

FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules
September 26, 2019

Rules Subject to Proposed Revision	
LCR 3	Commencement and Assignment of Action
LCR 5(f)	Serving and Filing Pleadings and Other Papers
LCR 6	Computing and Extending Time
LCR 7	Form and Scheduling of Motions
LCR 7.1	Corporate Disclosure Statement
LCR 11	Signed Filings; Sanctions
LCR 16	Pretrial Conferences; Scheduling; Management
LCR 16.1	Form of Pretrial Order
LCR 26	Duty to Disclose; General Provisions Governing Discovery
LCR 43	Taking Testimony; Marking Exhibits
LCR 83.2	Attorney Appearance and Withdrawal
EX_1:	[Model] Agreement Regarding Discovery of Electronically Stored Information and [Proposed] Order
EX_2:	LCR Appendix B - LCR 37 Joint Discovery Motion
EX_3:	Electronic Filing Procedures for Civil And Criminal Cases

The committee considered changes to LCR 100 regarding habeas petitions pursuant to 28 U.S.C. §§ 2241 and 2254, and motions pursuant to 28 U.S.C. § 2255. An amendment to Rule 5 of the Federal Rules Governing Section 2254 Cases requires that petitioner be allowed to file a reply to respondent's answer. Our rule. LCR 100 already permits the petitioner's reply, so no change is required.

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LCR 3 COMMENCEMENT AND ASSIGNMENT OF ACTIONS	
<p>(a) Civil Cover Sheet Required</p> <p>Every civil action shall be accompanied by a Civil Cover Sheet, Form JS-44 revised. All civil actions in which jurisdiction is invoked in whole or in part under 28 U.S.C. § 1338 (regarding patents, copyrights and trademarks) shall be accompanied by the required notice to the Patent and Trademark Office, Form AO 120, in patent and trademark matters, and by the required notice, Form AO 121, in copyright matters. These forms are available on the court's website and on the U.S. Courts website at www.uscourts.gov.</p>	<p>(a) Civil Cover Sheet Required</p> <p>Every civil action, <u>except civil actions filed by persons in state or federal custody challenging a conviction, sentence, or conditions of confinement</u>, shall be accompanied by a Civil Cover Sheet, Form JS-44 revised. All civil actions in which jurisdiction is invoked in whole or in part under 28 U.S.C. § 1338 (regarding patents, copyrights and trademarks) shall be accompanied by the required notice to the Patent and Trademark Office, Form AO 120, in patent and trademark matters, and by the required notice, Form AO 121, in copyright matters. These forms are available on the court's website and on the U.S. Courts website at www.uscourts.gov.</p>

DRAFTING COMMENTS:

These changes are submitted by the Clerk's Office and will provide for more efficient management of civil cases filed by prisoners in state or federal custody.

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LCR 5(f) SERVING AND FILING PLEADINGS AND OTHER PAPERS	
<p>(f) Proof of Service</p> <p>Proof of service of all filings required or permitted to be served, other than those for which a method of proof is prescribed in the Federal Rules of Civil Procedure, shall be made by a certificate or acknowledgment of service on the document itself. Parties should not file a separate proof of service document unless it is necessary. Failure to make the proof of service required by this subdivision does not affect the validity of the service, and the court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to any party.</p>	<p>(f) Proof of Service</p> <p><u>No certificate of service is required when a paper is served on a represented party by filing it with the ECF system, or on an unrepresented party that has signed up to participate in the ECF system. Whenever p</u>Proof of service <u>of all filing_ is</u> required or permitted <u>to be served, other than those for which a method of proof is prescribed in the Federal Rules of Civil Procedure, it</u> shall be made by a certificate or acknowledgment of service on the document itself. Parties should not file a separate proof of service document unless it is necessary. Failure to make the proof of service required by <u>this subdivision</u><u>Fed. R. Civ. P. 5(d)(1)(B)</u> does not affect the validity of the service, and the court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to any party.</p>

DRAFTING COMMENTS:

Federal Rule of Civil Procedure 5(f) now makes clear that a certificate of service is not required when a document is filed through electronic means, so we propose a change to clarify that certificates of service are only necessary when required by the Federal Rules and, when certificates of service are required, they must be included within the document itself.

