

June 30, 2019

The Honorable William E. Smith  
Chief Judge  
United States District Court for the District of Rhode Island  
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 submit the attached Annual Report of the LRRC on the proposed amendments to the Local Rules pursuant to LR Gen 113(b)(1).

The LRRC began its work with a request for suggested changes to the Local Rules from the Bar and public on February 8, 2019. During the month-long suggestion period that concluded on March 11, 2019, the LRRC received one suggested change from the Bar. The LRRC then met on April 4, 2019, to consider 46 Court-proposed amendments and one suggestion from the bar. At that meeting, the 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 15, 2019.

At the May 15<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 35 amendments, rejection of 11 proposals whole or in part, and that the Court consider incorporating the proposal from the bar into a General Order. Since there were a number of amendments that were rejected, we wanted to provide a brief summary of the LRRC's reasons for these recommendations.

The first rejected proposal was the proposed amendment to LR Gen 305, which would move the daily filing deadline from midnight to 5 PM. The LRRC preferred the current midnight filing deadline, as attorneys frequently need to make filings after 5 PM due to Court hearings or deposition schedules. The LRRC instead suggested that the Court adopt a different daily filing deadline on a case-by-case basis.

The LRRC recommended rejection of a group of Court-proposed deletions that provide guidance on the filing of stipulations and specific types of motions (motions in limine, for views, and for continuances, for example). The LRRC felt that these rules provide guidance to out-of-state and/or junior practitioners who may not be familiar with local practices and should be kept in the rules to assist them.

The LRRC also voted to keep LR Cr 57.1 in the Local Rules. In particular, the Criminal Rules Subcommittee recommended section (c) of the rule be retained, which requires petitioners to include a sworn statement regarding discussions that they had with counsel regarding the filing of an appeal. The LRRC added that the Court should update the forms provided to petitioners to include a reference to this provision of the Local Rules, as they are most likely not aware of it.

Finally, the LRRC considered a suggestion from a member of the bar to include language in the Local Rules to encourage litigants to provide opportunities for younger lawyers to argue motions before the Court. The LRRC agreed with this suggestion but did not think that it should be included in the Local Rules. Instead, the LRRC suggested that the Court consider adopting a General Order similar to one adopted by the District of Massachusetts to encourage this practice.

All of the LRRC's actions on the proposed amendments, along with explanations on the modification or rejection of certain proposed amendments, are set forth in the attached report.

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

Respectfully submitted,

Amy Moses  
Jason Knight  
Co-Chairs, LRRC

Enclosure

cc: Nora Tyer-Witek  
Frank Perry  
Michael Simoncelli

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

**FINAL REPORT ON THE PROPOSED AMENDMENTS  
TO LOCAL 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 data-bbox="325 227 840 292"><b>LR Gen 103 <u>COURTROOM PRACTICE EXHIBITS</u></b></p> <p data-bbox="273 324 882 446"><del>(a) <b>Addressing the Court.</b> Counsel shall stand at the podium when addressing the Court and when examining and cross-examining witnesses unless the Court expressly excuses counsel from standing.</del></p> <p data-bbox="273 479 882 657"><del>(b) <b>Registering Objections.</b> When registering an objection, counsel shall state the legal grounds for the objection (e.g., leading, hearsay, etc.) and/or the Rule of Evidence upon which counsel relies (e.g., 404(b)) but shall not argue or make any further comment unless requested by the Court.</del></p> <p data-bbox="273 690 441 722"><del>(c) <b>Witnesses.</b></del></p> <p data-bbox="367 755 892 844"><del>(1) <b>Scheduling.</b> Counsel shall schedule witnesses in a manner that ensures that there will be no delays in trial.</del></p> <p data-bbox="367 860 808 982"><del>(2) <b>Examination.</b> No witness may be examined by more than one attorney representing a party unless the Court otherwise permits.</del></p> <p data-bbox="367 998 892 1177"><del>(3) <b>Attorneys as Witnesses.</b> An attorney shall not testify in a trial or evidentiary hearing in a case in which that attorney participates as counsel, except to the extent allowed by the Standards of Professional Conduct set forth in LR Gen 208 and permitted by the Court.</del></p> <p data-bbox="273 1193 430 1226"><del>(d) <b>Exhibits.</b></del></p> <p data-bbox="367 1258 892 1437"><del>(1) <b>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 except for sensitive exhibits. Sensitive exhibits, including but not limited to,</del></p>	The General Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	

