

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOCAL RULES REVIEW COMMITTEE

Misc. 06-102

ORDER

Pursuant to L.R. Gen. 113 and by agreement of the Judges of this Court, Sara A. Rapport, James T. McCormick, Anthony F. Muri, James T. Murphy, R. Daniel Prentiss, and Gerard B. Sullivan are hereby reappointed to an additional term on the Local Rules Review Committee. Jeffrey C. Schreck and Patricia A. Sullivan are hereby re-appointed as Co-chairs of the Committee.

Therefore, the Local Rules Review Committee shall be comprised of the following individuals, whose terms expire on the dates indicated next to their respective names.

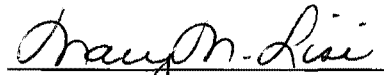
| <u>Name</u> | <u>Term Expires</u> |
|--------------------------------------|---------------------|
| Marc DeSisto, Esq. | June 30, 2009 |
| Christopher H. Little, Esq. | June 30, 2009 |
| Brooks R. Magratten, Esq. | June 30, 2009 |
| James E. O'Neil, Esq. | June 30, 2009 |
| Edward C. Roy, Jr. Federal Defender | June 30, 2009 |
| Patricia A. Sullivan, Esq. | June 30, 2009 |
| David A. Wollin, Esq. | June 30, 2009 |
| | |
| Edward J. Bertozzi, Jr., Esq. | June 30, 2010 |
| Stephanie S. Browne, AUSA | June 30, 2010 |
| Rebecca Tedford Partington, Esq. | June 30, 2010 |
| Jeffrey C. Schreck, Esq. | June 30, 2010 |
| Craig M. Scott, Esq. | June 30, 2010 |
| Max Wistow, Esq. | June 30, 2010 |
| | |
| James T. McCormick, Esq. | June 30, 2011 |
| Anthony F. Muri, Esq. | June 30, 2011 |
| James T. Murphy, Esq. | June 30, 2011 |
| R. Daniel Prentiss, Esq. | June 30, 2011 |
| Sara A. Rapport, Esq. | June 30, 2011 |
| Gerard B. Sullivan, AUSA | June 30, 2011 |
| | |
| Paul W. Goodale, ex officio reporter | n/a |

By Order,



Chief Deputy Clerk

ENTER:



Mary M. Lisi
Chief Judge
Date: May 16, 2008

LOCAL RULES REVIEW COMMITTEE
Minutes of May 28, 2009 Meeting

A meeting of the Local Rules Review Committee was held on May 28, 2009 in the Jury Assembly Room, United States District Court. In attendance were the following members of the Local Rules Review Committee: Edward J. Bertozzi, Marc DeSisto, Christopher Little, Brooks R. Magratten, Anthony Muri, James T. Murphy, Sara Rapport, Jeffrey Schreck, Craig Scott, Gerard Sullivan, Patricia Sullivan and David A. Wollin. Chief Judge Lisi, David DiMarzio, Paulette Dube, Paul Goodale, and Michael Simoncelli attended as representatives of the Court.

Committee Co-Chair Jeff Schreck called the meeting to order, made a few introductory remarks, and introduced Chief Judge Lisi.

Chief Judge Lisi thanked the Committee for its service through the past cycles; introduced James Murphy as the new co-chair for the upcoming 2009-2010 cycle; and commented generally on the Committee's work for this cycle and the upcoming 2009-2010 cycle. Following her remarks, Chief Judge Lisi left the meeting.

Jeff Schreck raised a couple of housekeeping matters:

- (1) Committee Co-chairs: Starting with the next cycle, members appointed as co-chairs will be on a three-year cycle as follows:
An appointee will serve as junior co-chair during the first year; as lead co-chair during the second year; and as co-chair emeritus during the third year.
- (2) Subcommittee Chairs: Jeff proposed that beginning with the next cycle, subcommittee chairs be rotated.

Three-Phase Plan

Pat Sullivan provided an update on the Committee's activity to date and provided an overview of the three-phase plan for the remainder of the 2008-2009 cycle and the beginning of the 2009-2010 cycle:

- (1) during the present cycle the Committee will focus on consideration of 'non-controversial' technical amendments proposed primarily by the District Court, and matters held over from the previous cycle will be deferred to the second part of the 2009-2010 cycle;
- (2) the first part of the 2009-2010 cycle will be dedicated to synchronizing our Local Rules with the new federal rules in regard to time computation; and
- (3) the second part of the 2009-2010 cycle will be dedicated to incorporating the CM/ECF Procedures into the Local Rules, and to matters held over from the previous cycle

David DiMarzio explained the reasoning behind the three-phase plan: that the five proposed rules amendments on today's agenda (four from the Court and one communicated to Pat Sullivan by an unnamed attorney) were relatively non-controversial and could be considered during one meeting. This would allow the Committee to prepare its report before the end of the current cycle on June 30, 2009. David explained that the Court decided to hold back the CM/ECF procedures and develop a three-phase plan for two reasons: (1) the process of integrating the CM/ECF procedures into the local rules was more complicated than originally thought and the Court wanted to provide the

committee with sufficient time to weigh the CM/ECF local rules completely and (2) bringing our local rules into conformity with the federal rules in regard to time has a deadline of December 1, 2009.