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LCR 6 COMPUTING AND EXTENDING TIME	
<p>(a) Computing Time</p> <p>When the Local Rules or a court order permits a party to act within a period of time stated in days or a longer unit of time and the last day of the period is a Saturday, Sunday, or legal holiday, the time period continues to run until the following day that is not a Saturday, Sunday, or legal holiday. If an order of the court sets a specific calendar date by which a party must act, the date is not extended even if it falls on a Saturday, Sunday, or legal holiday unless otherwise ordered by the court. If access to the electronic filing system is not available due to failure of the court’s filing system(s) for a period longer than two hours, or any period after 5pm, or if the courthouse is closed for unanticipated reasons, filing deadlines are extended to the next business day. If the closure results in a party having additional time to file a response to a motion, then the deadline for the party filing a reply shall be extended by the same number of days.</p>	<p>(a) Computing Time</p> <p>When the Local Rules or a court order permits a party to act within a period of time stated in days or a longer unit of time and the last day of the period is a Saturday, Sunday, or legal holiday, the time period continues to run until the following<u>next</u> day that is not a Saturday, Sunday, or legal holiday. If an order of the court sets a specific calendar date by which a party must act, the date is not extended even if it falls on a Saturday, Sunday, or legal holiday unless otherwise ordered by the court. If access to the electronic filing system is not available due to failure of the court’s filing system(s) for a period longer than two hours, or any period after 5pm, or if the courthouse is closed for unanticipated reasons, filing deadlines are extended to the next business day. If the closure results in a party having additional time to file a response to a motion, then the deadline for the party filing a reply shall be extended by the same number of days.</p>

DRAFTING COMMENTS:

There is confusion in the bar with the phrase “following day” which is not a defined term. “Next day” is a defined term in the Fed. R. Civ. P. 6(a)(5):

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- (5) *“Next Day” Defined.* The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.
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LCR 7(d) FORM AND SCHEDULING OF MOTIONS	
<p>(d) Noting Dates for Motions and Briefing Schedules</p> <p>Unless otherwise provided by rule or court order, motions shall be noted for consideration as follows:</p> <p>(1) <i>Same Day Motions.</i> Stipulated motions (see LCR 10(g)), motions to file over-length motions or briefs (see LCR 7(f)), motions for reconsideration (see LCR 7(h)), joint submissions pursuant to the optional procedure established in LCR 37(a)(2), motions to appoint a mediator (LCR 39.1(c)(3)), motions for default (see LCR 55(a)), requests for the clerk to enter default judgment (see LCR 55(b)(1)), ex parte motions, motions for the court to enter default judgment where the opposing party has not appeared (see LCR 55(b)(2)), motions to recuse (see LCR 3(f)), and motions for a temporary restraining order (“TRO”) (see LCR 65) shall be noted for consideration for the day they are filed.</p> <p>****</p> <p>(5) If the deadline for a party’s response or reply to a motion falls on a date that is a legal holiday as defined by Fed. R. Civ. P. 6, the party’s response or reply is due on the following day that is not a Saturday, Sunday, or legal holiday.</p>	<p>(d) Noting Dates for Motions and Briefing Schedules</p> <p>Unless otherwise provided by rule or court order, motions shall be noted for consideration as follows:</p> <p>(1) <i>Same Day Motions.</i> Stipulated, <u>joint or unopposed</u> motions (see <u>for example</u> LCR 10(g)), motions to file over-length motions or briefs (see LCR 7(f)), motions for reconsideration (see LCR 7(h)), joint submissions pursuant to the optional procedure established in LCR 37(a)(2), motions to appoint a mediator (LCR 39.1(c)(3)), motions for default (see LCR 55(a)), requests for the clerk to enter default judgment (see LCR 55(b)(1)), ex parte motions, motions for the court to enter default judgment where the opposing party has not appeared (see LCR 55(b)(2)), motions to recuse (see LCR 3(f)), and motions for a temporary restraining order (“TRO”) (see LCR 65) shall be noted for consideration for the day they are filed.</p> <p>****</p> <p>(5) If the deadline for a party’s response or reply to a motion falls on a date that is a legal holiday as defined by Fed. R. Civ. P. 6, the party’s response or reply is due on the <u>following next</u> day that is not a Saturday, Sunday, or legal holiday.</p>

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DRAFTING COMMENTS:

Clarify that all “stipulated, joint or unopposed motions” should be noted as same day motions.

