

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**


ORDER AMENDING LOCAL RULES

GENERAL ORDER 2019-06

Appropriate Public Notice and an opportunity to comment having been given pursuant to Rule 83 of the Federal Rules of Civil Procedure, and Rule 57 of the Federal Rules of Criminal Procedure, and pursuant to a majority vote of the active judges of this court,

IT IS ORDERED that Local Civil Rules 4, 5, 7, 16, 41, 47, 56, 62 and Local Criminal Rules 5, 24, and 49 of the United States District Court for Middle District of Louisiana are hereby amended to read as attached.

Baton Rouge, Louisiana, this 12th day of November 2019.


SHELLY D. DICK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

LOCAL CIVIL RULE 4 – SUMMONS

Deposit for Service. Except as provided by law in cases involving indigent persons, or unless ordered by the court, the United States Marshal shall not be required to perform any service until the deposit of a sum sufficient to cover the immediate costs has been made, and, may demand security in a reasonable amount for further costs.

LOCAL CIVIL RULE 5 - SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Filing by Electronic Means.

(1) All documents must be filed with the Clerk of Court in the manner provided in the Court's Administrative Procedures for Filing Electronic Documents, available at www.lamd.uscourts.gov.

(2) An attorney may, for good cause shown, request by written motion a temporary exemption from mandatory electronic case filing.

(b) Filing of Extraordinary Pleadings.

(c) Advance Payment Required.

(d) Filing by Unrepresented Prisoners, Subject to Electronic Filing, Regarding Civil Rights and Habeas Corpus Cases.

(e) Certificate of Service.

(1) When a document filed after the initial complaint is served by filing it with the Court's electronic filing system, no certificate of service is required when all parties are electronic filers.

(2) When a document that is required to be served is served by means other than the Court's electronic filing system, the document must include a certificate of service indicating the document has been served on all parties contemporaneously with

its filing with the court. The certificate of service must list each party on which the document has been served and must identify the method of service upon each party.

(f) Service by Electronic Means.

(1) As provided by Fed. R. Civ. P. 5(b)(2)(E), if a recipient is a registered filer in the Court's Electronic CM/ECF Filing System, service is complete when the document is electronically filed or uploaded to the Court's system. If the recipient is not a registered filer in the Court's system, the filer must effect service on all parties in accordance with the Federal Rules of Civil Procedure.

(2) Most sealed filings do not produce a Notice of Electronic Filing, and therefore service by the filer of any sealed document must be in accordance with the Federal Rules of Civil Procedure and the Local Rules.

LOCAL CIVIL RULE 7 - PLEADINGS ALLOWED; FORM OF MOTIONS

(f) Response and Memorandum. Each respondent opposing a motion shall file a response, including opposing affidavits, and such supporting documents as are then available, within twenty-one days after service of the motion. Memoranda shall contain a concise statement of reasons in opposition to the motion, and a citation of authorities upon which the respondent relies. For good cause appearing therefor, a respondent may be required to file a response and supporting documents, including memoranda, within such shorter or longer period of time as the Court may order. Reply memoranda may be filed without leave of Court in Rule 12 and Rule 56 motions only. Any such reply memoranda shall be filed within fourteen days after service of the response to the motion. Leave of court must be obtained to file surreplies in Rule 12 and Rule 56

motions. Leave of court must be obtained to file reply and surreply memoranda in all other motions not listed.

(g) Memoranda. All memoranda filed by a party (including briefs, memoranda in support of or in opposition to a motion, and appeals to District Judges) shall be limited to twenty-five pages excluding table of contents and attachments. The form of the memorandum shall comply with LR10(a). Reply and surreply memoranda, if permitted, shall be limited to ten pages. Leave of Court must be obtained to file memoranda in excess of the limit above.

LOCAL CIVIL RULE 16 - PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(a) Scheduling Orders.

(1) The scope and timing of the scheduling order under Fed. R. Civ. P. 16(b) shall be as prescribed by the Civil Justice Expense and Delay Reduction Plan of this Court (see General Orders of the Court).

LOCAL CIVIL RULE 41 – DISMISSAL OF ACTIONS

(b) Dismissal for Failure to Prosecute.