The Committee was amenable to the three-phase plan, but going forward Brooks Magratten suggested that the Committee consider some of the perceived barriers to federal court practice. Anthony Muri said that his committee found that many practitioners called for "simplification" in federal court practice, especially when the cases in question were "smaller cases."

Paul Goodale introduced the four amendments proposed by the Court (LR Cv 5, LR Cv 5.1, LR Cv 54, and LR Gen 213) and the one amendment proposed by Pat Sullivan (LR Cv 72).

Civil Rules 5 & 5.1

In regard to LR Cv 5 and LR Cv 5.1 Paul explained that attorneys have been filing executed deposition subpoenas in violation of the prohibitions on the filing of discovery materials in LR Cv 5. The new subsection (e) to Rule 5 removes any doubt as to whether deposition subpoenas should be filed. Paul stated that the amendment to rule 5.1(a)(1) is a technical one, incorporating the rule change made with the addition of the new LR Cv 5(e). The Committee concurred with the proposed amendment.

Civil Rule 54

Paul explained that the Court was proposing several changes to LR Cv 54 relating to bills of costs to streamline the processing of bills. Committee members had a number of questions and concerns about the current wording of the proposed amendment, such as:

- (1) How should the objection to the bill of costs be titled? The current form of the amendment merely says "shall be in the form of a motion." But, what kind of motion? The committee seemed to like "motion to challenge bill of costs" as a possible substitution.
- (2) There was also a question on the exact procedure when only some, but not all, of the objections to a bill of costs were resolved. Would a revised bill of cost need to be filed and then the remaining objections would go to the judge?
- (3) Typo in 2(B) and (C)-change "movant" to "applicant." (Since the bill of costs would no longer require a motion).
- (4) There was another suggestion that the entire process for bills of cost be revamped to include a "meet and confer" provision at the beginning of the process, not after an objection has been filed. This would (possibly) allow the Court to separate disputed bills of costs from undisputed ones.

After discussion, it was agreed that the proposed amendments to LR Cv 54 be tabled for future consideration and taken up during the "Phase 3" portion of the Committee's work in the 2009-2010 cycle.

Civil Rule 72

Paul explained that the proposed change to Rule 72 - adding language to make clear that

failure to file an objection to a magistrate judge's report and recommendation or ruling on a non-dispositive motion constitutes waiver of the right to appeal – was merely a technical change to bring our local rule in line with existing First Circuit case law. The Committee concurred with the proposed amendment.

General Rule 213

Paul explained that the proposed change to LR Gen 213 -- adding language that entry of a guilty plea or nolo contendere to a serious crime would result in summary suspension -- was merely a technical change and designed to close a loophole in the current rule. The Committee concurred with the proposed amendment.

The Committee approved the proposed rule changes in LR Cv 5, LR Cv 5.1, LR Cv 72, and LR Gen 213. Details will be included in the Committee's Final Report.

Other Matters

The Committee reviewed various other matters– some new, some old – that would be deferred until the "Phase 3" part of the Committee's work plan. These "other matters" included: LR Cv 54; issues surrounding simplifying federal court practice (Attorney Tony Muri's Report); attorney access to jurors post-trial; expedited non-dispositive motions; discovery closure dates; requiring pro hac vice attorneys to file certificates of good standing; and whether non-admitted attorneys in *pro hac vice* firms can assist in depositions.

Jeff Schreck stated that it should not be necessary for the Committee to meet again during the current cycle. With the assistance of the District Court staff, he will prepare a Final Report to circulate to all Committee members before submission to the District Court judges on or before June 30, 2009.