There is confusion in the bar with the phrase “following day” which is not a defined term. “Next day” is a defined term in the Fed. R. Civ. P. 6(a)(5):

- (5) *“Next Day” Defined.* The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.
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LCR 7.1 CORPORATE DISCLOSURE STATEMENT	
<p>(a) Who Must File; Contents</p> <p>Any nongovernmental party, other than an individual or sole proprietorship, must file a corporate disclosure statement identifying:</p> <ol style="list-style-type: none"> (1) any parent corporation and any publicly held corporation owning more than 10% of its stock; (2) any member or owner in a joint venture or limited liability corporation (LLC); (3) all partners in a partnership or limited liability partnership (LLP); or (4) any corporate member, if the party is any other unincorporated association <p>If there is no parent, shareholder, member, or partner to list in response to items (1) through (4), a corporate disclosure statement must still be filed stating that no such entity exists.</p> <p>(b) Diversity Cases</p> <p>In diversity actions, for any person or entity identified in (a)(2)-(4) above must also list in the corporate disclosure statement those states in which the party, owners, partners, or members are citizens.</p>	<p>(a) Who Must File; Contents</p> <p>Any nongovernmental party, <u>or any nongovernmental corporation that seeks to intervene</u>, other than an individual or sole proprietorship, must file a corporate disclosure statement identifying:</p> <ol style="list-style-type: none"> (1) any parent corporation and any publicly held corporation owning more than 10% of its stock; (2) any member or owner in a joint venture or limited liability corporation (LLC); (3) all partners in a partnership or limited liability partnership (LLP); or (4) any corporate member, if the party is any other unincorporated association <p>If there is no parent, shareholder, member, or partner to list in response to items (1) through (4), a corporate disclosure statement must still be filed stating that no such entity exists.</p> <p>(b) Diversity Cases</p> <p>In diversity actions, for any person or entity identified in (a)(2)-(4) above must also list in the corporate disclosure statement those states in which the party, owners, partners, or members are citizens.</p>

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DRAFTING COMMENTS:

FRCP 7.1 amendments effective December 2019 as set out below. This amendment aligns the local rule with the new FRCP (amendments in RED below).

Rule 7.1. Disclosure Statement

(a) Who Must File; Contents.

(1) *Nongovernmental Corporations.* A nongovernmental corporate party or any nongovernmental corporation that seeks to intervene must file ~~2~~ copies of a disclosure statement that:

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

~~(B)~~ (B) states that there is no such corporation.

(2) *Parties in a Diversity Case.* Unless the court orders otherwise, a party in an action in which jurisdiction is based on diversity under 28 U.S.C. § 1332(a) must file a disclosure statement that names—and identifies the citizenship of—every individual or entity whose citizenship is attributed to that party at the time the action is filed.

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LCR 11 SIGNED FILINGS; SANCTIONS	
<p>(a) Signature</p> <p>A document signed electronically (by either a digital signature or by using the “s/ Name” convention) has the same force and effect as if the person had affixed a signature to a paper copy of the document, unless an original document is otherwise required. If an original document is required to be filed with the court, any required signature thereto must also be original. Electronic signatures must be in conformance with this district’s Electronic Filing Procedures for Civil and Criminal Cases.</p>	<p>(a) Signature</p> <p>A document signed electronically (by either a digital signature or by <u>an attorney</u> using the “s/ Name” convention) has the same force and effect as if the person had affixed a signature to a paper copy of the document, unless an original document is otherwise required. If an original document is required to be filed with the court, any required signature thereto must also be original. Electronic signatures must be in conformance with this district’s Electronic Filing Procedures for Civil and Criminal Cases.</p>

DRAFTING COMMENTS:

This change makes clear that only attorneys may use the “s/ Name” convention. Non-attorneys may not use the “s/ Name” convention and must sign documents to be filed with the Court in accordance with ECF Filing Procedures, Section III.L.