(1) A civil action may be dismissed by the Court for lack of prosecution as follows:

(A) Where no service of process has been made within 90 days after filing of the complaint;

LOCAL CIVIL RULE 47 - JURORS

(d) Contacting Prospective Jurors and Jurors Before and During Trial.

(1) A lawyer shall not knowingly communicate, either directly or through another, with a juror or prospective juror unless authorized to do so by law or court

order, upon good cause shown.¹

(2) A lawyer may not, either personally or through another, send an access request to a juror or prospective juror through any electronic social media. An access request is a communication to a juror seeking access to a juror or prospective juror's social media for the purpose of obtaining information about a juror or potential juror which the juror or potential juror has not made public or that would be the type of ex parte communication prohibited by subsection (1) of this local rule.²

(3) Unless otherwise limited by law, court order, or subsections (1) and (2) of this local rule, a lawyer may review, in advance of or during a trial, a juror's or prospective juror's public Internet presence. "Internet presence" includes but is not limited to postings by the juror or prospective juror on electronic social media that are publicly available and that do not require an access request.³

(4) In the course of reviewing a juror's or potential juror's Internet presence, if a lawyer discovers evidence of juror or potential juror misconduct, the lawyer must disclose the misconduct or potential misconduct to the court as soon as possible.⁴

(e) Interviewing Jurors After Trial.

¹ This is drawn from the Louisiana Rule of Professional Conduct 3.5(b), ABA Model Rule 3.5(b) and ABA Formal Opinion 466.

² This is drawn verbatim from ABA Formal Opinion 466 except that "subsection (1) of this local rule" replaces "Model Rule 3.5(b)."

³ This is drawn from ABA Formal Opinion 466. See also Jan L. Jacobowitz and John G. Browning, *Legal Ethics and Social Media, A Practitioner's Handbook*, American Bar Association, 2017, at 96. ("[R]esearching the social media of prospective jurors, and continuing to monitor social media activity during trial, can be vital to seating an honest, unbiased jury, and to ensuring that any online misconduct is promptly brought to the court's attention.") One writer has suggested that "it is not only permissible for lawyers to research jurors before and during trial using social media according to currently existing professional standards, but they may have an ethical obligation to do so." Jessica L. Boylan, "Jury Duty": *The Ethical Obligations of Attorneys Researching Jurors Using Social Media Technology*, 29 Geo. J. Legal Ethics 867, 869 (2016).

⁴ This is drawn from ABA Formal Opinion 466.

(1) No party or their attorney shall, personally or through another person, contact, interview, examine, or question any juror or alternate, except on leave of court granted upon good cause shown. If a party believes in good faith that grounds for legal challenge to a verdict exist, he may move for an order permitting an interview of a juror or jurors to determine whether the verdict is subject to challenge.⁵

(2) No juror has any obligation to speak to any person about any case and may refuse all interviews or comments;

(3) No person may make repeated requests for interviews or questions after a juror has expressed the desire not to be interviewed;

(4) No juror or alternate who consents to be interviewed may disclose any information with respect to the following:

(A) The specific vote of any juror other than the juror being interviewed;

(B) The deliberations of the jury; or

(C) Evidence of improprieties in the jury's deliberation.

LOCAL CIVIL RULE 56 – SUMMARY JUDGMENT

(a) Motions for Summary Judgment. In addition to the material required to be filed by Local Civil Rule 7(d), (f), & (g), a motion for summary judgment and opposition thereto shall comply with the requirements of this rule.

(b) Supporting Statement of Material Facts.

⁵ This combines M.D. Florida Local Rule 5.01(d) and N.D. Mississippi Local Rule 48.

(1) A motion for summary judgment shall be supported by a separate, short, and concise statement of material facts, each set forth in separately numbered paragraphs, as to which the moving party contends there is no genuine issue of material fact to be tried. Each fact asserted in the statement shall be simply and directly stated in narrative without footnotes or tables and shall be supported by a record citation as required by subsection (f) of this rule.

(2) Nothing in this Local Civil Rule 56 precludes the parties from filing a stipulated statement of material facts as to all, or some, of the facts underlying a motion for summary judgment, or any opposition thereto. In the event the parties file a stipulated statement of material facts, such stipulated facts shall control and take precedence over any conflicting statement of fact filed by any party to the stipulation.

