

**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules  
November 2020**

<b>Rules Subject to Proposed Revision</b>	
LCR 12	DEFENSES AND OBJECTIONS: WHEN AND HOW PRESENTED; MOTION FOR JUDGMENT ON THE PLEADINGS; CONSOLIDATING MOTIONS; WAIVING DEFENSES; PRETRIAL HEARING
LCR 27	DEPOSITIONS BEFORE ACTION OR PENDING APPEAL
LCR 30	DEPOSITIONS BY ORAL EXAMINATION
LCR 39.1	ALTERNATIVE DISPUTE RESOLUTION
LCR 55	DEFAULT; DEFAULT JUDGMENT
LCR 65	TEMPORARY RESTRAINING ORDER
LCR 67	REGISTRY FUNDS
LCR 86	EFFECTIVE DATE
APPENDIX C	STIPULATION FOR VIRTUAL DEPOSITIONS

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**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules  
November 2020**

LCR 12 DEFENSES AND OBJECTIONS: WHEN AND HOW PRESENTED; MOTION FOR JUDGMENT ON THE PLEADINGS; CONSOLIDATING MOTIONS; WAIVING DEFENSES; PRETRIAL HEARING	
Current Rule	Proposed Amendment
RESERVED	<p><u>(a) Time to Serve a Responsive Pleading.</u></p> <p><u>(4) Effect of a Motion on Time to Respond: If the Court when ruling on a motion to dismiss allows the plaintiff to file an amended complaint, the defendant’s responsive pleading is due 14 days after the earlier of (i) the filing of the amended complaint or (ii) the deadline set by the Court for the filing of the amended complaint.</u></p>

**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules  
November 2020**

<b>LCR 27 DEPOSITIONS BEFORE ACTION OR PENDING APPEAL</b>	
<b>Current Rule</b>	<b>Proposed Amendment</b>
RESERVED	<p><u>Depositions to Perpetuate Testimony</u></p> <p><u>(a) Before an Action Is Filed</u></p> <p><u>(1) The petition must state the specific means by which the proponent seeks to take and record the deposition, including whether it will be remote or in person. If remote, the petition must include in the proposed order how exhibits will be handled, by what means persons including the deponent shall participate, other particulars necessary to the taking of a remote deposition, and that the deposition may be used in the same way as any other deposition.</u></p> <p><u>(2) Reserved</u></p> <p><u>(3) If the court issues an order as provided in FRCP 27(a)(3) and the deposition will be taken remotely, the court's order shall include provisions for how exhibits will be handled, by what means persons including the deponent shall participate, any other particulars necessary to the taking of a remote deposition, and that the deposition may be used in the same way as any other deposition.</u></p> <p><u>(4) Reserved</u></p>