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LCR 16 TITLE	
<p>(b) Scheduling Order; Exemption of Certain Types of Cases ***</p> <p>(5) <i>Dispositive Motions.</i> Not later than the deadline to file dispositive motions, unless otherwise ordered by the court, parties shall file all motions to dismiss, motions for summary judgment and other dispositive motions, together with supporting papers.</p> <p>(5) <i>Modifying a Schedule.</i> The parties are bound by the dates specified in the scheduling order. A schedule may be modified only for good cause and with the judge’s consent. Mere failure to complete discovery within the time allowed does not constitute good cause for an extension or continuance.</p> <p>(6) <i>Exemption of Certain Types of Cases.</i> The court exempts certain types of cases from the requirements of this local rule and of Fed. R. Civ. P. 16(b), including: any case exempt from the initial disclosure requirements under Fed. R. Civ. P. 26, proceedings upon a defendant’s default, bankruptcy proceedings before this court, condemnation cases, forfeiture actions, and cases filed as miscellaneous matters before this court.</p>	<p>(b) Scheduling Order; Exemption of Certain Types of Cases ***</p> <p>(5) <i>Dispositive Motions.</i> Not later than the deadline to file dispositive motions, unless otherwise ordered by the court, parties shall file all motions to dismiss, motions for summary judgment and other dispositive motions, together with supporting papers.</p> <p>(56) <i>Modifying a Schedule.</i> The parties are bound by the dates specified in the scheduling order. A schedule may be modified only for good cause and with the judge’s consent. Mere failure to complete discovery within the time allowed does not constitute good cause for an extension or continuance.</p> <p>(67) <i>Exemption of Certain Types of Cases.</i> The court exempts certain types of cases from the requirements of this local rule and of Fed. R. Civ. P. 16(b), including: any case exempt from the initial disclosure requirements under Fed. R. Civ. P. 26, proceedings upon a defendant’s default, bankruptcy proceedings before this court, condemnation cases, forfeiture actions, and cases filed as miscellaneous matters before this court.</p>

DRAFTING COMMENTS:

Correct paragraph numbering only (there are two paragraph 5’s in the current rules).