(c) Opposing Statement of Material Facts. A party opposing a motion for summary judgment shall submit with its opposition a separate, short, and concise statement of material facts. The opposing statement shall admit, deny or qualify the facts by reference to each numbered paragraph of the moving party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation as required by this rule. Each such statement shall begin with the designation "Admitted," "Denied," or "Qualified" and, in the case of an admission, shall end with such designation. The opposing statement may contain in a separately titled section additional facts, each set forth in a separately numbered paragraph and supported by a record citation as required by subsection (f) of this rule.

(d) Reply Statement of Material Facts. A party replying to the opposition to a motion for summary judgment shall submit with its reply a separate, short, and concise

statement of material facts which shall be limited to any additional facts submitted by the opposing party. The reply statement shall admit, deny or qualify such additional facts by reference to the numbered paragraphs of the opposing party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation as required by subsection (f) of this rule. Each such reply statement shall begin with the designation "Admitted," "Denied," or "Qualified" and, in the case of an admission, shall end with such designation.

(e) Motions to Strike Not Allowed. Motions to strike statements of fact are not allowed. If a party contends that an individual statement of fact should not be considered by the court, the party may include as part of the response that the statement of fact "should be stricken" with a brief statement of the reason(s) and the authority or record citation in support. Without prejudice to the determination of the request to strike, the party shall admit, deny or qualify the statement as provided in this rule. A party may respond to a request to strike either in the reply statement of material facts as provided in this rule or, if the request was made in a reply statement of material facts, by filing a response within 14 days of service of the reply statement. A response to a request to strike shall be strictly limited to a brief statement of the reason(s) why the statement of fact should be considered and the authority or record citation in support.

(f) Statement of Facts Deemed Admitted Unless Properly Controverted; Specific Record of Citations Required. Facts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted. An assertion of fact set forth in a statement of material facts shall be followed by a citation to the specific page or

paragraph of identified record material supporting the assertion. The court may disregard any statement of fact not supported by a specific citation to record material properly considered on summary judgment. The court shall have no independent duty to search or consider any part of the record not specifically referenced in the parties' separate statement of facts.

(g) Facts Admitted for Purpose of Summary Judgment. Facts deemed admitted solely for purposes of summary judgment shall not be deemed admitted for purposes other than determining whether summary judgment is appropriate.

(h) Number of Motions for Summary Judgment. As a general rule, a party may file only one motion for summary judgment that addresses all issues for which that party seeks summary judgment. A party may submit multiple motions for summary judgment only after seeking leave of Court and demonstrating good cause.

LOCAL CIVIL RULE 62 - STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(b) Bond or Other Security. A bond or other security staying execution of a money judgment shall be in the amount of the judgment plus 20% of the amount to cover interest, costs, and any award of damages for delay, unless the Court directs otherwise.

LOCAL CRIMINAL RULE 5 - INITIAL APPEARANCE BEFORE THE MAGISTRATE JUDGE

(a) Pre-trial proceedings in criminal matters may be referred to a Magistrate Judge for decision or for report and recommendation, in accordance with 28 U.S.C. § 636(b)(1)(A) and (B), by specific referral of the presiding District Judge or by any general or standing orders.

(b) Pursuant to 18 U.S.C. § 3153(c)(1), which governs the availability of the pretrial services report to counsel for the accused and for the government prior to any detention

hearing, the United States Probation Office for the Middle District of Louisiana is authorized to disclose pretrial services reports to counsel for the accused and for the government. This disclosure shall be accomplished by filing the pretrial services report for each case under seal in the CM/ECF filing system prior to or immediately after an initial appearance. Counsel for the accused and for the government may retain these reports but must not re-disclose the reports to other persons. When a copy of the report is filed under seal, it will have a header on the first page advising the attorney that (a) the report is not to be copied, (b) the report is not a public record, and (c) the content may not be disclosed to other persons. Other than the disclosures laid out herein, the reports shall remain confidential, as provided in 18 U.S.C. § 3153(c)(1).

LOCAL CRIMINAL RULE 24 - TRIAL JURORS

(a) Contacting Prospective Jurors and Jurors Before and During Trial.