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>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.</p> <p>(2) <b>Disposition.</b> Unless otherwise ordered by the Court, within 30 days after the appeal is concluded or the time for appeal has expired, exhibits in the custody of the Clerk must be removed by the party that presented the exhibit. Exhibits not so removed will be destroyed or otherwise disposed of by the Clerk.</p>			
LR Gen 106	<p><b><del>LR Gen 106 — REFERRALS TO AND FROM OTHER DISTRICTS</del></b></p> <p><del>When a judge of another district is designated to hear a case or other matter because all of the judges in this District have recused themselves, or when a judge of this District is designated to preside over a case filed in another district, the following procedures shall apply:</del></p> <p><del>(a) <b>Jurisdiction and Rules.</b> The originating court shall retain jurisdiction over the case, and the Local Rules of the originating court shall govern the case unless otherwise ordered by the judge who is presiding by designation. Any final judgment shall be entered by the originating court.</del></p> <p><del>(b) <b>Filing of Documents.</b> Documents shall be filed with the clerk of the originating court.</del></p> <p><del>(c) <b>Trials and Other Proceedings.</b> Conferences and hearings may be held in either district. Jury trials shall be held in the district where the case originates.</del></p>	The General Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	

\* 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>
LR Gen 112	<p><b>LR Gen 112 USE OF ELECTRONIC DEVICES</b></p> <p><del>(a)</del> <b>General Prohibition on Electronic Devices.</b> Except as provided in subsection (c) of this rule or expressly authorized by the Court, no person shall bring into the Courthouse or portion of the John O. Pastore Building occupied by the Court any electronic device capable of sending or receiving communications, making sound or video recordings, or making, recording or transmitting photographs or videos.</p> <p><del>(b)</del><b>(a) Photographing, Recording, and Broadcasting.</b> Except to the extent expressly authorized by the Court, no person shall photograph, record, broadcast, or otherwise transmit any proceeding, 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.</p> <p><del>(c)</del><b>(b) Exceptions.</b> Electronic devices, including but not limited to cellular or smart phones, laptops, and tablets, may be brought into and used within the Courthouse or portion of the John O. Pastore Building occupied by the Court only by those individuals authorized pursuant to this subsection.</p> <p><b>(1) Use of Electronic Devices by Attorneys.</b> 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:</p> <p>(A) Use of electronic devices shall not be</p>	The General Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	

\* 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>disruptive of Court proceedings;</p> <p>(B) Use of electronic devices does not conflict with (b) or any other provision of the Local Rules, Court order, or statute;</p> <p>(C) Unauthorized use of electronic devices may result in the user being required to relinquish the device to the custody of the United States Marshal until released by a judicial officer and/or imposition of sanctions.</p> <p><b>(2) Use of Electronic Devices by Media.</b> Unless the Court otherwise orders, members of the media who have been authorized to bring 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). The Clerk will maintain a list of individuals authorized pursuant to this subsection.</p>			
LR Gen 204	<p><b>LR Gen 204 PRO HAC VICE COUNSEL</b></p> <p>*****</p> <p><del>(e) Limit on Number. Unless otherwise permitted by the Court for good cause shown, no more than 3 pro hac vice counsel may be admitted to represent any party in a case.</del></p> <p>*****</p>	The General Rules Subcommittee recommended adoption of the proposed change by the LRRC.	<b>PROPOSED CHANGE ACCEPTED</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 208	<p><b>LR Gen 208 STANDARDS OF PROFESSIONAL CONDUCT</b></p> <p><del>(b) Prosecutors.</del> Attorneys prosecuting criminal cases also shall adhere to the standards of conduct established by law for prosecutors.</p>	The General Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Gen 305	<p><b>LR Gen 305 CONSEQUENCES OF ELECTRONIC FILING</b></p> <p>*****</p> <p><del>(d) Filing Deadlines.</del> Electronic filing does not alter the filing deadline for that document. All electronic filings must be completed before midnight 5:00 PM local time in order to be considered timely filed that day unless a different time is established by court order.</p>	The General Rules Subcommittee did recommended adoption of the proposed change by the LRRC. Members report that they frequently must do filings after 5 p.m. due to court or deposition schedules. Members also report that it appears to be the infrequent case where the midnight deadline currently in place causes issues. Members also have concerns that the 5 p.m. deadline may lead to confusion.	The LRRC recommended that the Court retain the current midnight filing deadline, as it is often necessary for practitioners to make filings after 5 PM. Instead, the LRRC suggested that the Court could adopt more specific time deadlines in particular cases as needed.	
LR Gen 307	<p><b>LR Gen 307 DOCUMENT RETENTION REQUIREMENTS</b></p> <p><del>Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until two years after a final decision has been rendered which disposes of all aspects of the case.</del></p>	The General Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Gen 309	<p><b>LR Gen 309 SERVICE OF DOCUMENTS BY ELECTRONIC MEANS</b></p> <p><del>(a) Notice of Electronic Filing.</del> Whenever a pleading or other document is filed electronically, the ECF system will automatically generate and send a 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</p>	The General Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	