For the Committee

**LOCAL RULES REVIEW COMMITTEE
OF THE DISTRICT OF RHODE ISLAND**

**FINAL REPORT CONCERNING
PROPOSED AMENDMENTS TO LOCAL RULES**

June 29, 2009

General/Attorney Local Rules

| <u>Rule Number</u> | <u>Comment Received</u> | <u>Subcommittee Recommendation</u> | <u>Full Committee Action</u> |
|--------------------------------------|--|---|---|
| LR Gen 213(a)(1) LR Gen 213(a)(2) | <p>Under the current rule, an attorney is immediately suspended after the Court receives a "certified copy of a judgment showing that an attorney . . . has been convicted of a serious crime." To increase the effectiveness and responsiveness of the attorney discipline system, the Court feels that this rule should be broadened to include "an official record of the entry of a plea of guilty or <i>nolo contendere</i> to a serious crime."</p> <p>Proposal:</p> <p>(a) Criminal Convictions</p> <p>(1) Summary Suspension. When a certified copy of a judgment is filed with this Court, showing that an attorney who is a member of the Bar of this Court or who is admitted to practice before this Court <i>pro hac vice</i> has been convicted of a serious crime, as hereinafter defined, in any court of the United States, the District of Columbia, any state, territory, commonwealth or possession of the United States, the Court shall enter an order immediately suspending that attorney from practicing before this Court, regardless of whether the conviction resulted from a plea of guilty or <i>nolo contendere</i>. A copy of such order shall immediately be served upon the attorney as provided in LR Gen 210(c)(2).</p> <p>Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.</p> <p><u>Summary Suspension.</u> The Court shall enter an order immediately suspending an attorney who is a member of the Bar of this Court or who is admitted to practice <i>pro hac vice</i> from practicing before this Court upon receipt of:</p> <p>(A) <u>An official record of the entry of a plea of guilty or <i>nolo contendere</i> to a serious crime, as hereinafter defined, in any court of the United States, the District of Columbia, any state, territory, commonwealth or possession of the United States, or;</u></p> | <p>N/A</p> | <p>PROPOSED CHANGE ACCEPTED</p> |

General/Attorney Local Rules (cont'd)

| <u>Rule Number</u> | <u>Comment Received</u> | <u>Subcommittee Recommendation</u> | <u>Full Committee Action*</u> |
|--|---|------------------------------------|---------------------------------|
| LR Gen 213(a)(1) LR Gen 213(a)(2) (cont'd) | <p>(B) <u>A certified copy of a judgment showing conviction of a serious crime, as hereinafter defined, in any court of the United States, the District of Columbia, any state, territory, commonwealth or possession of the United States.</u></p> <p><u>A copy of such order shall immediately be served upon the attorney as provided in LR Gen 210(c)(2). Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.</u></p> <p>(2) Disciplinary proceeding. In addition to suspending the attorney, the Court shall issue a show cause order as provided in LR Gen 210(c), provided, however, that a disciplinary proceeding so instituted shall not be brought to final hearing until all appeals from the conviction are concluded.</p> <p><u>An official record showing the entry of a plea of guilty or <i>nolo contendere</i> or A 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.</u></p> <p style="text-align: right;"><i>Chief Judge Lisi</i></p> | N/A | PROPOSED CHANGES ACCEPTED |

Civil Local Rules

| <u>Rule Number</u> | <u>Comment Received</u> | <u>Subcommittee Recommendation</u> | <u>Full Committee Action</u> |
|--------------------------|--|------------------------------------|---------------------------------|
| LR Cv 5(e) LR Cv 5(f) | <p>LR Cv 5(d) prohibits certain discovery documents from being filed, but attorneys frequently file civil subpoenas, including proofs of service, in violation of the subpoena instructions. The Court seeks to curtail this practice by adding a new subsection (e) and re-lettering existing subsection (e) as (f).</p> <p>Proposal:</p> <p>(d) Discovery Documents. Unless otherwise ordered by the Court, disclosures made under Fed. R. Civ. P. 26(a)(1)-(3), notices of deposition, deposition transcripts, interrogatories, requests for production, requests for admission, and answers and responses thereto, shall not be filed with the Court. The parties in possession of such documents shall be responsible for preserving them and making them available for use at trial and/or for other purposes required by the Court.</p> <p>(e) Subpoenas. <u>Subpoenas, including proofs of service, shall not be filed with the Court, unless otherwise ordered by the Court or required by the Federal Rules of Civil Procedure. The parties in possession of such documents shall be responsible for preserving them and making them available for use at trial and/or for other purposes required by the Court.</u></p> <p>(e)(f) Place for Filing Documents.</p> | N/A | PROPOSED CHANGES ACCEPTED |

Civil Local Rules (cont'd)

| <u>Rule Number</u> | <u>Comment Received</u> | <u>Subcommittee Recommendation</u> | <u>Full Committee Action</u> |
|---------------------------|---|---|-------------------------------------|
| LR Cv. 5.1(a)(1) | <p>LR Cv 5.1(a)(1) requires that "Proof of service of any document required to be served. . . shall be filed with the Court. ..." The District Court Staff suggests that this rule be altered to reflect LR Cv 5(d) and, if adopted, the new subsection (e) proposed above.</p> <p>Proposal:</p> <p>(a) Proof of Service.</p> <p>(1) Proof of service of any document, <u>except those listed in LR Cv 5(d) and (e) above,</u> required to be served on a party or non-party shall be filed with the Court within three (3) days after service is made. In the case of documents required to be served personally, proof of service shall include a certification by the person making service that the documents were served, the date of service, and a description of the manner in which service was made.</p> <p style="text-align: right;"><i>District Court Staff</i></p> | N/A | PROPOSED CHANGE ACCEPTED |

