

Federal Bar Update

Local Rules Issues

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The Local Rules Committees for the Northern District of Indiana and Southern District of Indiana met in early and late May, respectively. This article outlines key issues discussed at each meeting. Notably, for several years the Committees have collaborated and attempted, where deemed feasible, to make federal local rules uniform in each District. To this end, the chair of each court's committee attends the other court's committee meetings.

Northern District – The Northern District's Rules Committee met for much of the day on May 2, addressing a variety of issues. First, the Committee reviewed Local Rule 7.1(e) regarding citation of unpublished authority, and compared the Southern District's recent amendments to and simplification of the companion rule. The Committee recommended substituting, with only minor changes, the S.D. Ind. version of the rule for the Northern District's current version. The proposed amendment transmitted to the Judges for consideration is as follows:

Ordinarily, copies of cited authorities need not be appended to court filings. However, a party citing a decision, statute, or regulation that is not available on Westlaw or Lexis/Nexis shall attach a copy to the document filed with the Court ~~furnish a copy to the Court and other parties.~~ In addition, if a party cites a decision, statute, or regulation that is only available through electronic means (*e.g.* Lexis/Nexis, Westlaw or from the issuing court's website), upon request that party shall promptly furnish a copy to the Court and other parties. ~~A party citing a decision, statute or regulation not published in the *United States Reports*, the *Supreme Court Reporter*, the *Federal Reporters*, the *Federal Supplements*, the *Federal Rules Decisions*, the *Bankruptcy Reporter*, the *United States Patents Quarterly*, the *North Eastern Reporters*, or on a statute or regulation not found in the current publication of the *United States Code*, the *Code of Federal Regulations*, the *Indiana Code*, or the *Indiana Administrative Code*, must provide a copy of such materials to the Court and any other party upon request. With respect to decisions of the Supreme Court of the United States not yet available in the *United States Reports*, citation should be made both to the *Supreme Court Reporter* and to *Lawyers' Edition*.~~

Second, the Committee discussed amending Local Rule 16.1(f), to address an apparent inconsistency with Fed. R. Civ. P. 26(a)(3). Specifically, although Rule 26(a)(3) requires disclosure of all witnesses and exhibits except those to be used "solely for impeachment," Local Rule 16.1(f)(5) and (7) go further and allow non-disclosure of witnesses and exhibits used "solely for impeachment or rebuttal." The Committee proposed language that removes this inconsistency, leaving well developed case law to govern the non-disclosure of true rebuttal witnesses. The Committee also suggested amending the subtitle to subsection (f) to more accurately describe its contents.

Third, the Committee discussed adopting a local rule, similar to that which exists in the Northern District of Illinois, imposing a duty on the members of the bar to accept court appointments to represent indigent civil litigants. Rather than adopt such a local rule, the Committee recommended merely changing the title of Local Rule 83.7 to emphasize that members of the bar already have such a duty. The Committee also suggested various internal actions by the Clerk's office, including: reminding new bar admittees of their duty under the Local Rules; revamping the current bar questionnaire to increase voluntary participation; and updating the current list of counsel willing to accept appointments.

Fourth, the Committee next discussed adopting a local rule regarding the discovery of medical records, in light of the enactment of the Health Insurance Portability and Accountability Act (HIPPA). Several expressed the view that HIPPA, given its complexity, does not lend itself to either a local rule or uniform procedures. The Committee determined to take no action at this time, particularly because those on the bench report that issues involving HIPPA rarely arise in this context.

The Committee's recommendations will be considered by the District Judges of the Northern District.

Southern District – The Southern District's Local Rules Committee met in late May and considered several issues, as follows.

First, the Committee reviewed and recommended significant amendments to local rules on electronic filing. With electronic filing due to be mandatory in the Southern District effective September 1 (barring good cause exemption on an individual lawyer basis), new rules were deemed to be appropriate.

Second, the Committee discussed current Local Rule 83.5, which allows the court to require local counsel, but which does not mandate local counsel in all cases as a matter of course. It was noted that some federal courts across the country require local counsel in all cases involving out-of-state counsel. This subject has also received recent attention at the ABA level. After thorough discussion, the Committee determined that the current rule is working well, and that this should remain a subject of case-by-case determination by the judges.

Third, the Committee discussed the same inconsistency between FRCP 26(a)(3) and Local Rule 16.1(f) regarding rebuttal, and recommended to the court the same amendment recommended by the Northern District Committee.

Finally, the Committee discussed the Northern District's new (as of Oct. 2003) Local Rule 10.1, which requires responsive pleadings to recite verbatim the allegations to which they respond. This procedure makes it easier for parties and the court to know what is admitted and denied in pleadings. Nonetheless, a majority of the Committee did not recommend this amendment on the theory that practitioners are free to do this (and many do) but should not be required to do so. (The undersigned utilizes and

recommends this practice, and still advocates that the Southern District should follow the Northern District's lead in this regard and make this uniform in Indiana federal practice).

The court will consider the proposals outlined above at its next judges' meeting.

Judge Springmann's Notes – Judge Springmann has posted on-line her seminar notes from a recent program for the ISBA. These notes have helpful information about her practices, and can be found on the court's website – www.inns.uscourts.gov – under the Info/Forms section.

Federal Bar Membership – New members are welcome to the Federal Bar Association. Join on-line at www.fedbar.org or contact Indy Chapter President Offer Korin - okorin@katzkorin.com

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