# UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

# LOCAL RULES

# GENERAL, CIVIL, AND

# CRIMINAL

Effective February 1, 2010.

**LOCAL RULES COMMITTEE**
**FOR THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF WISCONSIN**
**November 2023**

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# INTRODUCTION

The Local Rules are divided into three parts: (1) General Local Rules applicable to civil and criminal cases; (2) Civil Local Rules applicable only to civil cases; and (3) Criminal Local Rules applicable only to criminal cases. Each part begins with a rule defining its scope.

Following the recommendation of the Judicial Conference, the numbering of the General and the Civil Local Rules has been tied to the Federal Rules of Civil Procedure and, in the case of the Criminal Local Rules, to the Federal Rules of Criminal Procedure.

Some of the Local Rules are similar to certain Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure. The Local Rules do not, however, repeat the Federal Rules in their entirety, and practitioners are advised to consult both the Local Rules and the applicable Federal Rules.

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## PART A: GENERAL RULES

## I. SCOPE OF RULES; FORM OF ACTION

### General L. R. 1. Scope and Purpose of Rules.

The General Rules set forth in Part A govern both civil and criminal proceedings in this District. The rules set forth in Part B govern civil proceedings in this District. The rules set forth in Part C govern criminal and petty offense proceedings in this District.

In these rules the use of the term "Court" is meant to include both the district judge and the magistrate judge. Similarly the use of term "judge" without specifying "district" or "magistrate" is meant to include both.

Compliance with the rules is expected. However, the rules are intended to be enforced primarily upon the Court's own initiative, and the filing of motions alleging noncompliance with a rule may be reserved for egregious cases.

### General L. R. 3. Assignment of Cases.

**(a) Civil Cases.**

**(1)** When an action is filed, except as otherwise provided by general order of the Court, the case must be randomly assigned to a district judge or a magistrate judge. The Clerk of Court will provide the party filing the action with a form advising all parties of their right to consent to the exercise of jurisdiction by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). The plaintiff must serve each defendant with a consent form. In the case of actions removed from state court, the defendant must serve each other party with a consent form. Each party to the action must file the completed consent form with the Clerk of Court within 21 days after service of the form.

**(2)** In cases assigned to a district judge, a magistrate judge also will be assigned. If the parties consent to the magistrate judge's jurisdiction pursuant to 28 U.S.C. § 636(c), the district judge may refer the case to the magistrate judge by written order, and the parties will be notified of such reference by the Clerk of Court. Whether or not the parties have consented to the reference of the case to the magistrate judge, the district judge assigned to the case may designate the magistrate judge to perform any of the duties authorized by 28 U.S.C. § 636 or by these Local Rules, including conducting alternative dispute resolution (ADR) procedures.

**(3)** The Court may by general order require the Clerk of Court to refer certain categories of the district judges' cases to the magistrate judges for pretrial processing as specified in the order.

**(b) Criminal Cases.** Upon the return of an indictment or the filing of an information, all felony criminal cases will be assigned by a method of random allocation to a district judge and a magistrate judge of this Court.

## II. FILING PLEADINGS, MOTIONS, AND ORDERS

### General L. R. 5. Serving and Filing Pleadings and Other Papers.

**(a) General Format of Papers Presented for Filing.**

**(1)** All pleadings and other papers must be filed by electronic means unless exempted or otherwise ordered by the Court, which may make reasonable exemptions from the electronic filing requirement.

**(2)** Pro se litigants are exempted from the electronic filing requirements set forth in (1) above and are permitted to file original paper.

**(3)** The original and a copy of all papers must be filed, unless the paper is filed electronically. In the following matters only the original paper need be filed: pro se litigation, habeas corpus proceedings, bankruptcy appeals, social security reviews, and United States collection cases.

**(4)** A pro se party must include an address and telephone number at which the Court can contact the party.

**(5)** Pleadings and other papers must be formatted for reproduction on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

**(6)** Either a proportionally spaced or a monospaced face may be used.

**(A)** A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 12-point or larger.

**(B)** A monospaced face may not contain more than 10½ characters per inch.

**(7)** All pleadings and other papers must use a plain, roman style font, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

**(b) Place of Filing.** All papers filed by non-electronic means must be filed with the Clerk of Court and not in the judge's chambers. The Clerk of Court must retain the original of the paper filed, except the original of an order submitted for signature, and must transmit the copy to the judge.

## III. DISCLOSURES AND DISCOVERY

### General L. R. 26. Sequential Numbering of Exhibits.

Documents identified as exhibits during the course of depositions, other pretrial proceedings, and at trial should be numbered sequentially. When practicable, only one exhibit number should be assigned to a document or physical object throughout the course of the action. By way of example, numbers 1-999 can be reserved for plaintiff's/prosecution's exhibits, and numbers 1000-1999 can be reserved for defendant's exhibits. If more than two parties appear in the litigation, successive blocks of 1000 can be reserved for each additional party starting with 2000-2999.

## IV. TRIAL

### General L. R. 40. Inquiries.

Inquiries about docket entries must be directed to the Clerk of Court. All other inquiries concerning a pending action may be directed to the judge's chambers.

### General L. R. 43. Examining Witnesses.

Unless otherwise ordered, only one attorney for each party may examine or cross-examine a witness.

### General L. R. 47. Selecting Jurors.

**(a) Voir Dire of Prospective Jurors.** Unless otherwise ordered, the voir dire examination of prospective jurors will be conducted by the Court. Counsel may submit written proposed questions for voir dire. Counsel may request additional questions in light of prospective jurors' responses to the Court's examination.

**(b) Juror Questionnaires.** Jury qualification questionnaires must be available for inspection in the Clerk of Court's office after the jury panel has been notified to appear.

**(c) Communications with Jurors.** Parties, attorneys, and the agents or employees of parties or attorneys may not approach, interview, or communicate with a venire member or juror, before, during or after trial, except on leave of Court granted upon notice to opposing counsel and upon good cause shown. Good cause may include a trial attorney's request for permission to contact one or more jurors after trial for the trial attorney's educational benefit. The juror(s) must be advised at the outset of any communication that the juror's participation is voluntary. Any juror contact permitted by the Court under this rule is subject to the Court's control.

**General L. R. 51. Instructions to the Jury.**

Counsel must submit written proposed jury instructions and, if required, a written form of verdict before the commencement of the trial. Further instructions may be submitted after the commencement of the trial as permitted by the Court.

## V. MAGISTRATE JUDGES

**General L. R. 72. Magistrate Judges.**

**(a) Duties.** Magistrate judges are authorized to exercise all of the powers and duties set forth in 28 U.S.C. § 636(a) and (b), and are authorized to perform any and all additional duties, as may be assigned from time to time consistent with the Constitution and laws of the United States.

**(b) Assignment of Duties.**

**(1)** The assignment of duties to the magistrate judges by the district judges of the Court may be made by standing order entered jointly, or by any individual district judge, in any case assigned to the district judge, through written order or oral directive made or given with respect to such case or cases.

**(2)** The duties authorized to be performed by magistrate judges, when assigned to them pursuant to paragraph (a) of this Local Rule, include, but are not limited to:

**(A)** Issuing search warrants (Fed. R. Crim. P. 41), issuing seizure warrants, issuing warrants to install a tracking device (18 U.S.C. § 3117 or Fed. R. Crim. P. 41), issuing orders for disclosure of the contents of wire or electronic communications or records (18 U.S.C. § 2703(d)), issuing orders for a pen register or a trap and trace device (18 U.S.C. §§ 3122, 3123), and issuing administrative inspection warrants upon proper application meeting the requirements of applicable law.

**(B)** Issuing complaints and appropriate summonses or arrest warrants for the named defendants. (Fed. R. Crim. P. 4.)

**(C)** Conducting initial appearance proceedings. (Fed. R. Crim. P. 5.)

**(D)** Appointing counsel for indigent persons, approving compensation and expense vouchers, and all other duties in conformance with the Court's Criminal Justice Act Plan.

**(E)** Conducting preliminary examinations. (Fed. R. Crim. P. 5.1; 18 U.S.C. § 3060.)

**(F)** Conducting removal hearings for defendants charged in other districts, including the issuance of warrants of removal. (Fed. R. Crim. P. 40.)

**(G)** Issuing writs of habeas corpus ad testificandum and habeas corpus ad prosequendum. (28 U.S.C. § 2241(c)(5).)

**(H)** Releasing or detaining material witnesses. (18 U.S.C. § 3144.)

**(I)** Issuing warrants and conducting extradition proceedings pursuant to 18 U.S.C. § 3184.

**(J)** Conducting proceedings for the discharge of indigent prisoners or persons imprisoned for debt under process or execution issued by a federal court. (28 U.S.C. § 2007.)

**(K)** Issuing attachment or other orders to enforce obedience to an Internal Revenue Service summons to produce records or given testimony. (26 U.S.C. § 7604(b).)

**(L)** Conducting post-indictment arraignments, accepting not guilty pleas, accepting guilty pleas in misdemeanor and other petty offense cases with the consent of the defendant, when required, and the ordering of a presentence investigation report concerning any defendant who expresses the desire to plead guilty. (Fed. R. Crim. P. 10, 11(a), 32(c), and 58.)

**(M)** Accepting the return of an indictment by the grand jury; granting leave to the government to dismiss a criminal complaint; and dismissing a criminal complaint upon a finding of unnecessary delay in presenting a charge to the grand jury, filing an information against a defendant or bringing a defendant to trial. (Fed. R. Crim. P. 6(f), 48(a) and 48(b).)

**(N)** Supervising and determining all pretrial proceedings and motions made in criminal cases including, without limitation, motions and orders made pursuant to Fed. R. Crim. P. 12, 12.2(c), 14, 15, 16, 17, 17.1, and 28, 18 U.S.C. § 4244 orders determining excludable time under 18 U.S.C. § 3161, and orders dismissing a complaint without prejudice for failure to return a timely indictment under 18 U.S.C. § 3162; except that a magistrate judge may not grant a motion to dismiss or quash an indictment or information, or a motion to suppress evidence, or any other case dispositive motion, but should make recommendations to the district judge concerning them.

**(O)** Conducting hearings and issuing orders upon motions arising out of grand jury proceedings including orders entered pursuant to 28 U.S.C. § 6003, and orders involving enforcement or modification of subpoenas, directing or regulating lineups, photographs, handwriting exemplars, fingerprinting, palm printing, voice identification, medical examinations, and the taking of blood, urine, fingernail, hair and bodily secretion samples (with appropriate safeguards).

**(P)** Conducting hearings and issuing orders arising out of motion for return of property pursuant to Fed. R. Crim. P. 41(g), except to the extent that the motion is treated as a motion to suppress under Fed. R. Crim. P. 12, and then it must be handled in accordance with subparagraph (2)(N) of this Rule.

**(Q)** Conducting preliminary hearings in all probation or supervised release revocation proceedings, and conducting final hearings for misdemeanors when the defendant has previously consented to the exercise of jurisdiction by the magistrate judge. (Fed. R. Crim. P. 32.1.)

**(R)** Processing and reviewing habeas corpus petitions or applications filed pursuant to 28 U.S.C. § 2241, those filed by state prisoners pursuant to 28 U.S.C. § 2254, or by federal prisoners pursuant to 28 U.S.C. § 2255, and civil suits filed by state prisoners under 42 U.S.C. § 1983, with authority to require responses, issue orders to show cause and any other orders necessary to develop a complete record, and to prepare a report and recommendation to the district judge as to appropriate disposition of the application, petition, or claim.

**(S)** Supervising and determining all pretrial proceedings and motions made in civil cases including, without limitation, rulings upon all procedural and discovery motions, and conducting pretrial conferences; except that a magistrate judge (absent the consent of all affected parties) may not appoint a receiver, issue an injunctive order

pursuant to Fed. R. Civ. P. 65, enter an order dismissing or permitting maintenance of a class action pursuant to Fed. R. Civ. P. 23, enter any order granting judgment on the pleadings or summary judgment in whole or in part pursuant to Fed. R. Civ. P. 12(c) or 56, enter an order of involuntary dismissal pursuant to Fed. R. Civ. P. 41(b) or (c) or enter any other final order or judgment that would be appealable if entered by a district judge, but may make reports and recommendations to that district judge concerning them.

**(T)** Conducting mediation conferences, or other ADR procedures, pursuant to the District's ADR program.

**(U)** Conducting all proceedings in civil suits after judgment incident to the issuance of writs of replevin, garnishment, attachment or execution pursuant to governing state or federal law, and conducting all proceedings and entering all necessary orders in aid of execution pursuant to Fed. R. Civ. P. 69.

**(V)** With the consent of the parties, conducting or presiding over the voir dire examination and empanelment of trial juries in civil and criminal cases and accepting jury verdicts in the absence of the district judge.

**(W)** Processing and reviewing all suits instituted under any law of the United States providing for judicial review of final decisions of administrative officers or agencies on the basis of the record of administrative proceedings, and the preparation of a report and recommendation to the district judge concerning the disposition of the case.

**(X)** Serving as a special master in accordance with Fed. R. Civ. P. 53.

**(Y)** In admiralty cases, entering orders (i) appointing substitute custodians of vessels or property seized in rem; (ii) fixing the amount of security pursuant to Rule C(5), Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, that must be posted by the claimant of a vessel or property seized in rem; (iii) in limitation of liability proceedings, for monition and restraining order including approval of the ad interim stipulation filed with the complaint, establishment of the means of notice to potential claimants and a deadline for the filing of claims; and (iv) to restrain further proceedings against the plaintiff in limitation except by means of the filing of a claim in the limitation proceedings.

**(Z)** Appointing persons to serve process pursuant to Fed. R. Civ. P. 4(c).

**(AA)** Processing and reviewing petitions in civil commitment proceedings under the Narcotic Addict Rehabilitation Act, and the preparation of a report and recommendation to the district judge concerning disposition of the petition.

**(BB)** Supervising proceedings conducted pursuant to letters rogatory or request in accordance with 28 U.S.C. § 1781.

**(c) Objections to Magistrate Judge's Determination in Criminal Cases and in Civil Cases in Which the Parties Have Not Consented to Magistrate Judge Jurisdiction.**

**(1)** In criminal cases and in civil cases in which the parties have not consented to magistrate judge jurisdiction, objections to a determination by the magistrate judge are governed by Fed. R. Civ. P. 72 and Fed. R. Crim. P. 59.