Civil Local Rules (cont'd)

| <u>Rule Number</u> | <u>Comment Received</u> | <u>Subcommittee Recommendation</u> | <u>Full Committee Action</u> |
|---------------------------|---|---|---|
| LR Cv 54 | <p>The District Court Staff suggests the following changes to LR Cv 54 to streamline the taxing of costs: (1) remove the requirement in (a) and (b)(2) that the bill of costs be in the form of a motion and (2) further define the process for the resolution of objections in subsection (d); (3) delete the word "proposed" from subsections (a), (b) and (c) because it is inconsistent with the Federal Rule; and (4) amend subsection (d) to specify that objections to bills of costs be in the form of a motion.</p> <p>Proposal:</p> <p>(a) Timing of Request. Within ten (10) days after entry of judgment, a party seeking an award of costs shall file and serve on all other parties a motion for an award of costs, together with a proposed bill of costs. Failure to file a proposed bill of costs within that time shall constitute a waiver of any claim for costs unless the Court otherwise orders, for good cause shown.</p> <p>(b) Form of Request.</p> <p>(1) A bill of costs shall be prepared on forms provided by the Clerk's Office and shall specify each item of costs claimed.</p> <p>(2) A motion for an award <u>bill</u> of costs shall be supported by a memorandum of law and an affidavit that:</p> <p>(A) the amounts listed in the proposed bill of costs are correct; and</p> <p>(B) all services reflected in the bill of costs were actually performed and were necessary to the presentation of the movant's case; and</p> <p>(C) all disbursements reflected in the bill of costs represent obligations actually incurred and necessary to the presentation of the movant's case.</p> <p>(c) Taxation by Clerk. Upon receipt of a proposed bill of costs, the Clerk shall tax those costs which appear to be properly claimed and shall notify all parties of the costs allowed.</p> | N/A | <p>CHANGES DEFERRED UNTIL NEXT CYCLE PENDING FURTHER STUDY BY LRRC</p> |

Civil Local Rules (cont'd)

| <u>Rule Number</u> | <u>Comment Received</u> | <u>Subcommittee Recommendation</u> | <u>Full Committee Action</u> |
|----------------------|---|------------------------------------|---|
| LR Cv 54 (cont'd) | <p>(d) Objections to Costs. The taxation of costs by the Clerk shall be final unless modified by the Court. Any objection to the costs taxed by the Clerk <u>shall be in the form of a motion</u>, shall be served and filed within five (5) days after notification, and shall be supported by a memorandum of law stating the reason for the objection and the authorities upon which the objector relies.</p> <p>(e) Resolution of Objections. Within ten (10) days after an objection is filed, all interested parties shall meet and confer in an effort to resolve the objections. The meeting shall be initiated by the objecting party, who shall notify the Court promptly as to whether the objections have been resolved. <u>If all objections have been resolved, the parties shall submit a proposed order.</u> If all objections have not been resolved, the Court will make a final determination with respect to the taxation of costs.</p> <p style="text-align: right;"><i>District Court Staff</i></p> | N/A | <p>CHANGES DEFERRED UNTIL NEXT CYCLE PENDING FURTHER STUDY BY LRRC</p> |

Civil Local Rules (cont'd)

| <u>Rule Number</u> | <u>Comment Received</u> | <u>Subcommittee Recommendation</u> | <u>Full Committee Action</u> |
|----------------------------------|--|------------------------------------|---------------------------------|
| LR Cv 72(c)(1) LR Cv 72(d)(1) | <p>It is recommended that sections (c)(1) and (d)(1) of LR Cv 72 be modified to make the consequences of the failure to file appeals from Magistrate Judge's rulings on non-dispositive matters or objections from a Magistrate Judge's Report and Recommendation more explicit.</p> <p>Proposal:</p> <p>c) Appeals from Rulings on Nondispositive Matters.</p> <p>(1) Time for Appeal; Failure to File. Any appeal from an order or other ruling by a magistrate judge in a nondispositive matter shall be filed and served within ten (10) days after such order or ruling is served on the appellant. <u>Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision.</u></p> <p>(d) Objections to Reports and Recommendations.</p> <p>(1) Time for Objections; Failure to File. Any objection to a Report and Recommendation by a magistrate judge shall be filed and served within ten (10) days after such Report and Recommendation is served on the objecting party. <u>Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision.</u></p> <p style="text-align: right;"><i>Pat Sullivan (for an unnamed attorney)</i></p> | N/A | PROPOSED CHANGES ACCEPTED |