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General/Attorney Rules

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	<p><del>Court's date stamp and proof of filing.</del></p> <p><del>(b) NEF as Service.</del> Transmission of the NEF shall constitute service of the filed document and shall be deemed to satisfy the requirements of Fed. R. Civ. P. 5(b)(2)(E), Fed. R. Civ. P. 77(d) and Fed. R. Crim. P. 49(b).</p> <p><del>(c) Exemptions.</del> Attorneys and <i>pro se</i> litigants who are not Filing Users must be conventionally served with any electronically filed documents in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.</p>			
LR Gen 310	<p><del>LR Gen 310 — NOTICE OF COURT ORDERS AND JUDGMENTS</del></p> <p>The electronic transmission to a Filing User of an order or judgment through a NEF constitutes notice as required by Fed. R. Civ. P. 77(d) and Fed. R. Crim. P. 49(e). When mailing paper copies of an electronically entered order to a party who is not a Filing User, the Clerk's Office will include the NEF.</p>	The General Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Gen 312	<p><del>LR Gen 312 — CORRECTING DOCKET ENTRIES</del></p> <p>Once a document is submitted and becomes part of the case docket, corrections to the docket are made only by the Clerk's Office. The CM/ECF system will not permit a Filing User to make changes to the document(s) or docket entry filed in error once the transaction has been accepted. The Filing User must notify the Clerk's Office immediately upon learning of an error in the electronic filing or docketing of a document.</p>	The General Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	

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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 313	<p><del>LR Gen 313</del> <b>PUBLIC ACCESS TO ELECTRONIC DOCKETS AND FILES</b></p> <p><del>(a) Public Access at Clerk's Office.</del> The public may obtain at the Clerk's Office during regular business hours electronic access to the electronic docket and documents that have been electronically filed. If a printed copy is requested, the Clerk may charge a fee consistent with the District Court Miscellaneous Fee Schedule pursuant to 28 U.S.C. §1914.</p> <p><del>(b) Remote Electronic Access.</del> The public may use a PACER login and password to obtain remote electronic access to the electronic docket and documents at the Court's Internet site (<a href="http://www.rid.uscourts.gov">www.rid.uscourts.gov</a>). A user fee for accessing court information through PACER will be assessed in accordance with 28 U.S.C. §1914.</p>	The General Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	

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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 7	<p>David Wollin submitted the following suggestion: “In an effort to encourage opportunities for younger lawyers to argue in court, the Committee and the Court might wish to consider the following language (similar to what some federal court judges have adopted) to be added to the end of LR Civ 7(c) and LR Cr 12(e):</p> <p>The Court encourages litigants to be mindful of opportunities for young lawyers to argue motions before the Court, particularly motions where the young lawyer drafted or contributed significantly to the motion or response.</p>		<p>The LRRC favors this suggestion but did not think that it should be included in the Local Rules. Instead, the LRRC recommended that the Court adopt a standing or general order, as the District of Massachusetts does, to encourage this practice, and to find other ways to encourage participation by junior associates in motion hearings by discussing it with counsel at Rule 16 conferences and/or by including the suggestion in hearing scheduling notices.</p>	
LR Cv 7.1	<p style="text-align: center;"><b>LR Cv 7.1 — ORDERS</b></p> <p><del>(a) Preparation By Clerk.</del> Unless the Court otherwise directs, all orders shall be prepared by the deputy clerk assigned to the judge issuing the order.</p> <p><del>(b) By Counsel.</del> If the Court so directs, an order shall be prepared, in writing, by counsel and shall be served and filed with the Clerk within 7 days. Any order prepared by counsel shall contain:</p> <ul style="list-style-type: none"> <li><del>(1) the name and signature of counsel presenting the order;</del></li> <li><del>(2) a certification that counsel presenting the order has served a copy of the proposed order on all other counsel and <i>pro se</i> parties; and</del></li> <li><del>(3) a statement as to whether other counsel or <i>pro se</i> parties object to the form of the order, or alternatively, that counsel presenting the order has been unable to determine whether other</del></li> </ul>	<p>The Civil Rules Subcommittee recommended adoption of the proposed change by the LRRC.</p>	<p>PROPOSED CHANGE ACCEPTED</p>	