**(2)** Any other party may serve and file a response to the objection within 14 days from the date of service of the objection unless a different deadline is set by the Court.

**(3)** The objecting party may serve and file a reply within 7 days from the date of service of the response unless a different deadline is set by the Court.

**(d) Record of Proceedings Before Magistrate Judge.**

**(1)** The magistrate judge must determine, after taking into account the complexity of the particular matter, whether the record must be taken down by a reporter or recorded by suitable sound equipment.

**(2)** Notwithstanding the magistrate judge's determination:

**(A)** The proceeding must be taken down by a reporter if any party so requests;

**(B)** The proceeding must be recorded by suitable sound equipment if all parties agree;

**(C)** No record need be made of the proceeding if all parties agree.

**General L. R. 73. Duties Under 28 U.S.C. § 636(c)**

The magistrate judges in this District are designated to exercise the

jurisdiction and authority provided by 28 U.S.C. § 636(c), when all parties consent to it, and may conduct any or all proceedings, including a jury or nonjury trial, in a civil case.

## VI. DISTRICT COURT AND CLERK OF COURT

### General L. R. 79. Custody of Exhibits; Return of Exhibits and Depositions; Withdrawal of Materials in Court Files; Confidential Matters; Sealed Records

**(a) Custody of Exhibits.** All exhibits received in evidence must be placed in the custody of the Clerk of Court unless otherwise ordered by the Court.

**(b) Return of Exhibits and Depositions.** Within 30 days (60 days for cases in which the United States is a party) after the time for appeal has elapsed and, if there is an appeal, after the filing of the mandate of the reviewing Court, the Clerk of Court must return all exhibits and depositions to the attorneys of record for the respective parties. The Clerk of Court may return such items by certified mail, or upon 14 days' written notice, require the attorneys of record to remove them. Any exhibits or depositions not removed within the time specified for such removal may be destroyed or otherwise disposed of by the Clerk of Court.

**(c) Withdrawal of Materials in Court Files.** No pleading, brief, deposition, exhibit or other material belonging in the file of an action may be withdrawn by any person without an order of the Court, except as provided in General L. R. 79(b). Before final disposition of the case, the order must be entered by a judge. After final disposition, the order may be entered by the Clerk of Court, but only if the withdrawal is by an attorney admitted to practice in this Court. In either event, such order must specify the time for return of such materials.

**(d) Confidential Matters; Restricted Records; Sealed Records.**

**(**1) The Court will consider any document or material filed with the Court to be public unless, at the time of filing, it is accompanied by a separate motion requesting that: access to the document be restricted to the Court and counsel for the parties; or that the document or material, or portions thereof, be sealed by the Court. No motion is necessary to seal or restrict a document or material otherwise protected from disclosure.

**(2)** The separate motion to restrict or seal must be publicly filed and must describe the general nature of the information withheld from the public record. To the extent possible, the movant should include with the public filing a version of the document or material that redacts only those portions of the document that are subject to the restriction/sealing request. If the motion is denied, the document or material subject to the restriction/sealing request will

be publicly filed by the Clerk of Court, unless otherwise ordered by the Court. Parties should refer to ECF Policies and Procedures II.I.2 for additional procedures related to filing sealed or restricted documents.

**(3)** Any motion to restrict access or seal must be supported by sufficient facts demonstrating good cause for withholding the document or material from the public record. If the documents or materials sought to be restricted/sealed have been designated confidential by someone other than the filing party, the filing party may explain in the motion that the documents or materials are being filed under seal pursuant to a Court-approved protective order or otherwise, and that the filing party supports, objects to, or takes no position on the continued sealing of the documents or materials. In response, the person or party that originally designated the documents or materials as confidential may, if it chooses, provide sufficient facts demonstrating good cause to continue sealing the documents or materials. Absent a sufficient factual basis demonstrating good cause sufficient to seal the documents or materials, the motion must be denied and the documents or materials publicly filed by the Clerk of Court, unless otherwise ordered by the Court.

**(4)** Any party seeking to restrict access to documents or materials or to file confidential documents or materials under seal, whether pursuant to a Court-approved protective order or otherwise, must include in the motion a certification that the parties have conferred in a good faith attempt to avoid the motion or to limit the scope of the documents or materials subject to sealing under the motion.

**(5)** The following documents or materials do not require a separate motion to be filed under seal: (a) an unredacted disclosure statement filed in accordance with Civil L. R. 10(c); (b) documents or materials filed in an action under the False Claims Act, in accordance with 31 U.S.C. § 3730(b), unless otherwise ordered by the Court; (c) documents or materials concerning or contesting ongoing grand jury proceedings; and (d) documents or materials concerning cooperation by criminal defendants, filed pursuant to 18 U.S.C. § 3553, United States Sentencing Guideline § 5K1.1, and Fed. R. Crim. P. 35.

**(6)** To the extent that any answers to interrogatories, transcripts of depositions, responses to requests for admissions, or any other papers filed or to be filed with the Court contain material designated as confidential, these papers, or any portion thereof, must be filed under seal by the filing party with the Clerk of Court in an envelope marked "SEALED."

**(7)** Any party filing material claimed to be confidential under subsection (6) must include with that filing either: (1) a motion to seal the material pursuant to this rule; or (2) an objection to the designation of the material as confidential and a statement that the objection to the designation has been

provided to the person claiming confidentiality. If such an objection is made, the person having designated the material as confidential may file a motion to seal under this rule within 21 days of the objection.

*Committee Comment: The withdrawal contemplated by General Local Rule 79(c) is not a permanent withdrawal from the record. Rule 79(c) addresses the temporary withdrawal from the file or "checking out" pleadings and/or exhibits from the court file for purposes such as copying or preparing an appeal.*

*The motion to seal filed in accordance with General Local Rule 79(d) should be limited to that portion of the material necessary to protect the movant from the harm that may result from disclosure, e.g., the fact that a single page or paragraph of a document contains confidential material generally will not support a motion to seal the entire document.*

*The Court encourages the parties to avoid filing materials designated confidential whenever reasonably possible. The standard for showing good cause is quite high, and there is no guaranty that material designated confidential will remain under seal.*

*Instructions for filing the material under seal are set forth in the Electronic Case Filing Policies and Procedures Manual, which may be found on the official website of the United States District Court for the Eastern District of Wisconsin.*

## VII. GENERAL PROVISIONS

### General L. R. 83. Courthouse; Appearing Before the Court; Admission to Practice; Discipline; Only Natural Persons May Appear Pro Se; Sanctions.

**(a) Courthouse.**

**(1) Photographing, Broadcasting, and Recording.** No one may take any photographs of, make any recordings in, or make any broadcasts from any of the courtrooms, jury rooms adjacent to the courtrooms, libraries, the grand jury room and adjacent areas, the clerk's office, or the corridors located on the second, third and fourth floors of the Federal Courthouse in Milwaukee or the court-occupied space in Green Bay, without first obtaining written permission from the person in charge of those offices. These prohibitions do not apply to ceremonial proceedings.

**(2) Causing a Disturbance or Nuisance.** Causing a disturbance or nuisance in the Federal Courthouse in Milwaukee or in the court-occupied space in Green Bay is prohibited. Picketing or parading outside of the Federal

Courthouse in Milwaukee is prohibited only when such picketing or parading obstructs or impedes the orderly administration of justice.

**(3) Contempt.** The United States Attorney may enforce these prohibitions by seeking an order that requires any person who violates General L. R. 83(a)(1) or 83(a)(2), or both, to appear before a judge to answer to a charge of contempt.

**(4) Enforcement.** The United States Marshal, the Marshal's deputies or a custodian of the Federal Courthouse may enforce General L. R. 83(a)(1) or 83(a)(2), or both, by ejecting violators or by referring the matter to the United States Attorney.

**(b) Appearing Before the Court.** Unless appearing pro se subject to the limitations in General L. R. 83(e), all parties to proceedings in this Court must appear by an attorney admitted to practice in this Court. This requirement does not apply to attorneys appearing pursuant to Fed. R. Civ. P. 45(f).

**(c) Admission to Practice.**

**(1) Eligibility for Admission to Practice.** Any licensed attorney in good standing before any United States court, or the highest court of any State, or the District of Columbia is eligible for admission to practice in this Court.

**(2) Procedure for Admission to Practice.**

**(A)** An eligible attorney who seeks admission to practice in this Court must complete the admission form prescribed by the Clerk of Court using the Pacer system as follows:

**(i)** Electronically submit to the Clerk of Court: (1) certificate of good standing from any United States court, or the highest court of any State or the District of Columbia; or (2) the affidavit or sworn statement of an attorney admitted to practice in this Court that the applicant is an attorney in good standing in one of these courts.

**(ii)** File with the Clerk of Court the following oath subscribed and sworn to before any person authorized to administer oaths:

I do solemnly swear that to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same;

that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will demean myself as an attorney and counselor of the United States District Court for the Eastern District of Wisconsin uprightly and according to law.

Thereupon, after payment of the prescribed fee to the Clerk of Court, the Clerk of Court may admit the applicant to practice before this Court.

**(B)** At the request of an eligible attorney and upon motion of a member of this Court and after payment of the prescribed fee, the eligible attorney may be admitted ceremonially by a judge.

**(C)** Upon good cause shown, a judge or the Clerk of Court may permit an eligible attorney to be admitted to practice without payment of the prescribed fee.

**(D)** Any federal government attorney authorized by statute or regulation to appear in a United States district court is admitted to practice before this Court.

**(E)** Pro hac vice motions for admission are not permitted.

**(3) Assistance of Local Counsel.** At any time, upon its own motion, the Court may require that a nonresident attorney obtain local counsel to assist in the conduct of the action.

**(d) Discipline.**

**(1)** Attorneys practicing before this Court are subject to the Wisconsin Rules of Professional Conduct for Attorneys, as such may be adopted from time to time by the Wisconsin Supreme Court and except as may be modified by this Court. After notice and opportunity to be heard, any attorney who violates those standards of conduct may be barred from practice before this Court, suspended from practice for a definite time, reprimanded, or subjected to such other discipline as the Court may deem proper.

**(2)** Notwithstanding the provisions of General L. R. 83(d)(1), upon learning that any attorney admitted to practice in this Court has been disbarred or suspended from practice (other than for the nonpayment of dues) by the highest court of any state in which the attorney is licensed, this Court may suspend the attorney from practice before this Court. The Clerk of Court must mail a notice of suspension and a copy of this rule to the attorney. Upon request, the attorney must be afforded a reinstatement hearing within 30 days

from the date the request is received by the Court. Any attorney admitted to practice or appearing before this Court who is disbarred or suspended in any jurisdiction must promptly report the matter to this Court.

**(3)** The Court, in its discretion, may report any allegation of unethical conduct to the appropriate authority regulating the practice of law in any jurisdiction in which the attorney has been admitted to practice law.

**(e) Only Natural Persons May Appear Pro Se.** Only natural persons, including those operating sole proprietorships, may appear pro se. Legal entities, such as corporations, partnerships, unincorporated associations, limited liability companies, or trusts, must be represented by legal counsel.

**(f) Sanctions for Violation of Local Rules.** The Court may impose appropriate sanctions on any party or attorney who fails to comply with a Local Rule. The Local Rules are intended to be enforced primarily upon the Court's own initiative. A party should not file a motion seeking sanctions for alleged noncompliance with a Local Rule unless the alleged violation is egregious or unfairly prejudicial.

*Committee Comment: The Committee reviewed an April 16, 2009, memorandum from the Administrative Office of the United States Courts addressing attorney admission procedures and verification of attorneys' bar status. In light of that memorandum, the Court should consider whether to eliminate the provision of General L. R. 83(c), allowing applicants to rely on the affidavit or sworn statement of an attorney admitted to practice in this District to establish that the applicant is an attorney in good standing elsewhere, or an oral attestation to that effect. Eliminating those provisions might increase the burden on the state bar entities to produce certificates of good standing for applicants for admission to practice in this District.*

*General L. R. 83(c) has been amended to make explicit that one seeking admission to practice in this District must pay the fee. The former rule emphasized the application and oath requirements and mentioned payment of the fee only in passing. In contrast, the Court's website lists the fee separately, thus enumerating three requirements for admission to practice in this District.*

*General L. R. 83(c)(2)(D) is new. The provision that any federal government attorney authorized by statute or regulation to appear in a U. S. district court is admitted to practice in this District is based, in substantial part, on 28 U.S.C. §§ 515-517.*

*General L. R. 83(f) is new and explicitly states that the Court has the ability to issue sanctions under the local rules. The second and third sentences reflect the Court's expectation that counsel will rarely file such motions.*

**General L.R. 84. Law Student Practice**

**(a) Scope.** With permission of the Court, an eligible law student acting under a supervising attorney may appear in court, provided that any party on whose behalf the student appears has provided written consent. Such consent must be maintained in the files of the supervising attorney.

**(b) Eligibility.** To practice pursuant to this rule, a student must:

**(1)** Be enrolled in a law school accredited by the American Bar Association.

**(2)** Have completed the equivalent of at least two semesters of legal training.

**(3)** Provide the student's supervising attorney a letter from the student's law school, certifying that the student is in good standing and satisfies the eligibility requirements set forth in subsection (b)(1) and (2).

**(c) Supervisor Requirements**. To supervise a student eligible to practice under this rule, an attorney must:

**(1)** Be admitted to practice in the Eastern District of Wisconsin;

**(2)** Obtain permission from the Court for the student to appear;

**(3)** Appear with the student at all proceedings and be prepared to supplement any written or oral statement made by the student to the Court or opposing counsel;

**(4)** Review all written submissions by the student before filing; and

**(5)** Assume overall responsibility for the student's work.

**(d) Permitted Student Activities**. Under the oversight of a supervising attorney, an eligible student may:

**(1)** Sign pleadings, motions, responses, briefs, and other filings, provided the supervising attorney also signs the filing.

**(2)** Appear and participate in judicial proceedings, provided the supervising attorney is present with the law student; and

**(3)** Take part in other activities in connection with cases, subject to the oversight of the supervising attorney.

**(e) Permission of the Court.** The Court may at any time, and for any reason, decline to allow the student to participate or terminate the student's participation in any matter.