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LCR 16.1 FORM OF PRETRIAL ORDER																																																																	
<p>EXHIBITS Identify each exhibit with a number, which becomes the number for the exhibit at the trial and appears on the exhibit tag.</p> <p>(a) Admissibility stipulated: Plaintiff's Exhibits #__Photo of port side of ship. (Examples) #__Photo of crane motor. #__Photo of crane. Defendant's Exhibits #__Weather report. (Examples) #__Log book. #__X-ray of plaintiff's foot. #__X-ray of wrist.</p> <p>(b) Authenticity stipulated, admissibility disputed: Plaintiff's Exhibits #__Inventory Report. (Examples) Defendant's Exhibits #__Photograph. (Examples)</p> <p>(c) Authenticity and admissibility disputed: Plaintiff's Exhibits #__Accountant's report. (Examples) Defendant's Exhibits #__Ship's log. (Examples)</p>	<p>EXHIBITS Identify each exhibit with a number, which becomes the number for the exhibit at the trial and appears on the exhibit tag <u>with the following information in table format:-</u></p> <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 10px;"> <thead> <tr> <th colspan="6" style="text-align: center; padding: 5px;"><u>Plaintiff's Exhibits</u></th> </tr> <tr> <th style="width: 5%;"><u>Ex .#</u></th> <th style="width: 25%;"><u>Description</u></th> <th style="width: 15%;"><u>Authenticity</u></th> <th style="width: 15%;"><u>Admissibility</u></th> <th style="width: 15%;"><u>Objection</u></th> <th style="width: 10%;"><u>Admitted</u></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">#</td> <td><u>Photo of port side of ship</u></td> <td style="text-align: center;"><u>Stipulated</u></td> <td style="text-align: center;"><u>Disputed</u></td> <td style="text-align: center;"><u>402; F</u></td> <td></td> </tr> <tr> <td style="text-align: center;">#</td> <td><u>Photo of crane motor</u></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">#</td> <td><u>Photo of crane</u></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 10px;"> <thead> <tr> <th colspan="6" style="text-align: center; padding: 5px;"><u>Defendant's Exhibits</u></th> </tr> <tr> <th style="width: 5%;"><u>Ex .#</u></th> <th style="width: 25%;"><u>Description</u></th> <th style="width: 15%;"><u>Authenticity</u></th> <th style="width: 15%;"><u>Admissibility</u></th> <th style="width: 15%;"><u>Objection</u></th> <th style="width: 10%;"><u>Admitted</u></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">#</td> <td><u>X-ray of plaintiff's foot</u></td> <td style="text-align: center;"><u>Stipulated</u></td> <td style="text-align: center;"><u>Stipulated</u></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">#</td> <td><u>Weather Report</u></td> <td style="text-align: center;"><u>Stipulated</u></td> <td style="text-align: center;"><u>Disputed</u></td> <td style="text-align: center;"><u>402</u></td> <td></td> </tr> <tr> <td style="text-align: center;">#</td> <td><u>Log book</u></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p><u>The Parties' Objection Code:</u></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 5%; text-align: center;"><u>E</u></td> <td><u>Exhibit is objectionable because it constitutes attempted expert testimony from a person who was not designated as an expert (Fed. R. Civ. P. 26)</u></td> </tr> <tr> <td style="text-align: center;"><u>F</u></td> <td><u>Lack of foundation</u></td> </tr> </tbody> </table>	<u>Plaintiff's Exhibits</u>						<u>Ex .#</u>	<u>Description</u>	<u>Authenticity</u>	<u>Admissibility</u>	<u>Objection</u>	<u>Admitted</u>	#	<u>Photo of port side of ship</u>	<u>Stipulated</u>	<u>Disputed</u>	<u>402; F</u>		#	<u>Photo of crane motor</u>					#	<u>Photo of crane</u>					<u>Defendant's Exhibits</u>						<u>Ex .#</u>	<u>Description</u>	<u>Authenticity</u>	<u>Admissibility</u>	<u>Objection</u>	<u>Admitted</u>	#	<u>X-ray of plaintiff's foot</u>	<u>Stipulated</u>	<u>Stipulated</u>			#	<u>Weather Report</u>	<u>Stipulated</u>	<u>Disputed</u>	<u>402</u>		#	<u>Log book</u>					<u>E</u>	<u>Exhibit is objectionable because it constitutes attempted expert testimony from a person who was not designated as an expert (Fed. R. Civ. P. 26)</u>	<u>F</u>	<u>Lack of foundation</u>
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**LCR 16.1
FORM OF PRETRIAL ORDER**

<u>MIL</u>	<u>Subject of Motion in Limine</u>
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In the Authenticity and Admissibility columns, indicate “Stipulated” or “Disputed”. If “Disputed”, identify the objection in the Objection column. An objection based on a Fed. R. Evid. should reference the rule number; additional objections should be referenced by a code that the parties include with the exhibit list. The “Admitted” column is for use by the Court.

(a) — Admissibility stipulated:

Plaintiff’s Exhibits

#__Photo of port side of ship. (Examples)

#__Photo of crane motor.

#__Photo of crane.

Defendant’s Exhibits

#__Weather report. (Examples)

#__Log book.

#__X ray of plaintiff’s foot.

#__X ray of wrist.

(b) — Authenticity stipulated, admissibility disputed:

Plaintiff’s Exhibits

#__Inventory Report. (Examples)

Defendant’s Exhibits

#__Photograph. (Examples)

(c) — Authenticity and admissibility disputed:

Plaintiff’s Exhibits

#__Accountant’s report. (Examples)

Defendant’s Exhibits

#__Ship’s log. (Examples)

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LCR 16.1 FORM OF PRETRIAL ORDER	
(No party is required to list any exhibit which is listed by another party, or any exhibit to be used for impeachment only. See LCR 16 for further explanation of numbering of exhibits).	(No party is required to list any exhibit which is listed by another party, or any exhibit to be used for impeachment only. See LCR 16 for further explanation of numbering of exhibits).