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Civil Rules

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	<del>counsel or <i>pro se</i> parties object, despite having made a good faith effort to do so.</del>			
LR Cv 10	<b>LR Cv 10 — FORM OF PLEADINGS</b> <del>See LR Cv 5 (Form and Filing of Documents).</del>	The Civil Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cv 11	<b>LR Cv 11 — SIGNING OF PLEADINGS AND REPRESENTATIONS BY ATTORNEYS</b> <del>See LR Gen 206 (Appearances and Withdrawals) and LR Gen 209 (basis for disciplinary action against attorneys practicing before the Court).</del>	The Civil Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cv 15	<b>LR Cv 15 MOTIONS TO AMEND</b> <del>Any motion to amend a pleading shall be made promptly after the party seeking to amend first learns the facts that form the basis for the proposed amendment. A motion to amend a pleading shall be filed in accordance with LR Cv 7, explain how the amended pleading differs from the original and why the amendment is necessary, and be accompanied by a complete and signed copy of the proposed amended pleading. If the motion to amend is granted, the Clerk shall file the proposed amended pleading.</del>	The Civil Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cv 22	<b>LR Cv 22 — INTERPLEADER FUNDS</b> <del>See LR Cv 67 (Deposit and Withdrawal of Funds).</del>	The Civil Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	

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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 26	<p><b>LR Cv 26 DISCOVERY</b></p> <p>****</p> <p><del>(d)</del> <b>Requests for Admission.</b> Requests for admission may be served following the discovery closure date with leave of court, upon motion which includes the proposed requests.</p> <p><del>(d)</del><b>(e) Service of Discovery by Electronic Means.</b> Service of discovery by electronic means is permitted.</p>	<p>The Civil Rules Subcommittee recommended that the proposed change not be adopted by the LRRC. The Subcommittee believes that this rule is helpful for junior and out-of-state practitioners who might be unfamiliar with local practices and look to the Local Rules for guidance.</p>	<p><b>PROPOSED CHANGE REJECTED</b></p>	
LR Cv 29	<p><del>LR Cv 29</del> <b>STIPULATIONS</b></p> <p><del>(a)</del> <b>In General.</b> All stipulations affecting a case before the Court, except stipulations which are made in open court and recorded by the court reporter, shall be in writing, shall be signed by all parties affected, and shall be promptly filed. Stipulations that fail to satisfy these requirements will not be given effect unless necessary to prevent injustice.</p> <p><del>(b)</del> <b>Stipulations Extending Time.</b> No stipulation extending the time specified in the Federal Rules of Civil Procedure or these Local Rules for the performance of any act shall be effective unless approved by the Court, except that Court approval is not required for a stipulation extending for not more than a total of 30 days the time to answer or otherwise respond to a complaint.</p>	<p>The Civil Rules Subcommittee recommended that the proposed change not be adopted by the LRRC. The Subcommittee believes that this rule is helpful for junior and out-of-state practitioners who might be unfamiliar with local practices and look to the Local Rules for guidance.</p>	<p><b>PROPOSED CHANGE REJECTED</b></p>	

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

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 32	<del>LR Cv 32 — USE OF DEPOSITIONS</del> <del>See LR Cv 39(b)(use of recorded testimony).</del>	The Civil Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cv 33, 34, and 36	These rules relate to discovery, and the Court would like the LRRC to consider whether they are needed in the Local Rules or whether our Local Rules should defer to the Federal Rules. Section (a) of all three rules reiterates the proscription on filing discovery documents in LR Cv 5(d); (b) regulates the format of the response, which the relevant Federal Rules cover in part; and (c) spells out the format of objections.	<b>The Civil Rules Subcommittee recommended the following regarding these 3 rules:</b> <b>1. (a) should be retained in its current form in all three rules;</b> <b>2. (b) could be removed from all 3 rules;</b> <b>3. LR Cv 33(c) and LR Cv 34 (c) should be retained in their current form, and LR Cv 36(c) should be amended:</b>  <b>Objections. When an objection is made to any request, or sub-part thereof, it shall state with specificity <u>under each individual request</u> all grounds upon which the objecting party relies. Any ground not stated in an objection shall be deemed waived. <u>The requirement that the grounds for objecting be stated with specificity under each individual request precludes the consideration of any generic General Objections.</u></b>	<b>The LRRC agreed with the Civil Rules Subcommittee’s modification of these three rules. Under the revised versions, LR Cv 33(a), 34(a), and 36(a) would be retained; LR Cv 33(b), 34(b), and 36(b) would be deleted; and LR Cv 33(c) and 34(c) would be retained, and similar language would be added to 36(c).</b>	
LR Cv 38	<del>LR Cv 38 — JURY DEMAND</del> <del>See LR Cv 5(a)(4) (demand for jury trial).</del>	The Civil Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cv 39.1	<del>LR Cv 39.1 — VIEWS</del> <del>(a) — In General. A view may be conducted only with the prior approval of the Court. A request to take a view shall be made by motion filed sufficiently in advance of trial to permit other parties</del>	<b>The Civil Rules Subcommittee recommended that the proposed change not be adopted by the LRRC. The Subcommittee believes that this rule is helpful for junior and out-of-state practitioners who might be unfamiliar with local practices and look to the Local Rules for guidance.</b>	PROPOSED CHANGE REJECTED	