*Committee Comment. This rule is designed to enhance law student education and to promote the legal competency of future practitioners in the Eastern District. The rule is meant to provide flexibility to allow for student participation under the direction of a qualified attorney and subject to the discretion of the presiding judicial officer.*

## PART B: CIVIL RULES

## I. SCOPE OF RULES

### Civil L. R. 1. Scope of Rules

The Civil Rules set forth in Part B govern all civil proceedings in this District.

## II. COMMENCING AN ACTION; SERVICE OF PROCESS AND PAPERS

### Civil L. R. 3. Commencing an Action.

**(a) Civil Cover Sheet.** A Civil Cover Sheet (AO Form JS 44) must accompany each civil action presented for filing.

**(b) Notification of Related Actions.**

**(1) Definition.** An action is related to another when the actions (i) arise from substantially the same transaction or events; (ii) involve substantially the same parties or property; (iii) involve the same patent, trademark or copyright; or (iv) for other reasons would entail substantial duplication of effort or risk inconsistent or contradictory results if heard by different judges.

**(2) Initial Notice of Related Actions.** When a civil case is filed or removed, or a motion to withdraw the reference of an adversary proceeding from the bankruptcy court is filed, the person filing or removing must list on the Civil Cover Sheet all related actions that are pending in this District. The party must also file a Notice of Related Actions. A copy of the Notice of Related Actions shall be served with the complaint, notice of removal, notice of appeal, or motion. The Notice of Related Actions must include a brief factual statement

that explains how the cases in question are related under the foregoing factors. All facts that appear relevant to such a determination must be set forth.

**(3) Notice of Prior Related Actions.** Whenever an action filed in this District is dismissed by a party or by the Court without prejudice and thereafter the same or essentially the same claims, involving the same or essentially the same parties, are alleged in another action, the filing party in the later-filed action must list the earlier-filed action as a related case on the Civil Cover Sheet and file a Notice of Related Actions pursuant to paragraph (2) of this subsection.

**(4) Assigning Related Actions.** Where the Civil Cover Sheet discloses a pending or previously filed related civil action in this District, the new civil action will be assigned to the same judge.

**(5) Continuing Duty.** Any party that has appeared in the action must notify the court, by filing and serving a Notice of Related Actions, as soon as the party becomes aware of any related action pending or previously filed in this District that is not listed on the Civil Cover Sheet or any prior Notice of Related Actions. The Notice must be filed as soon thereafter as it reasonably should appear that the action relates to another. The Notice must be served on all parties who have appeared in the case.

**(c) Reassignment of Actions.**

**(1) Conditions for Reassignment.** A case may be reassigned to another judge if it is found to be related to a lower-numbered case assigned to that judge and each of the following criteria is met:

**(A)** both cases are pending in this District;

**(B)** the handling of both cases by the same judge is likely to result in a substantial saving of judicial resources; and

**(C)** neither case has progressed to the point where reassigning a case would be likely to substantially delay the proceedings in either case, or the Court finds that the assignment of the cases to the same judge would promote consistency in resolution of the cases or otherwise be in the interest of justice.

A case may be randomly reassigned to a judge pursuant to General L.R. 3(a) if it was initially assigned pursuant to Civil L.R. 3(b)(4) and fails to meet each of the above criteria.

**(2) Motion to Reassign.**

**(A)** A motion for reassignment based on relatedness or a lack of relatedness may be filed by any party to a case. In order that all parties to a proceeding be permitted to respond on the questions of relatedness and possible reassignment, such motions should not generally be filed until after the answer or motions in lieu of answer have been filed in each of the proceedings involved.

**(B)** The motion must be filed with, and will be decided by, the judge to whom the lowest-numbered case of the claimed related set is assigned for trial or other final disposition. Copies of the motion must be served on all parties and on the judges for all of the affected cases.

**(C)** The motion must:

**(i)** set forth the points of commonality of the cases in sufficient detail to indicate that the cases are or are not related within the meaning of paragraph (b)(1);

**(ii)** indicate the extent to which the conditions required by paragraph (c)(1) will or will not be met if the cases are found to be related; and

**(iii)** be accompanied by a copy of the complaint or other relevant pleading in each of the higher-numbered cases that are the subject of the motion.

**(D)** Any objection to the motion must be filed within 7 days of the filing of the motion, and served on all parties and on the judges for all of the affected cases.

**(3) Order.**

**(A)** The judge to whom the motion is presented may consult with the judge or judges before whom the other case or cases are pending, if any. The judge must enter an order finding whether or not the cases are related, and, if they are, whether the higher numbered case or cases were properly assigned, or should be reassigned, to that judge.

**(B)** Where the judge finds that reassignment of a case assigned to a different judge should occur, the Clerk of Court must reassign the higher-numbered case or cases to the judge deciding the motion and to whom the lowest-numbered case is assigned. A copy of any finding on relatedness and whether or not reassignment should take place must be sent to each of the judges before whom any of the higher-numbered cases are pending.

**(C)** Where the judge finds that reassignment of a case that was initially assigned to that judge should occur, the Clerk of Court must randomly reassign the case pursuant to Gen. L.R. 3(a).

**(4) Sua Sponte Judicial Determination of Relatedness.**

**(A)** Whenever a judge believes that a case pending before that judge is related to a lower-numbered case pending in this District, the judge may refer the case to the judge assigned to the lowest-numbered case with a request that the judge assigned to the lowest-numbered case consider whether the cases are related. The referring judge must file and send a copy of the referral to all parties in all affected cases. The parties may file any opposition to or support for reassigning the cases within 7 days of the filing of the referral, a copy of which must be served on all parties and on the judges for all of the affected cases. The judge assigned to the lowest-numbered case must then enter an order finding whether or not the cases are related, and, if they are, whether the higher numbered case or cases should be reassigned to that judge.

**(B)** Whenever a judge concludes that a higher-numbered case has been assigned to the judge under paragraph (b)(4) based on an incorrect assertion of relatedness, or fails to meet the criteria of paragraph (c)(1), the judge must enter an order directing the Clerk of Court to randomly reassign the case pursuant to Gen. L.R. 3(a).

**(d) Bankruptcy Appeals.** Appeals to the United States District Court for the Eastern District of Wisconsin from the Bankruptcy Court must be commenced and administered as prescribed in Part VIII of the Federal Rules of Bankruptcy Procedure 8001-8020.

**(e) Social Security Disability Appeals.** Appeals from a decision of the Commissioner of Social Security may be administered by special procedures ordered by the judges of this District. These procedures may be found on the official website of the United States District Court for the Eastern District of Wisconsin.

*Civil L.R. 3(e) was added to alert all practitioners that, apart from the procedures set forth in the formal rules as codified here, the judges of the United States District Court for the Eastern District of Wisconsin have adopted and routinely follow discrete practices, including requirements about filing deadlines, with respect to the litigation of the Social Security Disability Appeals docket.*

### Civil L. R. 4. Service of Process Upon the State of Wisconsin or Its Employees When Sued by a State Prisoner Pursuant to 42 U.S.C. § 1983.

When service of process upon the State of Wisconsin or its employees is made in an action brought by a state prisoner pursuant to 42 U.S.C. § 1983, the process server, in addition to serving the named defendant or defendants, must serve a copy of the summons and complaint upon the Secretary of the Wisconsin Department of Corrections and the Administrator of the Legal Services Division of the Wisconsin Department of Justice as provided in Fed. R. Civ. P. 4(j).

### Civil L. R. 5. Service of Papers Through the Court's Electronic Transmission Facilities.

A separate certificate of service is not required for papers served electronically if all parties were served through the Court's Electronic Case Filing (ECF) system.

## III. PLEADINGS AND MOTIONS

### Civil L. R. 7. Form of Motions and Other Papers

**(a) Form of Motion and Moving Party's Supporting Papers.** Every motion must state the statute or rule pursuant to which it is made and, except for those brought under Civil L. R. 7(h) (Expedited Non-Dispositive Motion Practice), must be accompanied by:

> **(1)** a supporting memorandum and, when necessary, affidavits, declarations, or other papers; or
>
> **(2)** a certificate stating that no memorandum or other supporting papers will be filed.

**(b) Non-Moving Party's Response.** For all motions other than those for summary judgment or those brought under Civil L. R. 7(h) (Expedited Non-Dispositive Motion Practice), any memorandum and other papers in opposition must be filed within 21 days of service of the motion. Failure to respond to the motion may result in the Court deciding the motion without further input from the parties.

**(c) Reply.** For all motions other than those for summary judgment or those brought under Civil L. R. 7(h) (Expedited Non-Dispositive Motion Practice), the moving party may serve a reply memorandum and other papers within 14 days from service of the response memorandum.

**(d) Sanction for Noncompliance.** Failure to comply with the briefing requirements in Civil L. R. 7(a)-(b) may result in sanctions up to and including the

Court denying or granting the motion. Sanctions remain available under General L. R. 83(f).

**(e) Oral Argument.** The Court will hear oral argument at its discretion.

**(f) Length of Memoranda.** Subject to the limitations of Civil L. R. 7(h) (Expedited Non-Dispositive Motion Practice) and Civil L. R. 56 (Summary Judgment Motion Practice), the principal memorandum in support of, or in opposition to, any motion must not exceed 30 pages and reply briefs must not exceed 15 pages (excluding any caption, cover page, table of contents, table of authorities, and signature block). No memorandum exceeding the page limitations may be filed unless the Court has previously granted leave to file an oversized memorandum.

**(g) Modification of Provisions in Particular Cases.** The Court may provide by order or other notice to the parties that different or additional provisions regarding motion practice apply.

**(h) Expedited Non-Dispositive Motion Practice.**

**(1)** Parties in civil actions may seek non-dispositive relief by expedited motion. The motion must be designated as a "Civil L. R. 7(h) 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.

**(2)** The motion must contain the material facts, argument, and, if necessary, counsel's certification pursuant to Civil L. R. 37. The motion must not exceed 3 pages excluding any caption and signature block. The movant may not file a separate memorandum with the motion. The movant may file with the motion an affidavit or declaration 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 or declaration may not exceed 2 pages. The respondent must file a memorandum in opposition to the motion within 7 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 or declaration 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 or declaration may not exceed 2 pages. No reply brief is permitted absent leave of Court.

**(3)** The provisions of subsection (h) do not apply to 42 U.S.C. § 1983 actions brought by incarcerated persons proceeding pro se.

**(i) Leave to file paper.** Any paper, including any motion, memorandum, or brief, not authorized by the Federal Rules of Civil Procedure, these Local Rules, or a Court order must be filed as an attachment to a motion requesting leave to file it. If the Court grants the motion, the Clerk of Court must then file the paper.

**(j) Citations.**

**(1)** With the exception of the prohibitions in Seventh Circuit Rule 32.1, this Court does not prohibit the citation of unreported or non-precedential opinions, decisions, orders, judgments, or other written dispositions.

**(2)** If a party cites an unreported opinion, decision, order, judgment or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, decision, order, judgment, or other written disposition.

**(3)** Service of Copies on Pro Se Parties. If a party cites an unreported opinion, decision, order, judgment or other written disposition, the party must file and serve a copy of that opinion, decision, order, judgment, or other written disposition on pro se parties regardless of whether it is available in a publicly accessible electronic database.

**(k) Notice of Supplemental Authority.** If pertinent and significant authorities relevant to an issue raised in a pending motion come to a party's attention after a party's final brief on the motion has been filed, the party may file a Notice of Supplemental Authority, attaching the new authority, without leave of the court. The Notice of Supplemental Authority may not contain any argument but may identify the page or section in the filed briefs to which the authority is relevant.

*Committee Comment: The rule expressly allows the Court to expand the page count if needed, but it does not allow the filing of a memorandum longer than permitted by Civil L. R. 7 unless the Court grants leave before the memorandum is filed. See Civil L. R. 7(g) and (i).*

*The rule also makes clear that declarations made in compliance with 28 U.S.C. § 1746 may be used to the same effect as affidavits in supporting motions.*

*Civil L. R. 7(d) allows the Court to take adverse action if the Court construes the party's lack of response as an "intent to abandon suit or as meriting a sanction." Marcure v. Lynn, 992 F.3d 625, 631 (7th Cir. 2021). When the moving party bears the burden of proof, a failure to respond to the motion—standing alone—does not provide sufficient grounds to grant or deny the motion. Id.; see also Robinson v. Waterman, No. 20-1370, 2021 WL 2350875, *2 (7th Cir. June 9, 2021).*

*Civil L. R. 7(i) addresses the filing of papers, including motions or memoranda, for which leave to file is required. The rule provides that any paper, which may not be filed without the Court's first granting leave to file, must be attached to the motion seeking leave to file that paper. If the Court grants leave to file, the Clerk of Court must then file the paper.*

*Civil L. R. 7(j) addresses "unreported" or non-precedential authorities. The provision permits the citation of authorities in addition to those reported in printed national reporters, with the exception of orders whose citation and consideration is prohibited by Seventh Circuit Rule 32.1. If the authority is publicly accessible (i.e. Westlaw, Lexis, Pacer, FastCase), a copy need not be filed and served on all parties, unless a party is pro se. If a party is pro se, then "unpublished" or "non-precedential" authority must be served on the pro se litigant. Notably, with the exception of orders subject to Circuit Rule 32.1, this provision does not bar the citation of decisions or orders even if a rule would bar the citation of the decision to the court that issued the decision or to any other court. The Court may take limitations on the authority's use before other courts, as well as the "unpublished" or "non-precedential" nature of the authority, into consideration when deciding the weight, if any, to be afforded to the authority.*

*Civil L. R. 7(k) addresses the Notice of Supplemental Authority. The Notice of Supplemental Authority should be submitted in the following format: "[Case name and citation], is relevant to [page or section] of [title of brief, ECF No __]." The rule does not contemplate a response by any party absent extraordinary circumstances.*

**Civil L. R. 7.1. Disclosure Statement.**

**(a) Required information.** To enable the Court to determine whether recusal is necessary or appropriate, an attorney for a nongovernmental party, an intervenor, or an amicus curiae must file a Disclosure Statement that:

**(1)** states the full name of every party, intervenor, or amicus the attorney represents in the action; and

**(2)** if such party, intervenor, or amicus is a corporation:

**(A)** identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or

**(B)** states there is no such corporation; and

**(3)** states the names of all law firms whose attorneys will appear, or are expected to appear, for the party in this Court.

