

### **III. PLEADINGS AND MOTIONS**

#### **Civil L.R. 7.1 Motion Practice**

- (a) Every motion must set forth the rule pursuant to which it is made and, except for those brought under Civil L.R. 7.4 (Expedited Non-Dispositive Motion Practice), must be accompanied by (1) a supporting brief and, when necessary, affidavits or other documents, or (2) a certificate of counsel stating that no brief or other supporting documents will be filed. If the movant fails to comply with either (1) or (2) above, the Court may deny the motion as a matter of course.
- (b) On all motions other than those for summary judgment or those brought under Civil L.R. 7.4 (Expedited Non-Dispositive Motion Practice), the opposing party must serve a response brief and, when necessary, affidavits or other documents within 21 days of service of the motion. The movant may serve a reply brief and, when necessary, affidavits or other documents, within 14 days from the service of the response brief.
- (c) On motions for summary judgment, the opposing party must serve a response answering brief and affidavits or other documents within 30 days of service of the motion; the movant may serve a reply brief and, when necessary, affidavits or other documents within 15 days of service of the response brief. Parties must also comply with Civil L.R. 56.2 regarding additional summary judgment motion procedures.
- (d) All filings under this rule must indicate the date and method of service. On a showing of good cause, the Court may extend the time for the filing of any brief. Failure to file a timely brief shall be deemed a waiver of the right to submit it. All papers served under this rule must be filed promptly. (See Fed.R.Civ.P. 5(d).)
- (e) Oral argument, if deemed appropriate, may be scheduled at the discretion of the judicial officer.
- (f) Except by permission of the Court, principal briefs on motions must not exceed 30 pages and reply briefs must not exceed 15 pages, exclusive of pages containing the statement of facts, the proposed findings of fact as required by Civil L.R. 56.2, exhibits, and affidavits, but inclusive of headings and footnotes. A reply brief and any affidavits or other documents filed with the reply brief must be limited to matters in reply.

#### **Civil L.R. 7.2 Evidentiary Hearings**

In the case of any motion in which an evidentiary hearing is scheduled by the Court, the parties must file a statement of uncontested facts. It is the responsibility of the movant to submit a proposed stipulation of facts to opposing counsel who must admit or deny the facts proposed and advance any additional facts to be included. A final statement of uncontested facts signed by counsel for the parties must be filed with the Court at least 48 hours before the time set for hearing.

### **Civil L.R. 7.3 Modification of Provisions in Particular Cases**

The Court in any case, may provide by order or other notice to the parties that different or additional provisions regarding motion practice apply.

### **Civil L.R. 7.4 Expedited Non-Dispositive Motion Practice**

- (a) Parties in civil actions may seek non-dispositive relief by expedited motion. The motion must be designated as a “Rule 7.4 Expedited Non-Dispositive Motion.” The Court may schedule the motion for hearing or may decide the motion without hearing. The Court may designate that the hearing be conducted by telephone conference call. The Court may order an expedited briefing schedule. Counsel must serve the motion on all other parties and promptly file the motion with the Court.
- (b) The motion must contain the material facts, argument, and, if necessary, counsel’s certification pursuant to Civil L.R. 37.1. The motion must not exceed 3 pages. The movant must not file a separate memorandum with the motion. The movant may file with the motion an affidavit for purposes of (1) attesting to facts pertinent to the motion and/or (2) authenticating documents relevant to the issue(s) raised in the motion. The movant’s affidavit may not exceed 2 pages. The respondent must file a memorandum in opposition to the motion within 5 days of service of the motion, unless otherwise ordered by the Court. The respondent’s memorandum must not exceed 3 pages. The respondent may file with its memorandum an affidavit for purposes of (1) attesting to facts pertinent to the respondent’s memorandum and/or (2) authenticating documents relevant to the issue(s) raised in the motion. The respondent’s affidavit may not exceed 2 pages. No reply brief is permitted absent leave of Court.
- (c) The provisions of this rule must not apply to actions brought by incarcerated persons under 42 U.S.C. § 1983 in which the incarcerated person is proceeding pro se.