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Civil Rules

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	<p>to respond and to permit the Court to resolve any disputes regarding the request prior to trial.</p> <p><del>(b) — Conduct of View.</del> The manner in which any view is conducted shall be determined by the trial judge. During a view, counsel shall not make any statements audible to the jury unless permitted by the trial judge.</p>			
LR Cv 39.2	<p><b>LR Cv 39.2 — CONTINUANCES</b></p> <p><del>A request to continue a trial or hearing will be granted only for good cause shown. Any request for continuance shall be made as soon as counsel learns, or in the exercise of due diligence should have learned, of the reason for the request and, except in emergencies, far enough in advance to permit the Court to reschedule the matter without creating any hardship on other parties or interfering with the efficient conduct of the Court's business.</del></p>	<p>The Civil Rules Subcommittee recommended that the proposed change not be adopted by the LRRC. The Subcommittee believes that this rule is helpful for junior and out-of-state practitioners who might be unfamiliar with local practices and look to the Local Rules for guidance.</p>	<p><b>PROPOSED CHANGE REJECTED</b></p>	
LR Cv 39.3	<p><b>LR Cv 39.3 — MOTIONS IN LIMINE</b></p> <p><del>A motion in limine shall be filed in accordance with the pretrial order or other order issued by the presiding judicial officer.</del></p>	<p>The Civil Rules Subcommittee recommended that the proposed change not be adopted by the LRRC. The Subcommittee believes that this rule is helpful for junior and out-of-state practitioners who might be unfamiliar with local practices and look to the Local Rules for guidance.</p>	<p><b>PROPOSED CHANGE REJECTED</b></p>	
LR Cv 39.4	<p><b>LR Cv 39.4 SETTLEMENT</b></p> <p><del>(a) — General.</del> When a case has been settled, counsel shall immediately notify the Court and, unless otherwise permitted by the Court, shall file a dismissal stipulation or consent judgment within 14 days</p>	<p>The Civil Rules Subcommittee recommended adoption of the proposed change by the LRRC.</p>	<p><b>PROPOSED CHANGE ACCEPTED</b></p>	

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

Civil Rules

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	<p><del>thereafter. In cases where a dismissal stipulation has not been filed or a consent judgment has not been filed and entered by the Court prior to the time of empanelment and/or trial, counsel shall appear for empanelment and/or trial, unless excused by the Court.</del></p> <p><del>(b) <b>Jury Costs.</b> In cases that are settled later than 7 days before the date scheduled for empanelment of a jury, jury costs may be assessed equally against the parties and/or their counsel unless a party demonstrates to the Court's satisfaction that:</del></p> <p><del>(1) The costs should be borne entirely or primarily by one or more parties on the ground that the tardiness of the settlement was due to that party's failure to make a good faith effort to settle the case earlier; or</del></p> <p><del>(2) No costs should be assessed because all parties made a reasonable good faith effort to settle the case earlier.</del></p> <p><del>(c) <b>Settlements on Behalf of Minors or Incompetents.</b></del></p>			
LR Cv 41	<p><b>LR Cv 41 DISMISSALS FOR LACK OF PROSECUTION</b></p> <p><del>In cases where service of process is not made and proof of service is not filed within the time prescribed by law, t</del>The Court may issue an order to show cause <u>at any time</u> as to why the 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 dismiss the case.</p>	The Civil Rules Subcommittee recommended adoption of the proposed change by the LRRC.	<b>PROPOSED CHANGE ACCEPTED</b>	