**(b) Filing and Serving.** A party, intervenor, or amicus curiae must:

**(1)** file the disclosure statement with its first appearance, pleading, petition, motion, response, notice of removal or other request addressed to the Court, or when a case has been removed to this Court, the non-removing party must file within 14 days of the filing of a notice of removal; and

**(2)** promptly file a supplemental statement if any required information changes.

**(c) Form.** The disclosure statement must be substantially in the following form:

[CAPTION]

The undersigned, counsel of record for [John Doe, defendant, or Ruth Roe, plaintiff], furnishes the following list in compliance with Civil L. R. 7.1 and Fed. R. Civ. P. 7.1:

[Listed by Category]

Date: _____

Attorney's Signature

**(d) Pseudonyms.** A party who initiates a civil action using a pseudonym instead of the plaintiff's actual name must file the disclosure statement in accordance with Civil L. R. 10(c).

**(e) Withdrawal as Counsel.** An attorney may withdraw from a case in which he or she has appeared only as follows:

**(1) By Notice of Withdrawal.** A party's attorney may withdraw from a case by filing and serving a notice of withdrawal, effective upon filing, if:

**(A)** multiple attorneys have appeared on behalf of the party; and

**(B)** at least one of those attorneys will continue as the party's counsel of record after the attorney seeking to withdraw does so.

**(2) By Notice of Withdrawal and Substitution.** A party's attorney may withdraw from a case by filing and serving a notice of withdrawal and substitution, effective upon filing, if the notice includes:

**(A)** a statement by successor counsel that serves as successor counsel's notice of appearance and affirms that he or she represents the party;

**(B)** the names, addresses, and signatures of the withdrawing attorney and successor counsel;

**(C)** a statement that withdrawal and substitution has been discussed with the party and the party consents; and

**(D)** affirmation the withdrawal and substitution will not delay the trial or other progress of the case.

**(3) By Motion.** An attorney who seeks to withdraw under circumstances not addressed in Civil L.R. 7.1(e)(1) or (2) must move to withdraw and:

**(A)** show good cause for the withdrawal;

**(B)** serve a copy of the moving papers on the party;

**(C)** advise the party of the date and time of hearing, if the judge chooses to schedule a hearing, and whether attendance at the hearing will be in person, by telephone or by zoom conference; and

**(D)** advise the party whether the court requires the party's attendance at the hearing, if one is scheduled.

**Civil L. R. 8. Pleading Jurisdiction.**

If a pleading or notice of removal asserts jurisdiction based on diversity of citizenship, the pleading or notice must identify the amount in controversy and the citizenship of each party to the litigation. If any party is a corporation, the pleading or notice must identify both the state of incorporation and the state in which the corporation has its principal place of business. If any party is an unincorporated association, limited liability company, or partnership, the pleading or notice must identify the citizenship of all members.

**Civil L. R. 9. Pleading Special Matters.**

**(a) Required Forms for Seeking Release from Custody or Challenging Sentences, and Rules Applicable to Applications Under 28 U.S.C. § 2241.**

**(1)** All persons applying or petitioning for release from custody under 28 U.S.C. § 2241 or 28 U.S.C. § 2254, or moving under 28 U.S.C. § 2255 to challenge a sentence imposed by this Court must file their application, petition, or motion with the Clerk of Court using forms available from the Court. The

Clerk of Court will provide the forms and directions for their preparation without charge.

**(2)** When an application for release from custody under 28 U.S.C. § 2241 is filed, the respondent is not required to file an answer or respond to the application unless directed by the Court. The Court may apply any of the Rules Governing 28 U.S.C. § 2254 Cases in the United States District Courts to applications for release from custody under 28 U.S.C. § 2241.

**(b) Required Forms for 42 U.S.C. § 1983 Actions for Deprivations of Federal Rights by Persons Acting Under Color of State Law Commenced by Prisoners Appearing Pro Se.**

Prisoners appearing pro se who commence an action under 42 U.S.C. § 1983 for deprivations of federal rights by persons acting under color of state law must file the complaint with the Clerk of Court using the form available from the Court. The Clerk of Court will provide the forms and directions for their preparation without charge.

*Committee Comment: Civil L. R. 9(a) has been amended to require use of this District's form for applications for relief pursuant to 28 U.S.C. § 2241. Prior to March 2005, the District did not have a 28 U.S.C. § 2241 form.*

*Civil L. R. 9(a)(2) is new. There are no rules explicitly governing 28 U.S.C. § 2241. Establishing a general principle regarding the respondent's obligation to answer or respond will be helpful to the parties and to the Court. Rule 1(b) of the Rules Governing 28 U.S.C. § 2254 Cases in the United States District Courts provides that district courts may apply any or all those rules to a habeas corpus petition not covered by 1(a).*

**Civil L. R. 10. Form of Pleadings.**

**(a) Paragraphs.** A party, including a party proceeding pro se, must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances.

**(b) Answers and Replies.** An answer or reply must respond in numbered paragraphs corresponding to the paragraphs of the pleading to which it refers.

**(c) Pseudonyms.** A party who commences a civil action using a pseudonym instead of the plaintiff's actual name must indicate in the disclosure statement filed with the Clerk of Court under Civil L. R. 7.1 and served on all other parties that the plaintiff is using a pseudonym. At the same time, the party must file, but not serve, a disclosure statement under seal identifying the plaintiff's actual name and providing the other information required by Civil L. R. 7.1. Instructions for filing

the material under seal are set forth in the Electronic Case Filing Policies and Procedures Manual, which may be found on the official website of the United States District Court for the Eastern District of Wisconsin. Within 21 days of service of the complaint, the party must file and serve a motion seeking permission to continue to proceed using a pseudonym.

**Civil L. R. 12. Motions to Dismiss or Motions for Judgment on the Pleadings in Pro Se Litigation.**

In litigation involving a pro se party where matters outside the pleadings are presented to the Court in conjunction with a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) or a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), the procedure set forth in Civil L. R. 56(a)(1) applies.

**Civil L. R. 15. Amended and Supplemental Pleadings.**

**(a)** Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference.

**(b)** A motion to amend a pleading must state specifically what changes are sought by the proposed amendments. The proposed amended pleading must be filed as an attachment to the motion to amend.

**(c)** If the Court grants the motion to amend, the Clerk of Court must then file the amended pleading. For any party who has appeared in the action and was served with the proposed amended pleading, the time period to serve an answer or other responsive pleading begins when the Court grants the motion to amend. The time period for a party who has not appeared in the action to serve an answer or other responsive pleading begins to run when that party is properly served with the amended pleading.

*Committee Comment: Civil L. R. 15 is intended to end confusion surrounding the filing and service requirements in connection with successful motions for leave to amend pleadings. The proposed amended pleading should be attached to the motion to amend. If leave to amend is granted, the Clerk of Court will file the attached pleading. The time period for filing any response to the amended pleading begins to run from the date the Court grants the motion.*

**Civil L. R. 16. Pretrial Conferences; Scheduling; Management; Alternative Dispute Resolution.**

**(a) Preliminary Pretrial Conferences.**

**(1)** A judge may require the parties to appear to consider the future conduct of the case. In categories of actions and proceedings not exempted under subsection (a)(3) of this rule, the parties must be prepared to discuss the matters enumerated in Fed. R. Civ. P. 16 and Fed. R. Civ. P. 26(f). The parties also should be prepared to state:

**(A)** the nature of the case in 1 or 2 sentences;

**(B)** any contemplated motions;

**(C)** the parties' discovery plan, including the amount of further discovery each party contemplates, the approximate time for completion of discovery, and any disputes regarding discovery;

**(D)** whether the parties anticipate the disclosure or discovery of electronically stored information;

**(E)** whether the parties have reached an agreement for asserting post-production claims of privilege or of protection as trial-preparation material, and whether the parties request the judge to enter an order including the agreement;

**(F)** whether settlement discussions have occurred;

**(G)** the basis for the Court's subject matter jurisdiction;

**(H)** whether the case is included in one of the categories of proceedings exempted from initial disclosures and discovery conference pursuant to Fed. R. Civ. P. 26(a)(1)(B) and 26(f); appeals for review on an administrative record are exempted from (C), (D) and (E) above; and

**(I)** such other matters as may affect further scheduling of the case for final disposition.

**(2)** The judge may enter any orders necessary to aid in further scheduling the action, including dates for further conferences, briefing, schedules for motions, and cutoff dates for completing discovery. The judge also may enter any orders permitted under Fed. R. Civ. P. 16, Fed. R. Civ. P. 26(f), or Civil L. R. 26(e).

**(3)** Unless otherwise ordered by the judge, the categories of actions and proceedings set forth in Fed. R. Civ. P. 26(a)(1)(B)(i)-(ix) are exempted from the scheduling ad planning requirements of Fed. R. Civ. P. 16(b).

**(b) Final Pretrial Conference.** The judge 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 judge. Unless excused by the judge, principal trial counsel for each party must appear at the final pretrial conference.

**(c) Pretrial Report.**

**(1)** Unless otherwise ordered, each party must file a pretrial report at least 14 days before the scheduled start of the trial or, if a final pretrial conference is scheduled, 7 days before the final pretrial 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 pretrial report is not filed. The report must include the following:

**(A)** a short summary, not to exceed 2 pages, of the facts, claims, and defenses;

**(B)** a statement of the issues;

**(C)** the names and addresses of all witnesses expected to testify. Any witness not listed will not be permitted to testify absent a showing of good cause;

**(D)** a statement of the background of all expert witnesses listed;

**(E)** a list of exhibits to be offered at trial sequentially numbered according to General L. R. 26 where practicable;

**(F)** 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 judge finds good cause;

**(G)** an estimate of the time needed to try the case;

**(H)** if scheduled for a jury trial:

**(i)** any proposed voir dire questions;

**(ii)** proposed instructions on substantive issues; and

**(iii)** a proposed verdict form.

**(I)** if scheduled for a bench trial, proposed findings of fact and conclusions of law (*see* Fed. R. Civ. P. 52).

**(2)** In addition to completing a pretrial 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.

**(d) Alternative Dispute Resolution.**

**(1) Participation.** Each judge may conduct an alternative dispute resolution (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 or as a separate conference. If the judge determines that a case is appropriate for ADR, the judge may encourage the parties to participate in ADR before a magistrate judge or an appropriate neutral evaluator.

**(2) Exemptions.** 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.

**(3) 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 is 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.

**(4) Early Neutral Evaluation**. Early Neutral Evaluation (ENE) is a procedure in which the parties and their counsel, early in the case after an opportunity for limited discovery, meet with a neutral evaluator who is knowledgeable in the subject matter. The purpose is to reduce the cost and duration of litigation by providing an early opportunity for the parties to obtain a neutral evaluation of their case and to engage in meaningful settlement negotiations.

**(A) Cases Subject to ENE.** Any civil case may be referred to ENE if all parties agree. A case may be selected for ENE at the preliminary pretrial conference held pursuant to Civil L. R. 16(a), or at any other time by stipulation of the parties.

**(B) ENE Process.** Within 30 days of the case being referred to ENE, the neutral evaluator, an experienced attorney with expertise in the subject matter of the case, hosts a confidential and informal meeting of clients (companies are to be represented by someone knowledgeable about the case and with full settlement authority) and lead counsel at which each side, through counsel, clients or witnesses, presents evidence and arguments supporting its case (without regard to the rules of evidence and without direct or cross-examination of witnesses). The neutral evaluator identifies areas of agreement, clarifies and focuses the issues and encourages the parties to enter into procedural and substantive stipulations. The neutral evaluator in private prepares an evaluation that includes an assessment of the case, the reasoning that supports the assessment, and, where feasible, an estimate of the likelihood of liability and range of damages. Before the neutral evaluator provides the evaluation to the parties, the parties may engage in settlement discussions facilitated by the neutral evaluator. If settlement does not result, the neutral evaluator will present the parties with the evaluation. The neutral evaluator's evaluation is not shared with the trial judge.

**(C) Preservation of Right to Trial.** The neutral evaluator has no power to impose settlement. The confidential evaluation is nonbinding. If no settlement is reached, the case remains on the litigation track.

**(D) The Neutral Evaluator.** The neutral evaluator must have experience in the substantive legal area of the lawsuit. The parties must attempt to agree upon a neutral evaluator. If the parties cannot agree upon a neutral evaluator, the trial judge will appoint an available neutral evaluator. The trial judge may, but is not required to, appoint one of the magistrate judges of this District as the neutral evaluator.

**(E) Compensation of Neutral Evaluators.** Neutral evaluators volunteer their preparation time and the first four hours in an ENE session. After four hours in an ENE session, the neutral evaluator may either (1) continue to volunteer his or her time, or (2) give the parties the option of concluding the session or paying the neutral evaluator for additional time at 60% of the neutral evaluator's standard hourly billing rate, to be split equally among the parties unless they agree to a different apportionment. The ENE session will continue only if all

parties and the neutral evaluator agree. After eight hours in one or more ENE sessions, if all the parties agree that further assistance of the neutral evaluator is desired, the neutral evaluator may charge his or her standard hourly billing rate or such other rate that is acceptable to the neutral evaluator and all parties.

*Committee Comment: Civil L. R. 16(a) has been updated to expand the list of topics the parties must be expected to discuss at the Rule 16 conference. Counsel for the parties are expected to have good faith and meaningful discussions of all of the enumerated topics in advance of the Rule 16 conference.*

*Nothing in Civil L. R. 16(d)(3) prohibits parties from entering into written agreements resolving some or all of the case or entering into and filing procedural or factual stipulations based on suggestions or agreements made in connection with these ADR processes. Any written agreements or stipulations filed with the Court are public records, unless otherwise sealed pursuant to General L. R. 79(d)(4).*

*Civil L. R. 16(d) has been expanded to include an additional form of alternative dispute resolution (ADR)—Early Neutral Evaluation (ENE)—that each judge is to consider at the ADR evaluation conference held during the early stages of the case. As with other forms of ADR, the judge may encourage and even order the parties to participate in ENE. Unlike some other forms of ADR, which typically take place after substantial discovery has been completed, ENE is intended to occur early in the litigation, before the parties have invested substantial time and resources in the case and before substantial attorney fees have been incurred. ENE is intended to be inexpensive and is not a substitute for other forms of ADR. It may be used in addition to other forms of ADR that typically occur later in the case.*

*Under Fed. R. Civ. P. 16(b)(3)(B)(v) effective December 1, 2015, absent contrary Congressional action, practitioners are encouraged to seek a pre-motion conference with the court.*

## IV. PARTIES [Reserved]

## V. DISCLOSURES AND DISCOVERY

**Civil L. R. 26. Duty to Disclose; General Provisions Governing Discovery.**

**(a) Conference of the Parties; Planning for Discovery.** The parties' discovery plan must indicate whether they anticipate any party will be required to disclose or be requested to produce electronically stored information. If so the parties must consider:

**(1)** the reasonable accessibility of electronically stored information and the burdens and expense of discovery of electronically stored information;

**(2)** the format and media for the production of electronically stored information;

**(3)** measures taken to preserve potentially discoverable electronically stored information from alteration or destruction;

**(4)** procedures for asserting post-production claims of privilege or of protection as trial-preparation material; and

**(5)** other issues in connection with the discovery of electronically stored information.

**(b) Disclosure of Expert Testimony.**

**(1)** Unless otherwise stipulated or ordered by the Court, each party must disclose to every other party the substance of all evidence under Fed. R. Evid. 702, 703 or 705 that the party may use at trial, including the evidence of witnesses who have not been retained or specially employed to provide testimony, subject to the following:

**(A)** Each party must provide the written report required under Fed. R. Civ. P. 26(a)(2)(B) for a witness who has been retained or specially employed to provide expert testimony or one whose duties as the party's employee regularly involve giving expert testimony.