(1) A lawyer shall not knowingly communicate, either directly or through another, with a juror or prospective juror unless authorized to do so by law or court order.⁶

(2) A lawyer may not, either personally or through another, send an access request to a juror or prospective juror through any electronic social media. An access request is a communication to a juror seeking access to a juror or prospective juror's social media for the purpose of obtaining information about a juror or potential juror which the juror or potential juror has not made public or that would be the type of ex parte communication prohibited by subsection (1) of this local rule.⁷

⁶ This is drawn from the Louisiana Rule of Professional Conduct 3.5(b), ABA Model Rule 3.5(b) and ABA Formal Opinion 466.

⁷ This is drawn verbatim from ABA Formal Opinion 466 except that "subsection (1) of this local rule" replaces "Model Rule 3.5(b)."

(3) Unless otherwise limited by law, court order, or subsections (1) and (2) of this local rule, a lawyer may review, in advance of or during a trial, a juror's or prospective juror's public Internet presence. "Internet presence" includes but is not limited to postings by the juror or prospective juror on electronic social media that are publicly available and that do not require an access request.⁸

(4) In the course of reviewing a juror's or potential juror's Internet presence, if a lawyer discovers evidence of juror or potential juror misconduct, the lawyer must disclose the misconduct or potential misconduct to the court as soon as possible.⁹

(b) Interviewing Jurors After Trial.

(1) No party or their attorney shall, personally or through another person, contact, interview, examine, or question any juror or alternate, except on leave of Court granted upon good cause shown. If a party believes in good faith that grounds for legal challenge to a verdict exist, he may move for an order permitting an interview of a juror or jurors to determine whether the verdict is subject to challenge.¹⁰

(2) No juror has any obligation to speak to any person about any case and may refuse all interviews or comments;

(3) No person may make repeated requests for interviews or questions after a juror has expressed the desire not to be interviewed;

⁸ This is drawn from ABA Formal Opinion 466. See also Jan L. Jacobowitz and John G. Browning, *Legal Ethics and Social Media, A Practitioner's Handbook*, American Bar Association, 2017, at 96. ("[R]esearching the social media of prospective jurors, and continuing to monitor social media activity during trial, can be vital to seating an honest, unbiased jury, and to ensuring that any online misconduct is promptly brought to the court's attention.") One writer has suggested that "it is not only permissible for lawyers to research jurors before and during trial using social media according to currently existing professional standards, but they may have an ethical obligation to do so." Jessica L. Boylan, "Jury Duty": *The Ethical Obligations of Attorneys Researching Jurors Using Social Media Technology*, 29 *Geo. J. Legal Ethics* 867, 869 (2016).

⁹ This is drawn from ABA Formal Opinion 466.

¹⁰ This combines M.D. Florida Local Rule 5.01(d) and N.D. Mississippi Local Rule 48.

- (4) No juror or alternate who consents to be interviewed may disclose any information with respect to the following:
- (A) The specific vote of any juror other than the juror being interviewed;
 - (B) The deliberations of the jury; or
 - (C) Evidence of improprieties in the jury's deliberation

LOCAL CRIMINAL RULE 49 - SERVICE AND FILING OF PAPERS

(a) Filing by Electronic Means.

(1) An attorney may, for good cause shown, request by written motion a temporary exemption from mandatory electronic case filing.

(2) The filing of charging documents, including the complaint, information, indictment and superseding information or indictment, shall be accomplished as set forth in the administrative procedures guide for the U. S. District Court, Middle District of Louisiana, which is authorized by General Order 2005-06. A copy of the administrative procedures may be obtained from the Clerk's Office or downloaded from the Court's website at www.lamd.uscourts.gov.

(b) Service of Documents By Electronic Means.

(1) As provided by Fed. R. Cr. P. 49(a)(3), if a recipient is a registered filer in the Court's Electronic Filing System, service is complete when the document is electronically filed or uploaded to the Court's system. If the recipient is not a registered filer in the Court's system, the filer must effect service on all parties in accordance with the Federal Rules of Criminal Procedure and the Local Rules.

(2) Most sealed filings do not produce a Notice of Electronic Filing, and therefore, service by the party of any sealed document must be in accordance with the Federal Rules and the Local Rules.

(3) A certificate of service is not required when service is made through filing with the Court's electronic filing system. When a document is served by means other than the Court's electronic filing system, the document must include a certificate of service and must identify the method of service upon each party.