DRAFTING COMMENTS:

Modify the Form of Pretrial Order to reflect preference for a table listing of exhibits.

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LCR 26 DUTY TO DISCLOSE; GENERAL PROVISIONS GOVERNING DISCOVERY	
<p>(f) Conference of the Parties; Planning for Discovery</p> <p>****</p> <p>(1) Prior to the initial status conference with the court, if any, or prior to submitting their joint status report, counsel and any pro se parties shall meet and discuss, and address in their joint status report if the court orders one, the topics set forth in Fed. R. Civ. P. 26(f) and the following issues:</p> <p>****</p> <p>(I) whether the case will involve the preservation and production of Electronically Stored Information (“ESI”) and, if so:</p> <p style="padding-left: 20px;">(i) the nature, location, and scope of discoverable ESI; and</p> <p style="padding-left: 20px;">(ii) whether the parties agree to adopt the Model Agreement Regarding Discovery of Electronically Stored Information in Civil Litigation (the “Model ESI Agreement,” which can be found under “Forms” on the court’s website) or a modified version thereof;</p>	<p>(f) Conference of the Parties; Planning for Discovery</p> <p>****</p> <p>(1) Prior to the initial status conference with the court, if any, or prior to submitting their joint status report, counsel and any pro se parties shall meet and discuss, and address in their joint status report if the court orders one, the topics set forth in Fed. R. Civ. P. 26(f) and the following issues:</p> <p>****</p> <p>(I) whether the case will involve the preservation and production of Electronically Stored Information (“ESI”) and, if so:</p> <p style="padding-left: 20px;">(i) the nature, location, and scope of discoverable ESI; and</p> <p style="padding-left: 20px;">(ii) whether the parties agree to adopt the Model Agreement Regarding Discovery of Electronically Stored Information in Civil Litigation (the “Model ESI Agreement,” which can be found under “Forms” on the court’s website) or a modified version thereof, <u>and the timing for filing the agreement;</u></p>

DRAFTING COMMENTS:

Some on the committee believe that the Court should impose a deadline for filing an ESI Agreement. Because the Court does not require the parties to reach such an agreement, the committee instead recommends adding language regarding timing.

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LCR 43 TAKING TESTIMONY; MARKING EXHIBITS	
<p>(h) Procedure at Trial</p> <p>****</p> <p>(3) Not later than the close of each day of trial, counsel shall provide to opposing counsel a list of the witnesses he or she intends to call the following day of trial. This requirement may be modified for good cause shown.</p>	<p>(h) Procedure at Trial</p> <p>****</p> <p>(3) Not later than the close of each day of trial, counsel shall provide to opposing counsel a list of the witnesses he or she intends to call the following<u>next</u> day of trial. This requirement may be modified for good cause shown.</p>

DRAFTING COMMENTS:

There is confusion in the bar with the phrase “following day” which is not a defined term. “Next day” is a defined term in the Fed. R. Civ. P. 6(a)(5):

- (5) *“Next Day” Defined.* The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

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LCR 83.2 ATTORNEY APPEARANCE AND WITHDRAWAL	
<p>(a) Entry of Appearance</p> <p>....</p> <p>(b) Withdrawal of Attorneys</p> <p>....</p>	<p>(a) Entry of Appearance</p> <p>....</p> <p>(b) Withdrawal of Attorneys</p> <p>....</p> <p>(c) <u>Notices of Unavailability.</u> <u>Notices of unavailability are not required. Such notices, if filed, do not alter dates set by the Court or civil rules. The Court expects the parties to confer about significant periods of unavailability. This rule does not preclude an attorney from requesting relief from a deadline due to a scheduling difficulty. See LCR 7(j).</u></p>

DRAFTING COMMENTS:

The Bar has noticed an increase in the use of Notices of Unavailability, that are not binding on the Court or the parties but can in appropriate circumstances provide useful information to the parties and the Court. If filed, this rule makes it clear that the notice does not in any way impact dates set by the Court or the civil rules. If relief from a deadline is needed, an appropriate motion should be filed.