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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 43	<p><b>LR Cv 43 — INTERPRETERS</b></p> <p><del>See LR Gen 108 (regarding interpreter services in civil and criminal proceedings in this Court).</del></p>	The Civil Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cv 44	<p><b>LR Cv 44 — PROOF OF OFFICIAL OR CERTIFIED RECORDS</b></p> <p><del>A party that intends to offer into evidence an official record pursuant to Fed. R. Civ. P. 44, a public document pursuant to Fed. R. Evid. 902(1)–(3), or a certified record pursuant to Fed. R. Evid. 902(4) or (11)–(12) may serve such record on the opposing party at least 21 days prior to trial, together with a request that the opposing party admit the authenticity of such document. The authenticity of such document shall be deemed admitted by the party served unless, within 14 days thereafter, that party serves and files an objection.</del></p>	The Civil Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cv 49	<p><b>LR Cv 49 — SPECIAL VERDICTS AND INTERROGATORIES</b></p> <p><del>Any request for a special verdict or for interrogatories to the jury shall be filed and served before the close of the evidence and shall include the proposed special verdict and/or interrogatories, together with citations to the authorities relied upon in making the request.</del></p>	The Civil Rules Subcommittee recommended that the proposed change not be adopted by the LRRC. The Subcommittee believes that this rule is helpful for junior and out-of-state practitioners who might be unfamiliar with local practices and look to the Local Rules for guidance.	PROPOSED CHANGE REJECTED	
LR Cv 58	<p><b>LR Cv 58 — PREPARATION AND ENTRY OF JUDGMENTS</b></p> <p><del>(a) Preparation by Clerk. Unless the Court otherwise orders, the Clerk shall promptly prepare, enter and docket any judgment stated by a judge in open court and any other judgment</del></p>	The Civil Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	

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

Civil Rules

<u>Rule Number</u>	<u>Suggestion Received*</u>	<u>Subcommittee Recommendation</u>	<u>Full Committee Action</u>	<u>Court Action</u>
	<p><del>which the Clerk is authorized to enter without order of the Court.</del></p> <p><del>(b) Preparation by Counsel.</del> If the Court so directs, any judgment orally announced in open court shall be prepared in writing by counsel for the successful party and served and filed with the Clerk within 7 days. A judgment prepared by counsel shall contain a certification that counsel presenting the judgment:</p> <p>(1) has served a copy of the proposed judgment on the opposing party or that party's counsel;</p> <p>(2) has determined that the opposing party/counsel has no objection to the form of the judgment; or, alternatively, that counsel presenting the judgment has been unable to obtain a response from the opposing party/counsel despite having made a good faith effort to do so.</p>			
LR Cv 62	<p><b>LR Cv 62 SUPERSEDEAS BOND</b></p> <p>Unless the Court otherwise orders, a supersedeas bond staying execution of a money judgment shall be in the amount of the judgment, plus an additional 10% of that amount to cover interest and any award for delay, plus an amount established by law or directed by the Court to cover costs.</p>	<p>The Civil Rules Subcommittee recommended that the proposed change not be adopted by the LRRC. The Subcommittee believes that the 10% overage provision is needed to provide a party with a disincentive to engage in delay tactics by making frivolous appeals.</p>	<p><b>PROPOSED CHANGE REJECTED.</b> The LRRC did agree to remove the word “supersedeas” from LR Cv 62 to keep it in line with a similar change to Fed. R. Civ. P. 62 on December 1, 2018.</p>	
LR Cv 65	<p><del><b>LR Cv 65 INJUNCTIONS</b></del></p> <p><del>See LR Cv 9 (designating requests for special action on pleadings).</del></p>	<p>The Civil Rules Subcommittee recommended adoption of the proposed change by the LRRC.</p>	<p><b>PROPOSED CHANGE ACCEPTED</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 10	<p><del>LR Cr 10 TRIAL DATE</del></p> <p><del>At arraignment the judicial officer conducting the arraignment shall set a date on or after which the case shall be considered ready for trial.</del></p>	The Criminal Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cr 10.1	<p><del>LR Cr 10.1 POST-ARRAIGNMENT MEETING</del></p> <p><del>Within 7 days after arraignment, counsel shall confer in an effort to reach an agreement regarding discovery and any other matters that may be the subject of any motion that counsel intends to file.</del></p>	The Criminal Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cr 12	<p><del>LR Cr 12 PRETRIAL MOTIONS</del></p> <p><del>*****</del></p> <p><del>(b) Motions To Suppress. Motions to suppress evidence shall specify the precise evidence sought to be excluded and the legal basis and/or other grounds on which exclusion is sought.</del></p> <p><del>*****</del></p>	The Criminal Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cr 12	<p>David Wollin submitted the following suggestion: “In an effort to encourage opportunities for younger lawyers to argue in court, the Committee and the Court might wish to consider the following language (similar to what some federal court judges have adopted) to be added to the end of LR Civ 7(c) and LR Cr 12(e):</p> <p>The Court encourages litigants to be mindful of opportunities for young lawyers to argue motions before the Court, particularly motions</p>		SEE LR CV 7 ABOVE	