### **Civil L.R. 9.1 Standard Forms for Habeas Corpus Proceedings**

Petitions for writs of habeas corpus by persons in state custody filed pursuant to 28 U.S.C. § 2254, and motions attacking sentences imposed by this Court filed pursuant to 28 U.S.C. § 2255 must be on forms supplied by the Court and must be filed with the Clerk of Court. The forms and directions for their preparation must be provided without charge by the Clerk of Court.

### **Civil L.R. 9.2 Standard Forms for 42 U.S.C. § 1983 Actions (Pro Se)**

All incarcerated persons proceeding pro se who bring actions under 42 U.S.C. § 1983 are strongly encouraged to use forms supplied by the Court. The forms and directions for their preparation will be provided without charge by the Clerk of Court. Use of the forms will enable the Court to more efficiently and effectively evaluate and process the case.

### **Civil L.R. 10.1 Responsive Pleadings**

Responsive pleadings must be made in numbered paragraphs corresponding to the paragraphs of the pleading to which it refers.

### **Civil L.R. 12.1 Motions to Dismiss In Pro Se Litigation**

The procedure set forth in Civil L.R. 56.1(a) must also apply to motions to dismiss brought pursuant to Fed.R.Civ.P. 12(b)(6) or motions for judgment on the pleadings pursuant to Fed.R.Civ.P. 12(c) where matters outside the pleading are presented to the Court.

### **Civil L.R. 15.1 Motions to Amend Pleadings**

A motion to amend a pleading must specifically state in the motion what changes are sought by the proposed amendments. Any party submitting a motion to amend must attach to the motion the original of the proposed amended pleading. Any amendment to a pleading, whether filed as a matter of course or upon motion to amend, must reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference. If the motion to amend is granted, the clerk must then detach the amended pleading and file it when the order granting the motion to amend is filed.

### **Civil L.R. 16.1 Preliminary Pretrial Conferences**

- (a) The Court may require the parties to appear to consider the future conduct of the case. Whether these preliminary pretrial conferences are designated as status conferences, scheduling conferences, discovery conferences, or in any other manner, at each conference in civil actions counsel must be prepared to discuss the matters enumerated in Fed.R.Civ.P. 16 and Fed.R.Civ.P. 26(f). In all actions, counsel may be prepared to state:
- (1) The nature of the case in one or two sentences;
  - (2) Any motions which are contemplated;
  - (3) The amount of further discovery each party contemplates and the approximate time for completion of such discovery;
  - (4) Such other matters as may affect further scheduling of the case for final disposition;
  - (5) Whether settlement discussions have occurred; and
  - (6) The basis for the Court's subject matter jurisdiction.
- (b) At or following the conference, the Court may enter any orders which appear necessary to aid in further scheduling the action, including dates for further conferences, briefing, schedules for motions, and cutoff dates for completing discovery. The Court may also enter any orders permitted under Fed.R.Civ.P. 16, Fed.R.Civ.P. 26(f), or Civil L.R. 16.5.

## **Civil L.R. 16.2 Final Pretrial Conference**

The Court may require counsel to appear for a final pretrial conference to consider the subjects specified in Fed.R.Civ.P. 16 or to consider other matters determined by the Court. At or following the conference, the Court may issue any orders which appear necessary to insure the parties' completion of trial preparations or to aid the Court in the conduct of the trial. Unless excused by the Court, the principal trial counsel for each party must appear at the final pretrial conference.

## **Civil L.R. 16.3 Pretrial Report**

- (a) Unless otherwise ordered by the Court, each party must file a pretrial report. Unless the Court establishes a different date, any such pretrial report must be filed at least 10 days prior to the scheduled start of the trial or, if a final pretrial conference is scheduled, 3 days before the final pretrial conference. The report-standardized for all courts-must be in the following form:

PRETRIAL REPORT  
(effective [*date*])

IT IS ORDERED that all parties prepare and file pretrial reports. Reports are due 10 days before the scheduled start of the trial or, if a final pretrial conference is scheduled, 3 days before the conference. The report must be signed by the attorney (or a party personally, if not represented by counsel) who will try the case. Sanctions, which may include the dismissal of claims and defenses, may be imposed if a trial report is not filed.