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EX 1__[Model] Agreement Regarding Discovery of Electronically Stored Information and [Proposed] Order

DRAFTING COMMENTS:

See Exhibit 1 – Redline and Clean versions.

When the Court adopted the Model ESI Agreement, the committee agreed to review the agreement each year to ensure the document remains useful based on current practices. Mindful of that directive, the committee recommends the following changes reflected in Exhibit 2:

1. *Additional Provisions for Complex Cases.* Incorporates the additional provisions for complex cases, currently after the signature blocks, into the agreement. Because these provisions required re-drafting and were at the end, they were difficult to integrate and often ignored. The draft brings these provisions into the agreement as Sections C(2)(c), C(3)(c), C(3)(d), C(3)(e), C(3)(f), C(5), C(7), and E(1), identifies nearly all of them as *Optional* (the exceptions are Bates numbering and unitization, which are not listed as optional), and explains that *Optional* provisions may be useful in cases involving more complicated ESI issues or productions. These moves themselves are not redlined in the redlined version, but changes to the language of the moved provisions are redlined.
- ~~2. *Magistrate Referral.* Allows parties to provide revocable consent to referral of discovery disputes to a magistrate judge. See Section A(3).~~
- ~~3.2. *Number of Custodians.* Clarifies that the disclosure of five custodians is not the same as the number of custodians from whom ESI should be collected. See Sections B(1), C(2). A majority of the committee recommends retaining the number of custodians disclosed (five). A minority of the committee recommends that the disclosure instead be of “key” custodians.~~
- ~~4.3. *Location of ESI Procedures Section.* Moves the ESI Procedures from Section E to Section C. This move itself is not redlined in the redlined agreement, but changes to the language of the section are redlined. See Section C.~~
- ~~5.4. *ESI Procedures.* Makes a number of changes to the default process to clarify that default process and align it with the standard of practice. The changes include: (1) before the producing party runs searches, the producing party is to disclose the search methodology and the receiving party may request additional search terms/queries; and (2) after production, the receiving party may request additional search terms/queries. See Sections C(2)(a), (b). The agreement specifies the number of search terms/queries/presumptively overbroad results (see Sections C(2)(a)(ii), (iii); C(2)(b)), as recommended by a majority of the committee. A minority of the committee recommends against specifying these numbers.~~
- ~~6.5. *Privilege Log.* Provides alternatives for when privilege logs must be produced and provides the rationale for including such a~~

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provision. *See* Section E(1). Requires a privilege log for all documents fully withheld (*see* Section E(1)) and provides that redacted documents need not be logged so long as the reason for the redaction is stated on the redacted document (*see* Section E(2)). Regarding timing, *see* Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont., 408 F.3d 1142, 1149 (9th Cir. 2005) (“reject[ing] a per se waiver rule that deems a privilege waived if a privilege log is not produced within Rule 34’s 30-day time limit” but “using the 30-day period as a default guideline” absent “applicable local rules, agreements or stipulations among the litigants, and discovery or protective orders” providing otherwise).

~~7-6.~~

est Practices. Revises other sections to reflect the current best practices and standards of practice. *See* Sections B(5) (regarding foreign data privacy laws), C(2)(a)(iii) (regarding counting of search terms), C(4) (regarding de-duplication), C(5) (regarding email threading), C(6) (regarding metadata); C(2)(c) (regarding network design and databases).

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EX 2__Appendix B

Drafting Comments:

See Exhibit 3. The current rules set out appendix B, a sample LCR 37 joint discovery motion, in single space. The Appendix has been updated to exactly 24 point per local rule 10.

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EX 3__Electronic Filing Procedures for Civil & Criminal Cases 2019 Revisions

DRAFTING COMMENTS:

See Exhibit 3. Update Electronic Filing Procedures to reflect changes to local and Federal civil rules regarding filing, certification and signature requirements, and to clarify certain sections.