**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules  
November 2020**

<b>LCR 30</b>	
<b>DEPOSITIONS BY ORAL EXAMINATION</b>	
<b>Current Rule</b>	<b>Proposed Amendment</b>
<p><b>(a) When Depositions May Be Taken; When Leave Required</b></p> <p>(1) Reserved</p> <p>(2) If a party wishes to take the deposition of a person in custody, the party shall attempt to reach agreement with officials of the institution as to date, time, place, and maximum duration of the deposition. If agreement is reached, the party taking the deposition shall give notice as provided in Fed. R. Civ. P. 30(b), and no further order of the court is required. If agreement is not reached, the party noting the deposition shall serve a notice, at least 14 days before the proposed deposition, on the deponent, all other parties, the superintendent of the institution, and the attorney for the institution (e.g., the Washington Attorney General for a state prisoner, or the United States Attorney for a federal prisoner). Not later than seven days before the proposed deposition, the attorney for the institution may file, serve and note a motion objecting to the proposed deposition. In that event, the deposition shall not proceed until the court has ruled on the motion. In the absence of a timely motion, the deposition may proceed as noted without further order of the court.</p> <p>(b) n/a</p>	<p><b>(a) When Depositions May Be Taken; When Leave Required</b></p> <p>(1) Reserved</p> <p>(2) If a party wishes to take the deposition of a person in custody, the party shall attempt to reach agreement with officials of the institution as to date, time, place, and maximum duration of the deposition. If agreement is reached, the party taking the deposition shall give notice as provided in Fed. R. Civ. P. 30(b), and no further order of the court is required. If agreement is not reached, the party noting the deposition shall serve a notice, at least 14 days before the proposed deposition, on the deponent, all other parties, the superintendent of the institution, and the attorney for the institution (e.g., the Washington Attorney General for a state prisoner, or the United States Attorney for a federal prisoner). Not later than seven days before the proposed deposition, the attorney for the institution may file, serve and note a motion objecting to the proposed deposition. In that event, the deposition shall not proceed until the court has ruled on the motion. In the absence of a timely motion, the deposition may proceed as noted without further order of the court.</p> <p><u>(b) Notice of the Deposition; Other Formal Requirements</u></p> <p><u>(1) Notice in General. The notice must state whether the deposing party intends that deposition to be taken by</u></p>

**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules**  
**November 2020**

	<p><u>remote means as provided in, and subject to, Fed. R. Civ. P. 34(b).</u></p> <p>(2) <u>Reserved</u></p> <p>(3) <u>Reserved</u></p> <p>(4) <u>By Remote Means. Depositions handled by remote means may be used in the same way as any other deposition. If the deposition will be taken by remote means, the parties and any other necessary participant shall meet and confer to reach agreement about how exhibits will be handled, by what means persons including the deponent shall participate, and any other particulars necessary to the taking of a remote deposition, and are encouraged to enter into a written stipulation reflecting that agreement. An Example of a Stipulation on the Taking of Remote Depositions is at Appendix C.</u></p>
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**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules  
November 2020**

<b>LCR 39.1 ALTERNATIVE DISPUTE RESOLUTION</b>	
<b>Current Rule</b>	<b>Proposed Amendment</b>
<p><b>(c) Mediation</b></p> <p>(1) <i>Designation and Scheduling.</i> In any civil case, the court may order the parties to engage in mediation under this rule, and may schedule the required steps so as to maximize the prospects of early settlement. The parties may file a written stipulation for mediation under this rule at any time.</p> <p>(2) <i>Settlement Conference.</i> In every civil action in which the court has ordered the parties to engage in mediation under this rule, the attorneys for all parties to the action, except nominal parties and stakeholders, shall meet at least once, preferably in person, and engage in a good faith attempt to negotiate a settlement of the action no later than 30 days prior to the mediation conference, unless the court sets a different date.</p> <p>(3) <i>Selection of Mediator.</i> In every civil action in which the court has ordered the parties to engage in mediation under this rule, the parties shall attempt to agree upon the selection of a single mediator for settlement purposes from the register of attorney neutrals. If they are unable to agree upon a mediator from the register of qualified attorneys, they may choose a mediator who is not listed on the register. If the parties cannot agree upon the selection of a mediator, either party may apply to the court for the</p>	<p><b>(c) Mediation</b></p> <p>(1) <i>Designation and Scheduling.</i> In any civil case, the court may order the parties to engage in mediation under this rule, and may schedule the required steps so as to maximize the prospects of early settlement. The parties may file a written stipulation for mediation under this rule at any time.</p> <p>(2) <i>Settlement Conference.</i> In every civil action in which the court has ordered the parties to engage in mediation under this rule, the attorneys for all parties to the action, except nominal parties and stakeholders, shall meet at least once, preferably in person, and engage in a good faith attempt to negotiate a settlement of the action no later than 30 days prior to the mediation conference, unless the court sets a different date.</p> <p>(3) <i>Selection of Mediator.</i> In every civil action in which the court has ordered the parties to engage in mediation under this rule, the parties shall attempt to agree upon the selection of a single mediator for settlement purposes from the register of attorney neutrals. If they are unable to agree upon a mediator from the register of qualified attorneys, they may choose a mediator who is not listed on the register. If the parties cannot agree upon the selection of a mediator, either party may apply to the court for the</p>