The report must include the following:

- (1) A short summary statement of the facts of the case and theories of liability or defense. The statement may not be longer than two pages.
- (2) A statement of the issues.
- (3) The names and addresses of all witnesses expected to testify. A witness not listed will not be permitted to testify absent a showing of good cause.
- (4) If expert witnesses are to be used, a narrative statement of the experts' background.
- (5) A list of exhibits to be offered at trial, sequentially numbered according to General L.R. 26.1.
- (6) A designation of all depositions or portions of transcripts or other recordings of depositions to be read into the record or played at trial as substantive evidence. Reading or playing more than 5 pages from a deposition will not be permitted unless the Court finds good cause.

- (7) Counsel's best estimate on the time needed to try the case.
- (8) If scheduled for a jury trial:
  - (a) All proposed questions that counsel would like the Court to ask on voir dire.
  - (b) Proposed instructions on substantive issues.
  - (c) A proposed verdict form.
- (9) If scheduled for a court trial, proposed findings of fact and conclusions of law. (See Fed.R.Civ.P. 52.)

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United States District Court  
Eastern District of Wisconsin

- (b) In addition to completing a report, counsel are expected to confer and make a good faith effort to settle the case. Counsel are also expected to arrive at stipulations that will save time during the trial.

#### **Civil L.R. 16.4 Alternative Dispute Resolution--Importance of Process**

The Court recognizes that full, formal litigation of claims can impose large economic burdens on parties and delay resolution of disputes for considerable periods. The Court recognizes that alternative dispute resolution (ADR) can improve the quality of justice by improving the parties' clarity of understanding of their case, their access to evidence, and their satisfaction with the process and results. Accordingly, the Court has established an ADR program to provide litigants with a quicker, less expensive and potentially more satisfying alternative to continuing litigation without impairing the quality of justice or the right to trial.

#### **Civil L.R. 16.5 Alternative Dispute Resolution--Participation in Process**

- (a) Each judge must conduct an ADR evaluation conference during the early stages of case development to determine whether a civil case is appropriate for ADR. This conference may be held in conjunction with a pretrial conference under Fed.R.Civ.P. 16 or a scheduling conference under Fed.R.Civ.P. 16(b), but may be conducted as a separate conference. If the judge determines that a case is appropriate for ADR, the judge must encourage the parties to participate in a Court-sponsored ADR process. The judge may order the parties to participate in ADR.
- (b) The following types of cases are exempt from this procedure: administrative proceedings, including all Social Security cases; habeas corpus cases or other proceedings to challenge a

criminal conviction or sentence; pro se prisoner litigation; actions by the United States to recover benefit payments or to collect on a student loan guaranteed by the United States; cases in which the only relief sought is an order compelling arbitration or enforcing an arbitration award; actions to enforce or quash an administrative summons or subpoena; proceedings ancillary to proceedings in other courts; and mortgage foreclosure actions in which an agency of the United States is a secured party.

#### **Civil L.R. 16.6 Alternative Dispute Resolution--Confidentiality**

The Court, the neutral, all counsel and parties, and any other persons attending an ADR session under these rules must treat as confidential all written and oral communications made in connection with or during any ADR session. Except to the extent otherwise stipulated or ordered, the disclosure of any written or oral communication made by any party, counsel, or other participant in connection with or during any ADR session must be prohibited. ADR proceedings pursuant to these rules must be treated as compromise negotiations for purposes of the Federal Rules of Evidence and state rules of evidence. Nothing in this section must be construed to prohibit parties from entering into written agreements resolving some or all of the case or entering and filing procedural or factual stipulations based on suggestions or agreements made in connection with these ADR processes.

#### **Civil L.R. 16.7 Alternative Dispute Resolution--Evaluation of Program**

Congress has mandated that the Court's ADR program be evaluated. Neutrals, counsel and clients may promptly respond to any inquiries or questionnaires from persons authorized by the Court to evaluate the program. Responses to such inquiries will be used for research and monitoring purposes only. The identity of persons or entities providing specific information will not be disclosed to the assigned judge or in any evaluation report.