCOMMITTEE.</b></p>	
LR Cv 55	<p>The Civil Rules Subcommittee suggested LR Cv 55 be amended to simplify the process of obtaining a default and default judgment under the Local Rules. The Civil Rules Subcommittee revisited a proposed amendment originally adopted by the LRRC during the 2010-11 local rules review cycle.</p>	<p><b><u>LR CV 55 MOTIONS FOR DEFAULT AND DEFAULT JUDGMENT</u></b></p> <p><del>A motion for entry of default or entry of a default judgment made against a party not represented by counsel shall be accompanied by a certification that:</del></p> <p><del>(a) Notice of the motion was given to the party against whom a default or default judgment is sought by both regular mail, postage prepaid, and by certified or registered mail, return receipt requested. A copy of the return receipt shall be appended to the certification;</del></p> <p><del>(a) Default: The clerk shall enter a default upon an application by the plaintiff that conforms to the requirements of Fed. R. Civ. P. 55(a).</del></p> <p><del>(b) To the best of the movant's knowledge, the address set forth in such certification is the last known address of that party; and</del></p> <p><del>(b) Default judgment: Not less than 14 days after filing of a motion for entry of default judgment made against a party not represented by counsel, the moving plaintiff shall file with the court a certification that:</del></p> <p><u>1. The party against whom a default</u></p>	<p><b>PROPOSED AMENDMENT ACCEPTED WITH THE FOLLOWING REVISIONS:</b></p> <p>(a) Default: The clerk shall enter a default upon an application by <del>the plaintiff</del> <u>a party</u> that conforms to the requirements of Fed. R. Civ. P. 55(a).</p> <p>(b) Default judgment: Not less than 14 days after filing of a motion for entry of default judgment made against a party not represented by counsel, the moving <del>plaintiff</del> <u>party</u> shall file with the court a certification that:</p> <p>1. The party against whom a default judgment is sought is not in the military service of the United States as defined <del>in</del> <u>by</u> the Servicemembers Civil Relief Act of 2003, as amended; and;</p> <p>2. <del>That</del> <u>Notice of the motion was served on</u> <del>sent</del> <u>to</u> the party against whom the judgment is sought by first class mail and certified mail, return receipt requested, at the address where the party was served with process, and the party's</p>	

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Civil Rules

<u>Rule Number</u>	<u>Suggestion Received*</u>	<u>Subcommittee Recommendation</u>	<u>Full Committee Action</u>	<u>Court Action</u>
		<p><u>judgment is sought is not in the military service of the United States as defined in the by the Servicemembers Civil Relief Act of 2003, as amended; and;</u></p> <p><u>2. That notice of the motion was served on the party against whom the judgment is sought by first class mail and certified mail, return receipt requested, at the address where the party was served with process, and the party’s last known address, if different. The certificate shall include the return receipt, or, if unavailable, a statement of the measures taken to attempt service and verify receipt by the defaulted party.</u></p> <p><del>e) The party against whom a default or default judgment is sought is not in the military service of the United States as defined in the Servicemembers Civil Relief Act of 2003, as amended.</del></p>	<p>last known address, if different. The certificate shall include the return receipt, or, if unavailable, a statement of the measures taken to attempt service and verify receipt by the defaulted party.</p>	
<p>Suggestion from the Bar</p>	<p>During the 2011-12 cycle, Girard Visconti, Esq. and Marc DeSisto, Esq. proposed that the Court adopt a rule requiring <i>pro se</i> litigants to certify that an attorney has not drafted the documents that they filed with the Court. The Civil Rules Subcommittee elected to table that suggestion three times, pending a Rhode Island Supreme Court decision addressing the issue. On June 8, 2015, the Rhode Island Supreme Court issued an order on “Limited-Scope Representation in Rhode Island, Drafting Assistance to <i>Pro Se</i> Litigants,” which spelled out the Supreme Court’s policy on the ghostwriting of pleadings by a member of the bar on behalf of a <i>pro se</i> litigant. The Supreme Court opened this policy to public comment until January 15, 2016, and have not issued any subsequent orders regarding ghostwriting.</p>		<p><b>The Rhode Island Supreme Court issued a decision in three related ghostwriting cases on June 8, 2015. (See, <i>FIA Card Services, NA v. Pichette</i>, No. 2012-272-Appeal.) In that decision, they put forth a policy regarding the scope and nature of assistance that attorneys may provide to <i>pro se</i> litigants. The Supreme Court invited public comment on the policy, and has not issued a final policy as of the date of this report. In light of this, the LRRC tabled the suggestion for reconsideration during the 2016-17 local rules review cycle.</b></p>	

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Criminal Rules

<u>Rule Number</u>	<u>Suggestion Received*</u>	<u>Subcommittee Recommendation</u>	<u>Full Committee Action</u>	<u>Court Action</u>
LR Cr 44	<p><b>LR Cr 44 PROCEEDINGS INVOLVING AN INDIGENT DEFENDANT</b></p> <p>*****</p> <p><b>(b) CJA Attorneys—Fees and Expenses.</b>                      An attorney appointed to represent an indigent defendant under the Criminal Justice Act shall complete and file a voucher for fees and expenses <del>on the appropriate forms</del> promptly after completing the services rendered and no later than 45 days after disposition of the case.</p> <p>*****</p>	<p>The Criminal Rules Subcommittee recommended adoption of the proposed change by the LRRC.</p>	<p><b>PROPOSED CHANGE ACCEPTED.</b></p>	

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