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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>
	where the young lawyer drafted or contributed significantly to the motion or response.			
LR Cr 20	<p><del><b>LR Cr 20 — TRANSFER OF CRIMINAL PROCEEDINGS</b></del></p> <p><del>(a) <b>Assignment of Transferred Cases.</b> Where criminal proceedings have been transferred from another district to this District for plea and sentencing proceedings pursuant to Fed. R. Crim. P. 20, the Clerk’s Office shall open a new case file and assign a new docket number to the transferred case.</del></p> <p><del>(b) <b>Related or Similar Cases.</b> In the event that cases related to a transferred case are pending in this District, the transferred case shall be provisionally assigned to the district judge to whom the related case is assigned, and that judge shall determine whether to retain the transferred case or return it to the Clerk’s Office for random assignment.</del></p>	The Criminal Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cr 23.1	<p><del><b>LR Cr 23.1 — VIEWS</b></del></p> <p><del>(a) <b>In General.</b> A view may be conducted only with the prior approval of the Court. A request to take a view shall be made by motion filed sufficiently in advance of trial to permit other parties to respond and to permit the Court to resolve any disputes regarding the request prior to trial.</del></p> <p><del>(b) <b>Conduct of View.</b> The manner in which any view is conducted shall be determined by the trial judge. During a view, counsel shall not make any statements audible to the jury unless permitted by the trial judge.</del></p>	The Criminal Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	

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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 26	<p><del>LR Cr 26 MOTIONS IN LIMINE</del></p> <p>A motion in limine shall be filed in accordance with the pretrial order or other order issued by the presiding judicial officer.</p>	The Criminal Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cr 28	<p><del>LR Cr 28 INTERPRETER SERVICES</del></p> <p>See LR Gen 108 (regarding interpreter services in civil and criminal proceedings in this Court).</p>	The Criminal Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cr 32	<p><b>LR Cr 32 SENTENCING AND PRESENTENCE REPORTS</b></p> <p>*****</p> <p><del>(b) Presentence Investigative Report.</del></p> <p><del>(1) Receipt of the Report.</del> For purposes of Rule 32(f) of the Federal Rules of Criminal Procedure, the presentence report shall be deemed to have been received by the parties at the earlier of:</p> <p>(A) when a copy of the report is physically delivered to such party or counsel representing such party,</p> <p>(B) one day after the report's availability has otherwise been made known to a party or counsel, or</p> <p>(C) 3 days after a copy of the report or notice of its availability is mailed to such</p>	The Criminal Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	

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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>
	party or counsel representing such party.			
LR Cr 32.1	<p><b><del>LR Cr 32.1—REVOKING OR MODIFYING SUPERVISED RELEASE</del></b></p> <p><b><del>(a) Proceedings before a Magistrate Judge.</del></b>  Upon referral from a district judge, a magistrate judge may hear petitions for the revocation or modification of probation or supervised release and issue a report and recommendation containing proposed findings of fact and a recommended disposition. Any objection to the magistrate judge’s report and recommendation, and any response to an objection, shall be filed with the Clerk in accordance with LR Cr 57.2.</p> <p><b><del>(b) Modification of Supervised Release/ Waiver of Hearing.</del></b> A defendant may waive a hearing on the modification or revocation of his supervised release by executing a proper waiver form.</p>	The Criminal Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	
LR Cr 44	<p><b><del>LR Cr 44—PROCEEDINGS INVOLVING AN INDIGENT DEFENDANT</del></b></p> <p><b><del>(a) Appointment of Counsel by the Court.</del></b></p> <p><b><del>(1)</del></b> If, based on a financial affidavit of a defendant, the Court determines that the defendant is financially unable to retain private counsel, the Court shall appoint the Federal Defender or an attorney on the Court’s Criminal Justice Act Panel (CJA Attorney) to</p>	The Criminal Rules Subcommittee recommended adoption of the proposed change by the LRRC.	PROPOSED CHANGE ACCEPTED	