**(B)** A person, including a treating physician, who has not been retained or specially employed to provide expert testimony, or whose duties as the party's employee do not regularly involve giving expert testimony, may be used to present evidence under Fed. R. Evid. 702, 703 or 704 only if the party offering the evidence discloses to every other party the information identified in Fed. R. Civ. P. 26(a)(2)(C).

**(2)** Absent a stipulation or a Court order, disclosures required under this rule must be made in accordance with Fed. R. Civ. P. 26(a)(2)(C).

**(c) Completion of Discovery.** Unless the Court orders otherwise, all discovery must be completed 30 days before the date on which trial is scheduled. Completion of discovery means that discovery (including depositions to preserve testimony for trial) must be scheduled to allow depositions to be completed, interrogatories and requests for admissions to be answered, and documents to be produced before the deadline and in accordance with the provisions of the Federal Rules of Civil Procedure. For good cause, the Court may extend the time during which discovery may occur or may reopen discovery.

**(d) Standard Definitions Applicable to All Discovery.**

**(1)** The full text of the definitions set forth in subparagraph (2) is deemed incorporated by reference in all discovery, and may not be varied by litigants, but does not preclude (i) the definition of other terms specific to the particular litigation, (ii) the use of abbreviations, or (iii) a more narrow definition of a term defined in paragraph (2).

**(2) Definitions.** The following definitions apply to all discovery:

**(A) Communication**. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

**(B) Document.** The term "document" is defined to be synonymous in meaning and equal in scope of the usage of this term in Fed. R. Civ. P. 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

**(C) To Identify.**

**(i) With Respect to Persons.** When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

**(ii) With Respect to Documents.** When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

**(D) Person.** The term "person" is defined as any natural person or any business, legal, or governmental entity, or association.

**(e) Confidentiality of Discovery Materials.**

**(1)** All motions and stipulations requesting a protective order must contain sufficient facts demonstrating good cause. Upon a showing of good cause, the Court may enter a protective order regarding confidentiality of all documents produced in the course of discovery, all answers to interrogatories,

all answers to requests for admission, and all deposition testimony. A protective order template is attached as an Appendix to these Local Rules.

**(2)** A party may challenge the designation of confidentiality by motion. The movant must accompany such a motion with the statement required by Civil L. R. 37. The party prevailing on any such motion is entitled to recover as motion costs its actual attorney fees and costs attributable to the motion.

**(3)** At the conclusion of the litigation, all material not received in evidence and treated as confidential under this Rule must be returned to the originating party. If the parties so stipulated, the material may be destroyed.

**(f) Filing Papers Under Seal.** A party seeking to file a paper under seal must follow the procedure set forth in General L. R. 79(d). This includes the filing of information covered by a protective order.

Committee Comment: *The provisions of Civil L. R. 26 do not apply to actions for review on an administrative record.*

*The Committee members disagreed on the question of whether Civil L. R. 26(b)(1)(A) should require a written report from a treating physician who regularly gives expert testimony for the physician's employer in other contexts.*

*The disclosure obligations relating to witnesses who may be used to present evidence under Fed. R. Evid. 702, 703 or 704, but have not been retained or specially employed to provide expert testimony, or whose duties as the party's employee do not regularly involve giving expert testimony, should be discussed at the Rule 16 conference.*

*Practitioners should review* Banister v. Burton, *636 F.3d 828 (7th Cir. 2011) and related cases regarding treating physicians.*

*The designation of a paper as confidential under the terms of a protective order is not sufficient to establish the basis for filing that document under seal. The party seeking to withhold the document from the public record must file a motion to seal in accordance with General L. R. 79(d).*

**Civil L. R. 33. Interrogatories.**

**(a) Limitation on Interrogatories.**

**(1)** Any party may serve upon any other party no more than 25 written interrogatories. The 25 permissible interrogatories may not be expanded by the creative use of subparts.

**(2)** For the purpose of computing the number of interrogatories served interrogatories inquiring about the names and locations of persons having knowledge of discoverable information or about the existence, location, or custodian of documents or physical evidence do not count toward the 25 interrogatory limit.

**(3)** More than 25 interrogatories may be served on a party only if that party agrees in writing or the Court so orders. A party seeking to serve more than 25 interrogatories may move the Court for permission only after seeking the agreement of the party on whom the additional interrogatories would be served. If a party desires to serve additional interrogatories, the party must promptly consult with the party to whom the additional interrogatories would be propounded and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. The stipulation allowing additional interrogatories to be served should not be filed with the Court except in connection with a motion to compel answers. If a stipulation cannot be reached, the party seeking to serve additional interrogatories may move the Court for permission to serve additional interrogatories.

**(4)** The Court will not compel a party to answer any interrogatories served in violation of this rule

**(b) Answering Interrogatories.** An objection or an answer to an interrogatory must reproduce the interrogatory to which it refers.

**Civil L. R. 34. Producing Documents.**

A response or an objection to a request for production of documents must reproduce the request to which it refers.

**Civil L. R. 36. Requests for Admission.**

**(a) Limitation on Requests for Admission.**

(1) Any party may serve upon any other party no more than 50 written requests for admission. The 50 permissible requests for admission may not be expanded by the creative use of subparts.

(2) For the purpose of computing the number of requests for admission served, requests for admission relating to the genuineness of any described documents do not count toward the 50 request for admission limit.

(3) More than 50 requests for admission may be served on a party only if that party agrees in writing or the Court so orders. A party seeking to serve more than 50 requests for admission may move the Court for permission only

after seeking the agreement of the party on whom the additional requests for admission would be served. If a party desires to serve additional requests for admission, the party must promptly consult with the party to whom the additional requests for admission would be propounded and attempt to reach written stipulation as to a reasonable number of additional requests for admission. The stipulation allowing additional requests for admission to be served should not be filed with the Court except in connection with a motion to compel answers. If a stipulation cannot be reached, the party seeking to serve additional requests for admission may move the Court for permission to serve additional requests for admission.

(4) The Court will not compel a party to answer any requests for admission served in violation of this rule.

**(b) Answering Requests for Admission.** A response or an objection to a request for admission must reproduce the request to which it refers.

**Civil L. R. 37. Discovery Motions.**

All motions to compel disclosure or discovery pursuant to Fed. R. Civ. P. 26 through 37 must be accompanied by a written certification by the movant that, after the movant in good faith has conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action, the parties are unable to reach an accord. The statement must recite the date and time of the conference or conferences and the names of all parties participating in the conference or conferences.

***Committee Comment:*** *Under Fed. R. Civ. P. 16(b)(3)(B)(v) effective December 1, 2015, absent contrary Congressional action, practitioners are encouraged to seek a pre-motion conference with the Court.*

## VI. TRIALS

**Civil L. R. 41. Dismissal of Actions.**

**(a) Dismissal Where No Service of Process.** Where the plaintiff has not effected service of process within the time required by Fed. R. Civ. P. 4(m), and the defendant has not waived service under Rule 4(d), after 21 days' notice to the attorney of record for the plaintiff, or the plaintiff if pro se, the Court may enter an order dismissing the action without prejudice.

**(b) Dismissal Where No Answer or Other Pleading Filed.** In all cases in which a defendant has failed to file an answer or otherwise defend within 6 months from the filing of the complaint and the plaintiff has not moved for a default judgment, the Court may on its own motion, after 21 days' notice to the attorney of

record for the plaintiff, or to the plaintiff if pro se, enter an order dismissing the action for lack of prosecution. Such dismissal must be without prejudice.

**(c) Dismissal for Lack of Diligence.** Whenever it appears to the Court that the plaintiff is not diligently prosecuting the action and Civil L. R. 41(a) or (b) does not apply, the Court may enter an order of dismissal with or without prejudice.

**(d) Dismissal of Frivolous Action or Pleading.** Whenever it appears to the Court that the plaintiff's complaint, the defendant's answer (including counterclaims), or any other pleading filed by a party is frivolous, without merit, or interposed primarily for any improper purpose, the Court may dismiss or strike the pleading, or any portion of the pleading, without prejudice after 21 days' written notice to the parties.

**(e) Improper Refiling of Actions.** No party or attorney may dismiss and refile an action for the purpose of obtaining a different judge.

*Committee Comment: Civil L. R. 41 includes former Civil L. R. 41.1 - 41.4. Those provisions have been restyled. Civil L. R. 41(a), former Civil L. R. 41.1, now explicitly incorporates the good cause standard of Fed. R. Civ. P. 4(m).*

*Civil L. R. 41(e) is new. It prohibits the filing of an action, followed by the dismissal and the refiling of that action in the same district for the purpose of obtaining a different judge. The practice has been reported in at least one district in this circuit. The rule does not prohibit the dismissal and the refiling of an action for other reasons.*

**Civil L. R. 42. Consolidation.**

**(a)** When a party moves to consolidate two or more cases, whether for a limited purpose or for all future proceedings, the motion to consolidate and supporting materials must be captioned with the case names and numbers of all cases sought to be consolidated. Service and filing must be effected in all of the cases sought to be consolidated. The motion must be decided by the judge to whom the lowest numbered case is assigned. If the motion is granted, the judge to whom the lowest numbered case is assigned will handle all future proceedings covered by the consolidation order.

**(b)** After two or more cases are consolidated, all papers relevant to the purposes for which consolidation was granted will be filed and docketed only in the lowest numbered of the consolidated cases. A notation to check the docket sheet for the lowest numbered case will be entered on the docket sheet(s) for the higher numbered case(s).

**(c)** If cases are consolidated for some but not all purposes, documents relating to a particular case will be docketed on the docket sheet for that case and be filed only in that case file.

## VII. JUDGMENT

**Civil L. R. 54. Costs.**

**(a) Bill of Costs.**

**(1)** Unless otherwise provided by this Rule, no later than 14 days after the entry of the judgment, the party in whose favor a judgment for costs is awarded or allowed by law and who claims the party's costs must file the party's bill of costs and serve the bill of costs on all opposing parties. The Clerk of Court's office has forms available for this process or the party may use the party's own forms. If a timely Fed. R. Civ. P. 59 motion for a new trial or amendment of the judgment has been filed, the time for filing and serving the bill of costs commences upon the entry of the order resolving the motion.

**(2)** When an appeal is taken, the parties may file a stipulation to delay the filing of the bill of costs until after the appeal is decided. Absent a filed stipulation or Court order, the appeal will not delay the taxing of costs.

**(3)** Unless otherwise determined by the Clerk of Court, the non-claiming party must serve any objections, accompanied by a short memorandum, within 14 days of the service of the bill of costs. The party claiming costs must serve any response within 7 days of service of the objections. The non-claiming party must serve any reply within 7 days of the service of the response. Costs will be taxed by the Clerk of Court on the basis of the written memoranda.

**(b) Items Taxable as Costs.** The following is the practice of the Court concerning items of costs not otherwise allowed or prohibited by statute:

**(1) Fees of the Court Reporter for All of or Any Part of the Transcript Necessarily Obtained for Use in the Case.** The costs of the original transcript, if paid by the taxing party, and the cost of the taxing party's copy are taxable. The costs of a transcript of other court proceedings are taxable if the transcript was necessary for appeal, requested by the Court, or prepared pursuant to stipulation of the parties and necessarily obtained for use in the case. In the case of a daily transcript, the parties must follow Civil L. R. 54(b)(5).

**(2) Deposition Costs.** The court reporter's charge for the original of a deposition, if paid by the taxing party, and the taxing party's copy are taxable if the deposition was reasonably necessary for use in the case, whether or not

it was used at trial. Reasonable expenses of the reporter, the presiding notary or other official and postage costs for sending the original deposition to the Clerk of Court for filing are taxable. Counsel's fees and expenses in attending and taking the deposition are not taxable. Per diem attendance fees for a witness at a deposition are taxable as per 28 U.S.C. § 1821. If a translator is needed to take the deposition, a reasonable translator fee is taxable.

**(3) Witness Fees, Mileage, and Subsistence.** The rate for witness fees, mileage, and subsistence are fixed by statute. (See 28 U.S.C. § 1821 and Civil L. R. 54(b)(5).) Such fees are taxable whether or not the witness attends voluntarily or is under subpoena, provided the witness testified at the trial and received a witness fee. No party shall receive witness fees for testifying in his or her own behalf. Fees for expert witnesses are not taxable in a greater amount than that statutorily allowable in the case of ordinary witnesses, except in exceptional circumstances by order of the Court.

**(4) Copying Costs.** Taxable costs include the cost of copying papers (including, but not limited to, maps, charts, photographs, summaries, computations, and statistical comparisons) that are reasonably necessary for use in the case (*see* 28 U.S.C. § 1920(4)).

**(5) Other Costs.** The Clerk of Courts will not tax the cost of demonstrative evidence created for use in the case, daily transcripts, witness fees for mileage for trial witnesses coming from outside of the District in excess of 100 miles from the place of trial, and expert witness fees in excess of the statutory allowance, unless the party requesting taxation obtained Court approval before the costs were incurred, and in the case of demonstrative evidence, before the evidence was used at trial.

**(c) Review of Costs.** A party may move for review of the Clerk of Court's decision taxing costs pursuant to Fed. R. Civ. P. 54(d) within 7 days from taxation. The motion, supporting papers, and scheduling must conform to Civil L. R. 7.