**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules**  
**November 2020**

<p>designation of a mediator from the register of attorney neutrals. The court shall thereupon promptly designate a mediator from the register and shall send notice of that designation to the mediator and to all attorneys of record in the action. The court may require the mediator to serve without compensation in some circumstances. Within ten days of such notice, the mediator designated by the court shall advise all attorneys of record whether he or she is willing and able to serve as mediator and shall make all disclosures required by section (b)(4).</p> <p>(4) <i>Request for Mediation Without Charge.</i> A party, or the parties jointly, may request pro bono (free of charge) mediation. To do so, parties may complete and sign the Request for Mediation Without Charge form, available from the Clerk’s Office and on the court’s website. On the form, parties must indicate the basis for the request, which may include that one or more parties are unable, without financial hardship, to pay the anticipated fee for the services of the mediator.</p> <p>(5) <i>Mediation Procedure.</i> Whether selected by the parties or designated by the court, the mediator may arrange with the parties an initial conference call. Except to the extent the mediator directs otherwise, the following procedures shall apply:</p> <p>(A) Copy of Pretrial Order or Pleadings. Upon selection of a mediator the parties shall provide the mediator with a copy of the Pretrial Order, if one has been lodged in the cause. If a Pretrial Order has not been</p>	<p>designation of a mediator from the register of attorney neutrals. The court shall thereupon promptly designate a mediator from the register and shall send notice of that designation to the mediator and to all attorneys of record in the action. The court may require the mediator to serve without compensation in some circumstances. Within ten days of such notice, the mediator designated by the court shall advise all attorneys of record whether he or she is willing and able to serve as mediator and shall make all disclosures required by section (b)(4).</p> <p>(4) <i>Request for Mediation Without Charge.</i> A party, or the parties jointly, may request pro bono (free of charge) mediation. To do so, parties may complete and sign the Request for Mediation Without Charge form, available from the Clerk’s Office and on the court’s website. On the form, parties must indicate the basis for the request, which may include that one or more parties are unable, without financial hardship, to pay the anticipated fee for the services of the mediator.</p> <p>(5) <i>Mediation Procedure.</i> Whether selected by the parties or designated by the court, the mediator may arrange with the parties an initial conference call. Except to the extent the mediator directs otherwise, the following procedures shall apply:</p> <p>(A) Copy of Pretrial Order or Pleadings. Upon selection of a mediator the parties shall provide the mediator with a copy of the Pretrial Order, if one has been lodged in the cause. If a Pretrial Order has not been</p>
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**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules  
November 2020**