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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>
	<p><del>represent that defendant.</del></p> <p><del>(2) If the Federal Defender is unable to represent the defendant due to a conflict of interest or for any other reason, the Federal Defender shall request that a CJA Attorney be appointed to represent the defendant.</del></p> <p><del>(3) If the Court determines that a defendant has some assets from which to pay attorneys' fees, the Court may, at any time, order the defendant to pay all or any portion of any attorneys' fees incurred.</del></p> <p><del>(b) CJA Attorneys — Fees and Expenses. An attorney appointed to represent an indigent defendant under the Criminal Justice Act shall complete and file a voucher for fees and expenses promptly after completing the services rendered and no later than 45 days after disposition of the case.</del></p> <p><del>(c) Continuing Duty of Representation. Immediately after sentencing, counsel shall:</del></p> <p><del>(1) inform the defendant of any right that the defendant may have to appeal his conviction and/or sentence; and</del></p> <p><del>(2) consult with the defendant to determine whether the defendant desires to appeal; and, if so, take whatever steps may be necessary to file a notice of appeal and protect any appellate rights that the defendant may have unless and until other appellate counsel is appointed by the Court of Appeals.</del></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 46.1	<p><b>LR Cr 46.1 RETURN OF BOND</b></p> <p>No item surrendered as a condition of bail shall be returned, nor shall any obligation of surety be discharged, except upon written order of the Court.</p> <p>(To be moved to LR Cr 46, and redesignated as (g).)</p>	<p>The Criminal Rules Subcommittee recommended adoption of the proposed change by the LRRC.</p>	<p><b>PROPOSED CHANGE ACCEPTED</b></p>	
LR Cr 47.1	<p><b><del>LR Cr 47.1 ORDERS</del></b></p> <p><del>(a) Preparation By Clerk.</del> Unless the Court otherwise directs, all orders shall be prepared by the deputy clerk assigned to the judge issuing the order.</p> <p><del>(b) Preparation by Counsel.</del> If the Court so directs, an order shall be prepared, in writing, by counsel and shall be served and filed with the Clerk within 7 days. Any order prepared by counsel shall contain:</p> <p>(1) the name and signature of counsel presenting the order;</p> <p>(2) a certification that counsel presenting the order has served a copy of the proposed order on all other counsel and <i>pro se</i> parties; and</p> <p>(3) a statement as to whether other counsel or <i>pro se</i> parties object to the form of the order, or alternatively, that counsel presenting the order has been unable to determine whether other counsel or <i>pro se</i> parties object, despite having made a good faith effort to do so.</p>	<p>The Criminal Rules Subcommittee recommended adoption of the proposed change by the LRRC.</p>	<p><b>PROPOSED CHANGE ACCEPTED</b></p>	

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



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 57.1	<p><del>LR Cr 57.1—APPLICATIONS FOR POST-CONVICTION RELIEF</del></p> <p><del>(a) Form.</del> Any <i>pro se</i> petition* for post-conviction relief filed pursuant to 28 U.S.C. § 2254 or 28 U.S.C. § 2255 shall be on a form provided by the Clerk’s Office. The Clerk shall make the form available upon request and without charge.</p> <p><del>(b) Assignment.</del> Petitions for relief pursuant to 28 U.S.C. § 2255 shall be assigned to the district judge who sentenced the petitioner. If that district judge is unavailable to review the petition, the petition shall be randomly assigned to another district judge. Petitions for relief pursuant to 28 U.S.C. § 2254 shall be randomly assigned.</p> <p><del>(c) Ineffective Assistance of Counsel Claims.</del> If a petitioner makes a claim of ineffective assistance of counsel based on counsel’s failure to file a direct appeal, the petitioner shall append to his petition a sworn statement regarding the discussions the petitioner had with counsel regarding an appeal, specifically stating:</p> <p style="padding-left: 40px;"><del>(1) whether counsel asked whether the petitioner wished to appeal; and</del></p> <p style="padding-left: 40px;"><del>(2) whether petitioner ever told counsel that he wished to appeal.</del></p>	<p>The Criminal Rules Subcommittee believes that LR Cr 57.1 should remain, or at a minimum, (c) should remain a requirement of the local rules. This rule has not traditionally been invoked by the USAO in response to 2255 motions; however, it probably should be raised with more frequency. If the Court chooses to waive the requirements of some or all of the rule on a case-by-case basis, the Court is free to do so.</p>	<p>The LRRC agreed with the subcommittee’s recommendation but added that the Court should take steps to make sure that litigants are aware of LR Cr 57.1(c) by including it with the form motions/petitions that provided to litigants in actions filed pursuant to 28 U.S.C. §2255 and 28 U.S.C. §2254.</p>	

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

**From:** [Wollin, David A.](#)  
**To:** [Local Rules](#)  
**Subject:** Proposed Changes to the Local Rules  
**Date:** Thursday, February 14, 2019 8:09:23 AM  
**Attachments:** [image001.png](#)

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Dear Rules Committee,

In an effort to encourage opportunities for younger lawyers to argue in court, the Committee and the Court might wish to consider the following language (similar to what some federal court judges have adopted) to be added to the end of LR Civ 7(c) and LR Cr 12(e):

The Court encourages litigants to be mindful of opportunities for young lawyers to argue motions before the Court, particularly motions where the young lawyer drafted or contributed significantly to the motion or response.

**[David A. Wollin](#)**

*Partner*

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