*Committee Comment: The rules governing bills of costs are liberally construed to allow permitted costs. Civil L. R. 54 does not list every allowable cost and should be interpreted to accommodate ever-changing technology.*

**Civil L. R. 56. Summary Judgment.**

**(a) Pro Se Litigation.**

**(1)** If a party is proceeding pro se in civil litigation and the opposing party files a motion for summary judgment, counsel for the movant must comply with the following procedure:

**(A)** The motion must include a short and plain statement that any factual assertion in the movant's affidavit, declaration, or other admissible documentary evidence will be accepted by the Court as being true unless the party unrepresented by counsel submits the party's own affidavit, declaration, or other admissible documentary evidence contradicting the factual assertion.

**(B)** In addition to the statement required by Civil L. R. 56(a)(1)(A), the text to Fed. R. Civ. P. 56 (c),(d), and (e), Civil L. R. 56(a), Civil L. R. 56(b), and Civil L. R. 7 must be part of the motion.

**(2)** This procedure also applies 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 pleadings are presented to the Court.

**(b) Additional Summary Judgment Procedures.** Motions for summary judgment must comply with Fed. R. Civ. P. 56 and Civil L. R. 7. In addition, with the exception of Social Security reviews, other actions for review of administrative agency decisions, and other actions in which a judge relieves the parties of this Rule's requirements, the following must be met:

**(1) Moving Party's Principal Materials in Support of Motion**. With each motion for summary judgment, the moving party must file:

**(A)** a memorandum of law;

**(B)** a statement setting forth any material facts to which all parties have stipulated;

**(C)** a statement of proposed material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to a judgment as a matter of law;

(i) the statement shall consist of short numbered paragraphs, each containing a single material fact, including within each paragraph specific references to the affidavits, declarations, parts of the record, and other supporting materials relied upon to support the fact described in that paragraph;

(ii) a moving party may not file more than 150 separately numbered statements of fact;

(iii) failure to submit such a statement constitutes grounds for denial of the motion; and

**(D)** any affidavits, declarations, and other materials referred to in Fed. R. Civ. P. 56(c).

**(2) Opposing Party's Materials in Opposition**. Each party opposing a motion for summary judgment must file within 30 days of service of the motion and the materials required by subsection (b)(1), above:

**(A)** a memorandum of law;

**(B)** a concise response to the moving party's statement of facts that must contain:

**(i)** a reproduction of each numbered paragraph in the moving party's statement of facts followed by a response to each paragraph, including, in the case of any disagreement, specific references to the affidavits, declarations, parts of the record, and other supporting materials relied upon, and

**(ii)** a statement, consisting of short numbered paragraphs, of any additional facts that require the denial of summary judgment, including references to the affidavits, declarations, parts of the record, and other supporting materials relied upon to support the facts described in that paragraph. A non-moving party may not file more than 100 separately-numbered statements of additional facts. Each separately-numbered paragraph shall be limited to one material fact; and

**(C)** any opposing affidavits, declarations, and other materials referred to in Fed. R. Civ. P. 56(c).

**(3) Moving Party's Materials in Reply.** A moving party may file within 14 days of the service of the opposing party's materials under subsection (b)(2), above:

**(A)** a reply memorandum;

**(B)** a reply to any additional facts submitted by the opposing party pursuant to subsection (b)(2) above, in the form prescribed in section (b)(2)(B)(i) above; and

**(C)** any affidavits, declarations, and other materials referred to in Fed. R. Civ. P. 56(c) submitted in reply.

**(4) Effect of Uncontroverted Statements of Fact.** The Court will deem uncontroverted statements of material fact admitted solely for the purpose of deciding summary judgment.

**(5) Stipulated Facts.** Parties are encouraged to stipulate to facts. Facts so stipulated will not count against any party's allotment of proposed facts and do not require references to evidentiary support.

**(6) Citations to Facts in Memoranda.** Assertions of fact in the parties' supporting memoranda must refer to the corresponding numbered paragraph of the statement of facts, statement of additional facts, or statement of stipulated facts.

**(7) Prior Leave of Court Required to Increase the Number of Statements of Fact or Statements of Additional Fact.** A party may not file any proposed statements of material fact or statements of additional fact in excess of the limit set forth in this rule unless the Court previously has granted leave upon a showing that an increase is warranted.

**(8) Length of Memoranda.**

**(A)** A principal memorandum in support of, or opposition to, summary judgment must not exceed 30 pages and a reply memorandum must not exceed 15 pages (excluding any caption, cover page, table of contents, table of authorities, and signature block).

**(B)** No memorandum exceeding the page limitations may be filed unless the Court previously has granted leave to file an oversized memorandum.

**(9) Sanction for Noncompliance.** Failure to comply with the requirements in this rule may result in sanctions up to and including the Court denying or granting the motion. Sanctions remain available under General L. R. 83(f).

**(10) Collateral Motions.** Collateral motions, such as motions to strike, are disfavored.

Committee Comment: *New Civil L. R. 56 replaces former Civil L. R. 56.1 and 56.2. The additional summary judgment procedures have been modified to limit the number of proposed statements of material fact. Moving parties are limited to 150 separately numbered proposed statements of material fact, and non-moving parties are limited to 100 separately numbered proposed statements of additional material facts. Stipulated statements of facts are not counted against any party's allotment and do not require evidentiary support. The rule expressly provides that the Court may*

*increase the allowed number of proposed material facts upon a showing that an increase is warranted.*

*Civil L. R. 56(b)(2)(B) anticipates that the parties will respond to each statement of proposed material fact by either: (i) admitting the fact; (ii) denying the fact; or (iii) stating an objection. The preferred practice is to include arguments in support of objections in the memoranda of law and not in the responses to the proposed statements of material fact. The response should not simply incorporate a response to an earlier numbered paragraph.*

*Civil L. R. 56(b)(10) clarifies that collateral motions in the summary judgment process, including motions to strike, are disfavored. Whenever possible all arguments relating to the other party's submissions should be contained in memoranda.*

*Civil L. R. 56, like Civil L. R. 7, also makes clear that declarations made in compliance with 28 U.S.C. § 1746 may be used in the summary judgment process to the same effect as affidavits.*

**Civil L. R. 62. Supersedeas Bonds.** (deleted September 3, 2019)

## VIII. PROVISIONAL AND FINAL REMEDIES

### Civil L. R. 67. Security; Deposit Into Court; Withdrawal of Monies; Registry Fee.

**(a) Required Security.** In addition to any security required by law, the Court, at any time upon good cause shown, may order that security for costs be given by any party.

**(b) Forms of Security.** Security for costs must consist of a cash deposit or a bond, with surety, in the sum of $250.00 unless otherwise ordered. The security must be conditioned to secure the payment of costs that the posting party may ultimately be ordered to pay to a party. A corporation authorized by the Secretary of the Treasury of the United States must be accepted as surety on bonds. A party may raise objections to the form, amount, or sufficiency of security for costs.

**(c) Deposit of Monies.** Unless the Court designates a trustee other than the Clerk of Court or orders other procedures, the following procedure for the deposit of monies applies:

> **(1)** Upon motion or stipulation and an order of the Court, all monies paid into the Court must be deposited in the United States Treasury. However, the Court may direct the Clerk of Court to place the monies in an interest-bearing account in the Court Registry Investment System ("CRIS"). Funds deposited with CRIS are considered to be on deposit in the United States Treasury and

thus are not subject to collateralization and insurance requirements applicable to funds on deposit with local financial institutions.

**(2)** The monies must be invested in the name of the Clerk of Court "under order of the United States District Court for the Eastern District of Wisconsin, Case No. _____."

**(3)** The Clerk of Court must file a certified copy of the Court order for the deposit of the monies with the institution where the monies are invested.

**(d) Withdrawal of Monies.** The Clerk of Court may only withdraw deposited monies when directed by a court order.

**(e) Registry Fee.** The CRIS Administrator will deduct a registry fee from income earned on registry monies invested in CRIS. The fee will not exceed that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office in accordance with the schedule published periodically by the Director in the Federal Register. The fee is withdrawn whenever income earned becomes available and is be deposited in the United States Treasury, without further order of the Court. This assessment applies to all investments of registry monies.

*Committee Comment: Civil L. R. 67 includes former Civil L. R. 67.1-67.4. The rule has been substantially re-written and unnecessary provisions have been deleted.*

*Two sentences were deleted from former Civil L. R. 67.2 because the Clerk of Court's Office informed the Committee that the provision authorizing persons to serve as surety in civil actions has not been used. The deleted sentences are: "An individual resident of the District who owns real or personal property within the District, the unencumbered value of which is equal to the amount of the bond, may be accepted by the Court as surety upon a bond. No member of the bar or officer of this Court must be accepted as surety upon any bond or similar undertaking." Former Civil L. R. 67.2 is now designated as Civil L. R. 67(b).*

*Civil L. R. 67(c) has been redrafted to replace former Civil L. R. 67.3(a) with a provision that establishes the procedure of former Civil L. R. 67.3(b) as the default procedure. The change was made because the Clerk of Court's Office informed the Committee that the alternative trustee provision has not been used. However, the introductory clause of Civil L. R. 67(c) continues to provide for designation of an alternative trustee or alternative procedures, in the event that option would become necessary or more appropriate in a particular circumstance.*

*Civil L. R. 67(c) deletes the references to the Federal Savings and Loan Insurance Corporation Act, repealed on August 9, 1989, and to Federal Savings and Loan Associations.*

*The provision of former Civil L. R. 67.3(a)(3) for the deposit of monies in certificates of deposit has been deleted. To avoid penalties for early withdrawals, the Clerk of Court does not invest monies in certificates of deposit.*

*Civil L. R. 67(e) is new. It has been added based on consideration of 11 GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Chap. VII: Financial Management, 2.7.6 (Administrative Office of Courts Dec. 1999), encouraging courts to adopt local rules authorizing the Clerk of Court to assess the registry fee and deduct it from the "income earnings" without the need for a subsequent court direction in each individual case, because of the statutory requirement that no money may be withdrawn from the registry without a Court order). The language of Civil L. R. 67(e) is based on the sample local rule in Exhibit I-5 in the GUIDE.*

*In 2013, the Clerk's Office for the Eastern District of Wisconsin enrolled in the Court Registry Investment System "CRIS," administered by the Administrative Office of the United States Courts. The changes to Civil L. R. 67 are made to effectuate participation in the CRIS program. Under this program, the Clerk's Office will deposit registry funds into the United States Treasury in accordance with 13 GUIDE TO JUDICIARY POLICY Chap. 3: Receipting & Collections (Administrative Office of the Courts Dec. 2014)..*

## IX. SPECIAL PROCEEDINGS [Reserved]

## X. DISTRICT COURTS AND CLERKS: CONDUCTING BUSINESS; ISSUING ORDERS

**Civil L. R. 77. Clerk's Authority.**

Pursuant to the provisions of Fed. R. Civ. P. 77(c)(2), the Clerk of Court or deputy clerk may enter the following orders and judgments without further direction by the Court, but the Clerk of Court's action may be suspended, altered or rescinded by the Court for cause shown:

**(a)** Consent orders for the substitution of attorneys;

**(b)** Except as otherwise provided by law, all bonds, undertakings and stipulations of corporate sureties holding certificates of authority from the Secretary of the Treasury, whether the amount of such bonds or undertakings has been fixed by a judge or by a Court rule or statute;

**(c)** Consent orders dismissing an action, except in cases to which Fed. R. Civ. P. 23(e) and Fed. R. Civ. P. 66 apply;

**(d)** Orders canceling liability on bonds other than orders disbursing funds from the Clerk's Registry Account; and

**(e)** Consent orders regarding extensions of time for filing responses, supporting documents and briefs filed pursuant to Civil L. R. 7 for not more than 14 days.

## XI. GENERAL PROVISIONS [Reserved]

## XII. ADMIRALTY OR MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS

### Civil L. R. 100. Scope of Rules; General Provisions.

**(a) Scope of Rules.** Civil L. R. 100 applies to any claim governed by the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure.

**(b) Pleadings and Parties.**

**(1)** Every complaint filed under this Local Rule as an action under the Federal Rules of Civil Procedure must state "In Admiralty" following the designation of the Court, in addition to the statement, if any, contained in the body of the complaint, pursuant to such rule. If the complaint contains a claim at law, it must state "at Law and in Admiralty."

**(2)** Every complaint in Supplemental Rule B and C actions must state the amount of the debt, damages, or salvage for which the action is brought. This amount must be included in the process, together with a description of the nature of any unliquidated items claimed, such as attorney's fees. The defendant or claimant may give a bond or stipulation in such amount, plus interest and costs including an amount stipulated to by the parties or fixed by the Court for an unliquidated item, unless a federal statute, procedure or Court of applicable state statute requires some other amount.

**(3)** In cases of salvage, the complaint must state, to the extent known, or estimate the value of the hull, cargo, freight and other property salvors, and that the suit is instituted on their behalf and on behalf of all other persons interested or associated with them. An attachment to the complaint must also list all known salvors, all persons entitled to share in any salvage award, and a statement as to any agreement of consortship available and known to exist among them or any of them, together with a copy of any such agreement.

**(c) Verification of Pleadings, Answers to Interrogatories and Request for Admissions.** Complaints in admiralty must be verified when Supplemental Rule B, C, D, or G so requires. Verification must be made by a party or by an officer of a corporate party. If no party or corporate officer is within the District or readily available, verification of the complaint, claim, answer to interrogatories or request

for admission may be made by an agent, attorney-in-fact or attorney of record, who must state the source of his or her knowledge, declare that the document affirmed is true to the best of his or her knowledge, state the reason why verification is not made by a party or a corporate officer, and state that he or she is authorized so to act. Any interested party may move the Court, with or without a request for stay, for the personal oath of a party or all parties, or that of a corporate officer. If required by the Court, such verification must be procured by commission or as otherwise ordered.

**(d) Suits In Forma Pauperis.** Unless allowed by the Court, no process in rem must issue in forma pauperis suits, except upon proof of 24 hours' notice of the filing of the complaint to the owner of the res or the owner's agent.

**(e) Security for Costs.** No complaint in Supplemental Rule B, C, D or F actions must be filed, except by the United States or by Court order, unless the party offering the same filed Security for Cost as prescribed in Civil L. R. 67(b).