<p>lodged, they shall provide the mediator with copies of their relevant pleadings.</p> <p>(B) Notice of Time and Place. The mediator shall fix a time and place for the mediation conference, and all adjourned sessions that is reasonably convenient for the parties.</p> <p>(C) Memoranda. Each party shall provide the mediator with a memorandum presenting in concise form its contentions relative to both liability and damages. This memorandum should not exceed 10 pages in length. Copies of the memorandum must be delivered to the mediator and served upon all other parties at least seven days before the mediation conference. In addition, a party may deliver to the mediator a confidential memorandum that is not served on the other parties.</p> <p>(D) Attorney’s Attendance and Preparation Required. The attorney who is primarily responsible for each party’s case shall personally attend and participate in good faith in the mediation conference and any adjourned sessions of that conference. The attorney for each party shall come prepared to discuss the following matters in detail:</p> <ol style="list-style-type: none"><li>(1) all liability issues;</li><li>(2) all damage issues; and</li><li>(3) the position of his or her client relative to settlement.</li></ol>	<p>lodged, they shall provide the mediator with copies of their relevant pleadings.</p> <p>(B) Notice of Time and Place. The mediator shall fix a time and place for the mediation conference, and all adjourned sessions that is reasonably convenient for the parties.</p> <p>(C) Memoranda. Each party shall provide the mediator with a memorandum presenting in concise form its contentions relative to both liability and damages. This memorandum should not exceed 10 pages in length. Copies of the memorandum must be delivered to the mediator and served upon all other parties at least seven days before the mediation conference. In addition, a party may deliver to the mediator a confidential memorandum that is not served on the other parties.</p> <p>(D) Attorney’s Attendance and Preparation Required. The attorney who is primarily responsible for each party’s case shall personally attend and participate in good faith in the mediation conference and any adjourned sessions of that conference. The attorney for each party shall come prepared to discuss the following matters in detail:</p> <ol style="list-style-type: none"><li>(1) all liability issues;</li><li>(2) all damage issues; and</li><li>(3) the position of his or her client relative to settlement.</li></ol>
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**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules**  
**November 2020**

<p>(E) Parties to Attend. In addition to counsel, parties and insurers having authority to settle, and to adjust pre-existing settlement authority if necessary, must attend the mediation in person and participate in good faith. The mediator may in his or her discretion, but only in exceptional cases, excuse a party or insurer from personally attending a mediation conference. If a party or representative of an insurer is excused from personal attendance by the mediator, the party or representative shall be on call by telephone during the conference.</p> <p>(F) Failure to Attend. Willful or negligent failure to attend the mediation conference, to participate in good faith, or to comply with this rule or with the directions of the mediator, shall be reported to the court by the mediator in writing and may result in the imposition of such sanctions as the court may find appropriate.</p> <p>(6) <i>Notice to Clients of Mediator's Suggestions.</i> Counsel shall comply promptly with any request by the mediator that a party be advised of the mediator's suggestions as to settlement.</p> <p>The mediator shall have no obligation to make any written comments or recommendations but may provide the attorneys for the parties with a written settlement recommendation. No copy of any such recommendation shall be filed with the clerk or made available in whole or in part, directly or indirectly, to the court or to the jury.</p>	<p>(E) Parties to Attend. In addition to counsel, parties and insurers having authority to settle, and to adjust pre-existing settlement authority if necessary, must attend the mediation, <u>either</u> in person <u>or virtually</u>, and participate in good faith. The mediator may in his or her discretion, but only in exceptional cases, excuse a party or insurer from <del>personally</del> attending a mediation conference. If a party or representative of an insurer is excused from personal attendance by the mediator, the party or representative shall be on call by telephone during the conference.</p> <p>(F) Failure to Attend. Willful or negligent failure to attend the mediation conference, to participate in good faith, or to comply with this rule or with the directions of the mediator, shall be reported to the court by the mediator in writing and may result in the imposition of such sanctions as the court may find appropriate.</p> <p>(6) <i>Notice to Clients of Mediator's Suggestions.</i> Counsel shall comply promptly with any request by the mediator that a party be advised of the mediator's suggestions as to settlement.</p> <p>The mediator shall have no obligation to make any written comments or recommendations but may provide the attorneys for the parties with a written settlement recommendation. No copy of any such recommendation shall be filed with the clerk or made available in whole or in part, directly or indirectly, to the court or to the jury.</p>
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**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules  
November 2020**