**(f) Summons to Show Cause Why Funds May Not Be Paid Into Court.** A summons issued pursuant to Supplemental Rule C(3), dealing with freight or the proceeds of property sold or other intangible property, must direct the person having control of the funds, at a date fixed thereby which must be at least 14 days after service thereof (unless the Court, for good cause shown, shortens the period), to show cause why the funds may not be paid into Court to abide the judgment. Funds paid into Court are subject to the provisions of Civil L. R. 67(d).

**(g) Publication Where Property Arrested.**

**(1)** Publication required by Supplemental Rule C(4) must be made once in a newspaper of general circulation within the District in which the arrest is made, designated by order of the Court.

**(2)** If the property arrested is not released within 14 days after execution of process, publication must be made by the plaintiff or intervenor within 21 days after execution of process, unless otherwise ordered by the Court.

**(h) Publication of Notice of Sale.** Notice of sale of property in suits in rem and quasi in rem, except in suits on behalf of the United States where other notice is prescribed by statute, must be caused by the United States Marshal to be published in the newspaper of largest general circulation within the District in which the seizure was made. Such publication must occur at least twice: the first at least 7 calendar days prior to the date of the sale and the second at least 3 calendar days prior to the date of sale, unless otherwise ordered by the Court.

**Civil L. R. 101. Publication Where Property Is Seized by Forfeiture.**

Where publication is required by Supplemental Rule G(4), the government is authorized to use any of the means of publication set forth in Supplemental Rule G(4)(a)(iv), including posting notice on an official internet government forfeiture site for the time period prescribed in Supplemental Rule G(4).

## PART C: CRIMINAL RULES

## I. SCOPE OF RULES

**Criminal L. R. 1. Scope of Rules.**

In this District, the Criminal Rules set forth in Part C govern criminal and petty offense proceedings as defined in 18 U.S.C. § 19.

## II. PRELIMINARY PROCEEDINGS

**Criminal L.R. 5. Reminder of Brady Obligations.**

In accordance with the Federal Rules of Criminal Procedure 5(f), the judge in each criminal case in this district must issue an order reminding the United States of its disclosure obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, and of the possible consequences of violating such an order The Seventh Circuit Judicial Council has adopted a model order for possible use by courts for this purpose. The model order reads as follows:

*Pursuant to Rule 5(f) of the Federal Rules of Criminal Procedure, the court, with both the prosecutor and defense counsel present, confirms the government's obligation to disclose favorable evidence to the accused under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, and orders it to do so. Favorable evidence under Brady need have only some weight and includes both exculpatory and impeaching evidence. Failure to produce such evidence in a timely manner may result in sanctions, including, but not limited to, adverse jury instructions, dismissal of charges, and contempt proceedings.*

## III. THE GRAND JURY

**Criminal L. R. 6. Grand Jury Materials.**

**(a) Restrictions on Disclosure of Grand Jury Materials.** Grand jury materials disclosed to the defense under Fed. R. Crim. P. 6(e)(3)(E) must not be disseminated in any way, other than in open court, by the defendant or by defense counsel except to the defendant himself or herself, to defense counsel and to those

lawyers, support staff, or investigators assisting counsel directly, or to a witness to the extent that the materials consist of the witness' own prior testimony. Use of grand jury materials disclosed under this Rule must be limited to the proceeding for which they were disclosed. This Rule does not prevent the government from seeking further restrictions by Court order on the use or dissemination of such materials.

**(b) Dissemination or Use of Grand Jury Materials.** Any person who obtains grand jury materials pursuant to Criminal L. R. 6(a) is prohibited from otherwise disseminating or using the materials except by further order of the Court.

## IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

### Criminal L. R. 12. Pretrial Conferences; Motions; Evidentiary Hearings; Expanded Discovery Policy.

**(a) Pretrial Conferences.**

**(1)** In any case that appears unusually complex, by reason of the number of parties, the novelty of legal or factual issues presented, the volume of discovery materials, or other factors peculiar to that case, the government must notify the Clerk of Court when the indictment or information is filed that the case may be appropriate for a pretrial scheduling conference pursuant to Fed. R. Crim. P. 17.1. If the government has not suggested a pretrial scheduling conference, a defendant may do so upon learning that the case may be unusually complex.

**(2)** A pretrial scheduling conference pursuant to Criminal L. R. 12(a)(1) and Fed. R. Crim. P. 17.1 may be set by the judge conducting the arraignment, by the judge assigned to pretrial proceedings, or by the judge assigned to preside over the trial of the case. At a pretrial scheduling conference, the Court may inquire as to the parties' discussions pursuant to Criminal L. R. 16.1 and may set deadlines for filing pretrial motions, briefing, discovery and disclosure by all parties, hearings, trial, or any other dates that will further the ends of justice.

**(3)** In cases in which there will be no pretrial scheduling conference under Criminal L. R. 12(a)(1), if the government is following its Expanded Discovery Policy, the government must make available to the defense all information known to the government or in the government's possession falling within the scope of Criminal L. R. 16(a)(2). If the government is not following its Expanded Discovery Policy, the government must make available to the defense all information within the scope of Fed. R. Crim. P. 16(a)(1) (other than material falling within Fed. R. Crim. P. 16(a)(1)(G)). In all cases for which there will be no pretrial scheduling conference, the government must undertake its best efforts to make as much discovery available as possible at

arraignment or within 5 days after arraignment. The government has a continuing duty to disclose discoverable material as it becomes available. If the defense accepts disclosure from the government under this rule, the defense is bound to the provisions of Fed. R. Crim. P. 16(b).

**(b) Motions.**

**(1)** Absent a court order, all motions raising any issue described in Fed. R. Crim. P. 12(b)(3) must be filed within 20 days after arraignment on an indictment. Every motion must state the statute or rule pursuant to which it is made and must be accompanied by a supporting memorandum and, when necessary, affidavits or other documents; or a certificate of counsel stating that no brief or other supporting documents will be filed.

**(2) Non-Movant's Response**. Absent a court order, the non-movant may have 10 days from the date the motion is due to file a memorandum or other materials in response to any such motion. If the non-movant does not intend to file a response, the non-movant must file a statement that so indicates.

**(3) Movant's Reply.** Absent a court order, the movant may have 5 days from the date the response is due to file any reply.

**(4)** If any motion seeks an evidentiary hearing, Criminal L. R. 12(c) applies and the movant is not required to file a supporting memorandum of law with the motion. If the movant does not seek an evidentiary hearing, any supporting memorandum of law must be filed by the movant with the motion.

**(c) Evidentiary Hearing.** If a motion seeks an evidentiary hearing, the movant must provide in the motion a short, plain statement of the principal legal issue or issues at stake and specific grounds for relief in the motion and, after a conference with the non-movant, provide a description of the material disputed facts that the movant claims require an evidentiary hearing. The movant also must provide an estimate of the in-court time necessary for the hearing. The non-movant may file a response opposing an evidentiary hearing within 3 days after filing of a movant's motion seeking an evidentiary hearing. The non-movant's response must include a short, plain statement of why that party believes that an evidentiary hearing is unnecessary.

**Criminal L. R. 12.4. Disclosure Statement.**

**(a) Required information.** To enable the Court to determine whether recusal is necessary or appropriate, an attorney for a nongovernmental corporate party or an amicus curiae must file a Disclosure Statement that:

**(1)** states the full name of every party or amicus the attorney represents in the action;

**(2)** identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; and

**(3)** states the names of all law firms whose attorneys will appear, or are expected to appear, for the party in this Court.

**(b) Filing and Serving.** A nongovernmental corporate party must:

**(1)** file the Disclosure Statement with its first appearance; and

**(2)** promptly file a supplemental statement if any required information changes.

**Criminal L. R. 13. Reassignment of Related Criminal Cases.**

**(a) Conditions for Reassignment**. A criminal case may be reassigned to another judge if it is found to be related to a lower numbered criminal case assigned to that judge and each of the following criteria is met:

**(1)** all defendants in each of the cases are the same, or, if the defendants are not all the same, the cases are based upon the same set of facts, events or offenses;

**(2)** both cases are pending in this District;

**(3)** the handling of both cases by the same judge is likely to result in the overall saving of judicial resources; and

**(4)** neither case has progressed to the point where reassigning a case would likely delay substantially the proceedings in either case, or the Court finds that the assignment of the cases to the same judge would promote consistency in resolution of the cases or otherwise be in the interest of justice.

**(b) Motion to Reassign.** A motion for reassignment based on relatedness may be filed by any party to a case. The motion must be filed with, and will be decided by the judge to whom the lowest numbered case of the claimed related set is assigned for trial or other final disposition. If the set includes both felony cases, and one or more misdemeanors assigned to a magistrate judge, then the motion must be filed with, and will be decided by the district judge assigned to the lowest numbered felony case in the set. Copies of the motion must be served on all parties and on the judges for all of the affected cases. The motion must:

**(1)** set forth the points of commonality of the cases in sufficient detail to indicate that the cases are related within the meaning of subsection (a), and

**(2)** indicate the extent to which the conditions required by subsection (a) will be met if the cases are found to be related.

Any objection to the motion must be filed within 7 days of the filing of the motion.

**(c) Order**. The judge must enter an order finding whether or not the cases are related, and, if they are, whether the higher numbered case or cases should be reassigned to that judge. Where the judge finds that reassignment should occur, the Clerk of Court must reassign the higher numbered case or cases to the judge deciding the motion and to whom the lowest numbered case is assigned. A copy of any finding on relatedness and whether or not reassignment should take place must be sent to each of the judges before whom any of the higher numbered cases are pending.

**(d) Scope of Reassignment Order.** An order under this rule reassigning cases as related does not constitute a joinder order under Fed. R. Crim. P. 13.

**Criminal L. R. 16. Discovery and Inspection.**

**(a) Expanded Discovery Policy.**

**(1)** At arraignment, the government must state on the record to the presiding judge whether it is following its Expanded Discovery Policy as defined in Criminal L. R. 16(a)(2). If the government states that it is following the Expanded Discovery Policy and the defense accepts such discovery materials, then the defense's discovery obligations under Fed. R. Crim. P. 16(b) arise without further government motion or request and both parties must be treated for all purposes in the trial court and on appeal as if each had filed timely written motions requesting all materials required to be produced under Fed. R. Crim. P. 16(a)(1)(A), (B), (C), (D), (E), (F), and (G), and 16(b)(1)(A), (B), and (C), and invoking Fed. R. Crim. P. 16(c). If the government is following the Expanded Discovery Policy, the government need not respond to and the Court must not hear any motion for discovery under Fed. R. Crim. P. 16(a) or 16(b) unless the motion complies with subsection (b) of this rule.

**(2)** As defined by the United States Attorney's Office, the "Expanded Discovery Policy" means disclosure without defense motion of all information and materials listed in Fed. R. Crim. P. 16(a)(1)(A), (B), (C), (D), and (F); upon defense request, material listed in Fed. R. Crim. P. 16(a)(1)(E); material disclosable under 18 U.S.C. § 3500, other than grand jury transcripts; reports of interviews with witnesses the government intends to call in its case-in-chief relating to the subject matter of the testimony of the witness; relevant substantive investigative reports; and all exculpatory material. The

government retains the authority to redact from open file material anything (i) that is not exculpatory and (ii) that the government reasonably believes is not relevant to the prosecution, or would jeopardize the safety of a person other than the defendant, or would jeopardize an ongoing criminal investigation. The defense retains the right to challenge such redactions by motion to the Court.

**(3)** Unless these items contain exculpatory material, "expanded discovery materials" do not ordinarily include material under Fed. R. Crim. P. 16(a)(1)(G), government attorney work product and opinions, materials subject to a claim of privilege, material identifying confidential informants, any Special Agent's Report (SAR) or similar investigative summary, reports of interviews with witnesses who will not be called in the government's case-in-chief, rebuttal evidence, documents and tangible objects that will not be introduced in the government's case-in-chief, rough notes used to construct formal written reports, and transcripts of the grand jury testimony of witnesses who will be called in the government's case-in-chief.

**(4)** Unless otherwise ordered by the Court, when the government is following the Expanded Discovery Policy under Criminal L. R. 16(a)(1) and 16(a)(2), materials described in Fed. R. Crim. P. 16(a)(1)(G) must be disclosed to the defense not later than 15 days before the commencement of the trial, unless the government shows good cause for later disclosure. Grand jury transcripts of any and all witnesses the government intends to call at trial will be made available to the defense no later than 1 business day before the commencement of the trial. The defense must disclose materials described in Fed. R. Crim. P. 16(b)(1)(C) as soon as reasonably practicable after the government's disclosure under Fed. R. Crim. P. 16(a)(1)(G), and in any event not later than 5 business days before trial, unless the defense shows good cause for later disclosure.

**(5)** If the government is following the Expanded Discovery Policy, the defense must disclose materials described in Fed. R. Crim. P. 16(b)(1)(A) and (B) as soon as reasonably practicable, and in any event not later than 15 days before commencement of the trial, unless the defense shows good cause for later disclosure.

**(6)** If the government elects not to follow the Expanded Discovery Policy described in Criminal L. R. 16(a)(2), discovery must proceed pursuant to Fed. R. Crim. P. 16 and Criminal L. R. 12(a)(3).

**(b) Motions to Compel Discovery or Inspection.** All motions to compel discovery or disclosure must be accompanied by a written statement by the movant that, after the movant has in good faith conferred or attempted to confer with the party failing to make disclosure or discovery in an effort to obtain it without court action, the parties are unable to reach an accord. The statement must recite the date

and time of the conference or conferences and the names of all parties participating in the conference or conferences.

*Committee Comment: The "Expanded Discovery Policy" set forth in this rule had been known as the "Open File Policy." In 2010, after defense counsel in other districts alleged that the term "open file" was misleading because the government was not providing access to its actual "file," the Department of Justice directed all federal prosecutors to avoid using the term. The change to "Expanded Discovery Policy" simply reflects the fact that the United States Attorney's Office no longer refers to its policy as an "open file." Despite the change in name, the policy embodied in this rule remains unchanged.*

**Criminal L. R. 16.1. Pretrial Discovery Conferences.**

**(a) Timing.** As soon after indictment as practicable, and in no event more than 14 days after arraignment, the attorney for the government and counsel for the defendant must confer regarding discovery. In cases in which a pretrial scheduling conference will be held pursuant to Criminal L. R. 12(a), the parties should confer sufficiently in advance of the conference to be able to provide meaningful information to the Court.