<p>The attorneys for the parties shall forward copies of any such recommendation to their clients and shall advise them of the fact that the mediator is a qualified attorney who has agreed to act as an impartial mediator in an attempt to help the parties reach agreement and avoid the time, expense and uncertainty of trial.</p> <p>(7) <i>Notice to Court.</i> The mediator shall provide written notice to the judge, the Clerk’s Office, and the parties stating (1) when the mediation occurred, and (2) whether the case is resolved. If the case was not resolved, the mediator also may submit a letter to the judge and the parties, not filed with the Clerk’s Office, expressing the mediator’s views as to whether the appointment of a settlement judge, or the use of other alternative dispute resolution procedures, would be advisable. In no event shall the mediator disclose any communication made between the mediator and the parties or their counsel.</p>	<p>The attorneys for the parties shall forward copies of any such recommendation to their clients and shall advise them of the fact that the mediator is a qualified attorney who has agreed to act as an impartial mediator in an attempt to help the parties reach agreement and avoid the time, expense and uncertainty of trial.</p> <p>(7) <i>Notice to Court.</i> The mediator shall provide written notice to the judge, the Clerk’s Office, and the parties stating (1) when the mediation occurred, and (2) whether the case is resolved. If the case was not resolved, the mediator also may submit a letter to the judge and the parties, not filed with the Clerk’s Office, expressing the mediator’s views as to whether the appointment of a settlement judge, or the use of other alternative dispute resolution procedures, would be advisable. In no event shall the mediator disclose any communication made between the mediator and the parties or their counsel.</p>
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**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules  
November 2020**

<b>LCR 55 DEFAULT; DEFAULT JUDGMENT</b>	
<b>Current Rule</b>	<b>Proposed Amendment</b>
<p><b>((b) Judgment on Default</b></p> <p>((4) <i>By the Court.</i> In all other cases, including instances where a defaulting party has entered an appearance, is an infant or incompetent, or is or may be in the military service, a motion for entry of a judgment by default must be addressed to the court. If there has been no appearance in the action by the defaulting party, the motion shall be noted in accordance with LCR 7(d)(1), but it need not be served on the defaulting party and notice of the motion need not be given to the defaulting party. If the defaulting party has appeared, the motion shall be noted in accordance with LCR 7(d)(3), and service of all papers filed in support of the motion must be made at the defaulting party’s address of record. In the absence of an address of record, service shall be made at the defaulting party’s last known address. The court may conduct such hearing or inquiry upon a motion for entry of judgment by default as it deems necessary under the circumstances of the particular case.</p>	<p>(4) <i>By the Court.</i> In all other cases, including instances where a defaulting party has entered an appearance, is an infant or incompetent, or is or may be in the military service, a motion for entry of a judgment by default must be addressed to the court. If there has been no appearance in the action by the defaulting party, the motion shall be noted in accordance with LCR 7(d)(1), but it need not be served on the defaulting party and notice of the motion need not be given to the defaulting party. If the defaulting party has appeared, the motion shall be noted in accordance with LCR 7(d)(3), and service of all papers filed in support of the motion must be made at the defaulting party’s address of record <u>and shall also be served by electronic means if available</u>. In the absence of an address of record, service shall be made at the defaulting party’s last known address <u>and shall also be served by electronic means if available</u>. The court may conduct such hearing or inquiry upon a motion for entry of judgment by default as it deems necessary under the circumstances of the particular case.</p>

**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules  
November 2020**

LCR 65 TEMPORARY RESTRAINING ORDERS	
Current Rule	Proposed Amendment
<p>(a) <b>Reserved</b></p> <p>(b) <b>Temporary Restraining Order</b></p> <p>(1) <i>Issuance Without Notice Disfavored:</i> Motions for temporary restraining orders without notice to and an opportunity to be heard by the adverse party are disfavored and will rarely be granted. Unless the requirements of Fed. R. Civ. P. 65(b) for issuance without notice are satisfied, the moving party must serve all motion papers on the opposing party before or contemporaneously with the filing of the motion and include a certificate of service with the motion. The motion must also include contact information for the opposing party's counsel or for an unrepresented party.</p> <p align="center">* * * * *</p>	<p>(a) <b>Reserved</b></p> <p>(b) <b>Temporary Restraining Order</b></p> <p>(1) <i>Issuance Without Notice Disfavored.</i> Motions for temporary restraining orders without notice to and an opportunity to be heard by the adverse party are disfavored and will rarely be granted. Unless the requirements of Fed. R. Civ. P. 65(b) for issuance without notice are satisfied, the moving party must serve all motion papers on the opposing party, <u>by electronic means if available</u>, before or contemporaneously with the filing of the motion and include a certificate of service with the motion. The motion must also include contact information for the opposing party's counsel or for an unrepresented party.</p> <p align="center">* * * * *</p>