**(b) Discussion topics.** To facilitate efficient preparation for trial, the attorney for the government and counsel for the defendant should discuss the scope and timing of discovery. This discussion should include:

**(1)** the volume, format, and categories of electronically stored information (ESI) included in the discovery materials, and the extent to which such materials are being provided in a searchable format;

**(2)** whether the discovery materials include items or types of information that cannot be copied and instead will be made available for inspection upon request, such as contraband, tangible objects, or bulky materials;

**(3)** the extent to which the discovery materials include, or are anticipated to include, reports of examinations or tests covered by Rule 16(a)(1)(F) or summaries of intended expert testimony covered by Rule 16(a)(1)(G);

**(4)** whether a protective order would be appropriate given the nature of the case or content of the discovery materials;

**(5)** the extent to which the discovery will be redacted;

**(6)** the extent to which the defendant anticipates providing reciprocal discovery under Crim. L. R. 16;

**(7)** the expected timing of:

**(A)** the production of initial and any anticipated additional discovery by the government;

**(B)** the disclosure of identity information for any confidential informants who were transactional witnesses; and

**(C)** the disclosure of *Giglio* information for the government's trial witnesses; and

**(8)** any other topics that could help the Court set an appropriate schedule for production of discovery, filing of motions, and preparation for trial.

**(c) Request for Court Action.** After the discovery conference, if good faith efforts have failed to result in agreement by all counsel, any party may ask the Court to determine or modify the time, place, manner, or any other aspect of disclosure to facilitate preparation for trial. To the extent a party is seeking to compel discovery or disclosure, the party must comply with Criminal L. R. 16(b).

*Committee Comment: This rule implements Federal Rule of Criminal Procedure 16.1, which was adopted in 2019. Like the federal rule, the local rule describes a general procedure that the parties should adapt to the circumstances of the case. Because technology changes rapidly, neither the federal nor local rule sets forth specific requirements for the manner, timing, or format of disclosure in cases involving ESI. However, counsel should seek to be familiar with best practices and are encouraged to review the "Recommendations for Electronically Store Information (ESI) Discovery Production in Federal Criminal Cases" published jointly by the Department of Justice, the Administrative Office of the U.S. Courts, and the Joint Working Group on Electronic Technology in the Criminal Justice System (JETWG) in 2012.*

## V. VENUE [Reserved]

## VI. TRIAL [Reserved]

## VII. POST-CONVICTION PROCEDURES

### Criminal L. R. 32. Presentence Investigation; Presentence Reports.

**(a) Confidentiality of Presentence Reports.**

**(1)** Confidential records of this Court maintained by the United States Probation Office, including presentence investigation reports and probation supervision records, may not be disclosed except upon written petition to the Court establishing with particularity the need for specified information contained in such records. No disclosure shall be made except upon court order. This rule must not be construed to deny the subject of any presentence report and/or the subject's counsel the right to review such presentence report without consent of the Court.

**(2)** Any copy of a presentence report that the Court makes available, or has made available, to the United States Parole Commission or the Bureau of Prisons, constitutes a confidential court document and must be presumed to remain under the continuing control of the Court when it is in the temporary custody of these agencies. Such copy must be loaned to the Parole Commission and the Bureau of Prisons only for the purpose of enabling those agencies to carry out their official functions, including parole release and supervision, and must be returned to the Court after such use upon request.

**(b) Objections to Presentence Investigation.** In any case in which the defendant has waived the time limitations under Fed. R. Crim. P. 32(e)(2), objections to a presentence investigation report must be submitted in writing with the United States Probation Department, and served on the opposing party at least 10 days before the scheduled sentencing, unless otherwise provided by Court order.

## VIII. SUPPLEMENTARY AND SPECIAL PROCEEDINGS [Reserved]

## IX. GENERAL PROVISIONS

### Criminal L. R. 49. Sealed Hearings.

**(a) Sealed Hearings.** A party seeking a sealed hearing must move the Court in writing prior to the hearing, or orally at the hearing, when a written motion is not practicable. The Court may seal the hearing if the Court finds good cause for such sealing. Any written motion and supporting documentation filed pursuant to this rule must comply with General L. R. 79(d)(4).

**(b) Docket Entry for Sealing Hearing.** Whenever the Court orders that a hearing be conducted under seal as provided in subsection (a), the Court, upon a finding of good cause, may order that the docket entry for that hearing state only "SEALED," and that it be accessible only to the Court and the parties directly involved in the hearing.

**Criminal L. R. 58. Misdemeanors and Other Offenses.**

**(a) Generally.**

**(1)** In proceedings upon which no indictment is necessary (*see* Fed. R. Crim. P. 7(a)), deadlines in these local rules that commence with arraignment on an indictment instead commence with the entry of a not guilty plea on the trial document. (*See* Fed. R. Crim. P. 58(b)(1).)

**(2)** Except as provided in Criminal L. R. 58(a)(3), the defendant in an action on an infraction, as defined in 18 U.S.C. § 19, and listed specifically in a schedule published by order of the Court pursuant to this rule, may pay the collateral fixed on the citation or complaint, if any, in lieu of appearance and by doing so authorizes the termination of proceedings and a default judgment in the amount of the sum fixed, pursuant to Fed. R. Crim. P. 58(d). The voluntary forfeiture of collateral under this rule must be treated as a finding of guilt on the infraction charged in the citation or complaint. Government counsel and the Clerk of Court then may execute such judgment without further notice to the defendant. If a person charged with an infraction under this rule fails to post and forfeit collateral, any punishment authorized by law may be imposed upon a finding of guilt.

**(3)** This rule does not preclude the arrest or the detention of any person accused of an infraction, as defined by 18 U.S.C. § 19, or requiring the person accused to appear in person before a judge, to the extent allowed by law.

**(b) Trial of Misdemeanors and Other Petty Offense Cases.**

**(1)** All misdemeanor cases are randomly assigned to the magistrate judges in this District, who are authorized to conduct any or all proceedings in such matters. All petty offense cases on the District's docket for a particular month are assigned to the magistrate judge of this District who is the duty magistrate judge for that month. If proceedings in a petty offense case continue past that duty month, further proceedings on the case are presided over by the duty magistrate judge for the month in which the proceedings continue, unless otherwise ordered by the magistrate judge who originally presided over the matter.

**(2)** In all such cases in which the consent of the defendant is required, the magistrate judge must explain to defendant that the person has a right to trial, judgment, and sentencing by a district judge, and that the person may have a right to trial by jury before a district judge or magistrate judge. The magistrate judge must not try the case unless the defendant consents to be tried before the magistrate judge, specifically waiving a trial, judgment, and sentencing by a district judge. If the defendant elects to be tried before a district judge, the magistrate judge must return the case to the Clerk of Court's office, which must randomly reassign the case to a district judge.

## APPENDIX

## STIPULATED PROTECTIVE ORDER TEMPLATE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

| | | |
|---|---|---|
| _____, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | |
| | ) | Case No. _____ |
| _____, | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |
| | ) | |

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**[PROPOSED] PROTECTIVE ORDER**

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Based on the Stipulation of the parties and the factual representations set forth therein, the Court finds that exchange of sensitive information between or among the parties and/or third parties other than in accordance with this Order may cause unnecessary damage and injury to the parties or to others. The Court further finds that the terms of this Order are fair and just and that good cause has been shown for entry of a protective order governing the confidentiality of documents produced in discovery, answers to interrogatories, answers to requests for admission, and deposition testimony.

**IT IS THEREFORE ORDERED THAT**, pursuant to Fed. R. Civ. P. 26(c) and Civil L. R. 26(e)**:**

**(A) DESIGNATION OF CONFIDENTIAL OR ATTORNEYS' EYES ONLY INFORMATION.** Designation of information under this Order must be made by placing or affixing on the document or material, in a manner that will not interfere with its legibility, the words "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

(1) One who produces information, documents, or other material may designate them as "CONFIDENTIAL" when the person in good faith believes they contain trade secrets or nonpublic confidential technical, commercial, financial, personal, or business information.

(2) One who produces information, documents, or other material may designate them as "ATTORNEYS' EYES ONLY" when the person in good faith believes that they contain particularly sensitive trade secrets or other nonpublic confidential technical, commercial, financial, personal, or business information that requires protection beyond that afforded by a CONFIDENTIAL designation.

(3) Except for information, documents, or other materials produced for inspection at the party's facilities, the designation of confidential information as CONFIDENTIAL or ATTORNEYS' EYES ONLY must be made prior to, or contemporaneously with, their production or disclosure. In the event that information, documents or other materials are produced for inspection at the party's facilities, such information, documents, or other materials may be produced for inspection before being marked confidential. Once specific information, documents, or other materials have been designated for copying, any information, documents, or other materials containing confidential information will then be marked confidential after copying but before delivery to the party who inspected and designated them. There will be no waiver of confidentiality by the inspection of confidential information, documents, or other materials before they are copied and marked confidential pursuant to this procedure.

(4) Portions of depositions of a party's present and former officers, directors, employees, agents, experts, and representatives will be deemed confidential only if designated as such when the deposition is taken or within 30 days of receipt of the deposition transcript.

(5) If a party inadvertently produces information, documents, or other material containing CONFIDENTIAL or ATTORNEYS' EYES ONLY information without marking or labeling it as such, the information, documents, or other material shall not lose its protected status through such production and the parties shall take all steps reasonably required to assure its continued confidentiality if the producing party provides written notice to the receiving party within 10 days of the discovery of the inadvertent production, identifying the information, document or other material in question and of the corrected confidential designation.

**(B) DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION.** Information, documents, or other material designated as CONFIDENTIAL OR ATTORNEYS' EYES ONLY under this Order must not be used or disclosed by the parties or counsel for the parties or any persons identified in subparagraphs (B)(1) and (2) below for any purposes whatsoever other than preparing for and conducting the litigation in which the information, documents, or other material were disclosed (including appeals). The parties must not disclose information, documents, or other material designated as confidential to putative class members not named as plaintiffs in putative class litigation unless and until one or more classes have been certified. Nothing in this Order prohibits a receiving party that is a government agency from following its routine uses and sharing such information, documents or other material with other government agencies or self-regulatory organizations as allowed by law.

(1) CONFIDENTIAL INFORMATION. The parties and counsel for the parties must not disclose or permit the disclosure of any information, documents or other material designated as "CONFIDENTIAL" by any other party or third party under this Order, except that disclosures may be made in the following circumstances:

(a) Disclosure may be made to employees of counsel for the parties or, when the party is a government entity, employees of the government, who have direct functional responsibility for the preparation and trial of the lawsuit. Any such employee to whom counsel for the parties makes a disclosure must be advised of, and become subject to, the provisions of this Order requiring that the information, documents, or other material be held in confidence.

(b) Disclosure may be made only to employees of a party required in good faith to provide assistance in the conduct of the litigation in which the information was disclosed who are identified as such in writing to counsel for the other parties in advance of the disclosure of the confidential information, documents or other material.

(c) Disclosure may be made to court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making copies of documents or other material. Before disclosure to any such court reporter or person engaged in making copies, such reporter or person must agree to be bound by the terms of this Order.

(d) Disclosure may be made to consultants, investigators, or experts (collectively "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit. Before disclosure to any expert, the expert must be informed of and agree to be subject to the provisions of this Order requiring that the information, documents, or other material be held in confidence.

(e) Disclosure may be made to deposition and trial witnesses in connection with their testimony in the lawsuit and to the Court and the Court's staff.

(f) Disclosure may be made to persons already in lawful and legitimate possession of such CONFIDENTIAL information.

(2) ATTORNEYS' EYES ONLY INFORMATION. The parties and counsel for the parties must not disclose or permit the disclosure of any information, documents, or other material designated as "ATTORNEYS' EYES ONLY" by any other party or third party under this Order to any other person or entity, except that disclosures may be made in the following circumstances:

(a) Disclosure may be made to counsel and employees of counsel for the parties who have direct functional responsibility for the preparation and trial of the lawsuit. Any such employee to whom counsel for the parties makes a disclosure must be advised of, and become

subject to, the provisions of this Order requiring that the information, documents, or other material be held in confidence.

(b) Disclosure may be made to court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making copies of documents or other material. Before disclosure to any such court reporter or person engaged in making copies, such reporter or person must agree to be bound by the terms of this Order.

(c) Disclosure may be made to consultants, investigators, or experts (collectively "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit. Before disclosure to any expert, the expert must be informed of and agree to be subject to the provisions of this Order requiring that the information, documents, or other material be held in confidence.

(d) Disclosure may be made to deposition and trial witnesses in connection with their testimony in the lawsuit and to the Court and the Court's staff.

(e) Disclosure may be made to persons already in lawful and legitimate possession of such ATTORNEYS' EYES ONLY information.

**(C) MAINTENANCE OF CONFIDENTIALITY**. Except as provided in subparagraph (B), counsel for the parties must keep all information, documents, or other material designated as confidential that are received under this Order secure within their exclusive possession and must place such information, documents, or other material in a secure area.

(1) All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as "copies") of information, documents, or other material designated as confidential under this Order, or any portion thereof, must be immediately affixed with the words "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" if not already containing that designation.

(2) To the extent that any answers to interrogatories, transcripts of depositions, responses to requests for admissions, or any other papers filed or

to be filed with the Court reveal or tend to reveal information claimed to be confidential, these papers or any portion thereof must be filed under seal by the filing party with the Clerk of Court utilizing the procedures set forth in General L. R. 79(d). If a Court filing contains information, documents, or other materials that were designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" by a third party, the party making the filing shall provide notice of the filing to the third party.

**(D) CHALLENGES TO CONFIDENTIALITY DESIGNATION.** A party may challenge the designation of confidentiality by motion. The movant must accompany such a motion with the statement required by Civil L. R. 37. The designating party bears the burden of proving that the information, documents, or other material at issue are properly designated as confidential. The Court may award the party prevailing on any such motion actual attorney fees and costs attributable to the motion.

**(E) CONCLUSION OF LITIGATION.** At the conclusion of the litigation, a party may request that all information, documents, or other material not filed with the Court or received into evidence and designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY under this Order must be returned to the originating party or, if the parties so stipulate, destroyed, unless otherwise provided by law. Notwithstanding the requirements of this paragraph, a party may retain a complete set of all documents filed with the Court, subject to all other restrictions of this Order.