**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules  
November 2020**

<b>LCR 67 REGISTRY FUNDS</b>	
<b>Current Rule</b>	<b>Proposed Amendment</b>
<p><b>(a) Deposit into Court Registry and Investment of Registry Funds</b></p> <p>All deposits into the Registry of the Court must be accompanied by a court order permitting the deposit.</p> <p>Funds deposited in the Registry of the Court will be invested in an interest-bearing account in accordance with the guidelines set up by the Administrative Office of the Court and approved by the court.</p> <p>The clerk is directed to deduct from the income earned on the investment a fee as proscribed by the Judicial Conference of the United States and set by the Director of the Administrative Office of the Court.</p>	<p><b>(a) Deposit into Court Registry and Investment of Registry Funds</b></p> <p>All deposits into the Registry of the Court must be accompanied by a court order permitting the deposit.</p> <p>Funds deposited in the Registry of the Court will be invested in an interest-bearing account in accordance with the guidelines set up by the Administrative Office of the Court and approved by the court.</p> <p>The clerk is directed to deduct from the income earned on the investment a fee as proscribed by the Judicial Conference of the United States and set by the Director of the Administrative Office of the Court.</p>
<p><b>(b) Disbursement of Registry Funds</b></p> <p>All motions for disbursement of registry funds shall specify the principal sum initially deposited, the amount(s) of principal funds to be disbursed and to whom the disbursement is to be made. Each proposed order shall contain the following language: "... the clerk is authorized and directed to draw a check(s) on the funds deposited in the registry of this court in the principal amount of \$plus all accrued interest, minus any statutory users fees, payable to (name of payee) and mail or deliver the check(s) to (name</p>	<p><b>(b) Disbursement of Registry Funds</b></p> <p>All motions for disbursement of registry funds shall specify the principal sum initially deposited, the amount(s) of principal funds to be disbursed and to whom the disbursement is to be made. Each proposed order shall contain the following language: "... the clerk is authorized and directed to draw a check(s) on the funds deposited in the registry of this court in the principal amount of \$plus all accrued interest, minus any statutory users fees, payable to (name of payee) and mail or deliver the check(s) to (name</p>

**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules  
November 2020**

of payee).” If more than one check is to be issued pursuant to a single order, the portion of principal and interest due each payee must be separately stated.

The court requires the mailing address(es), Social Security number(s) or Tax ID(s) of the disbursement recipients be provided to the Clerk and shall not be filed in the record.

of payee).” If more than one check is to be issued pursuant to a single order, the portion of principal and interest due each payee must be separately stated.

The court requires the mailing address(es), email address(es), Social Security number(s) or Tax ID(s) of the disbursement recipients be provided to the Clerk and shall not be filed in the record.

**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules  
November 2020**

<b>LCR 86 EFFECTIVE DATE</b>	
<b>Current Rule</b>	<b>Proposed Amendment</b>
These local rules, as amended, shall apply to every civil case pending in the Western District of Washington, without regard to when the case was filed. The rules were last revised effective January 1, 2020.	These local rules, as amended, shall apply to every civil case pending in the Western District of Washington, without regard to when the case was filed. The rules were last revised effective January <del>19, 2020</del> <u>2021</u> .

**FBA WDWA Local Rules Committee - Proposed Amendments to Local Civil Rules  
November 2020**

**APPENDIX C STIPULATION FOR VIRTUAL DEPOSITIONS**

See separate Word document.