

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

November 20, 2008

NOTICE OF REVISIONS TO CIVIL AND CRIMINAL LOCAL RULES

The U.S. District of Colorado has adopted the following additions or revisions to its Local Rules:

Revised Civil Rules:

- D.C.COLO.LCivR 5.2: Service By Other Means, Including Electronic Means
- D.C.COLO.LCivR 5.6D: Electronic Case Filing – Service
- D.C.COLO.LCivR 7.3: Procedures for Filing Papers and Documents under Seal
- D.C.COLO.LCivR 10.1: Format and Copies of Papers Presented for Filing
- D.C.COLO.LCivR 16.2B: Scheduling Orders – Limitations
- D.C.COLO.LCivR 16.3: Final Pretrial Orders
- D.C.COLO.LCivR 30.3A: Sanctions for Abusive Deposition Conduct – Prohibited Conduct
- D.C.COLO.LCivR 72.1B: General Authority and Duties of Magistrate Judges – Duties
- D.C.COLO.LCivR 83.3A: The Bar of the Court – Applicant Information
- D.C.COLO.LCivR 83.3E: The Bar of the Court – Member in Good Standing

New Proposed Criminal Rule:

- D.C.COLO.LCrR 32.1: Deadline and Service for Objections, Motions and Statements to Assist with Sentencing

Revised Criminal Rules:

- D.C.COLO.LCrR 47.1: Motions to Seal; Motions to Close Court Proceedings

- D.C.COLO.LCrR 49.2: Service By Other Means, Including Electronic Means
- D.C.COLO.LCrR 49.3: Format and Copies of Papers Presented for Filing
- D.C.COLO.LCrR 50.1C: Assignment of Cases – Special Assignments
- D.C.COLO.LCrR 57.5A: The Bar of the Court – Applicant Information
- D.C.COLO.LCrR 57.5E: The Bar of the Court – Member in Good Standing

PROPOSED REVISIONS:

D.C.COLO.LCivR 5.2

SERVICE BY OTHER MEANS, INCLUDING ELECTRONIC MEANS

- A. Electronic Case Filing Registration.** Registration with the court's Electronic Case Filing system shall constitute consent to electronic service of all documents in accordance with the Federal Rules of Civil Procedure.
- B. Form and Content of Consent.** A party's consent to accept service by other means, ~~including electronic means~~, as authorized by Fed. R. Civ. P. 5(b), shall be expressly stated and filed in writing with the clerk. The consent shall include:
1. the persons to whom service should be made; and
 2. the appropriate address or location for such service, as authorized by Fed. R. Civ. P. 5(b) ~~such as the electronic-mail address or facsimile number.~~
- C. Duration of Consent.** A party's consent shall remain effective for all service authorized by Fed. R. Civ. P. 5 or Fed. R. Civ. P. 77(d) until expressly revoked or until the representation of a party changes through entry, withdrawal, or substitution of counsel.
- D. Notice of Change of Electronic-Mail Address or Facsimile Number.** Within ~~ten~~ five days after any change of electronic-mail address or facsimile number of any attorney or *pro se* party that has consented to service by other means, including electronic means, notice of the new electronic-mail address or facsimile number shall be filed.

Revision Notes:

With the adoption of Electronic Case Filing system, consent to electronic service is done by means of registration for the system. This local rule has been revised as the need remains for consent to service by means other than the methods listed in Fed. R. Civ. P. 5(b)(2)(A)-(E).

The rule requiring notification of a change of e-mail address or facsimile number within ten days has been shortened to five days, to maintain uniformity with the time period required in the local criminal rules of practice.

**D.C.COLO.LCivR 5.6
ELECTRONIC CASE FILING**

- D. Service.** Parties are authorized to make service under Fed. R. Civ. P. 5(b)(2)(D)(3) through the court's transmission facilities.

Revision Notes:

D.C.COLO.LCivR 5.6D is updated for consistency with the current edition of the Federal Rules of Civil Procedure.

**D.C.COLO.LCivR 7.3
PROCEDURES FOR NON-ELECTRONIC FILING OF PAPERS AND DOCUMENTS
UNDER SEAL**

A. Manner of Filing. Except for filings made electronically pursuant to D.C.COLO.LCivR 5.6A, the following papers or documents must be placed unfolded in a sealed envelope with a copy of a cover page (see section B. of this rule) affixed to the outside of the envelope:

1. papers or documents ordered sealed by the court;
2. proposed filings of papers or documents submitted under seal with a motion requesting that the documents be sealed; and
3. documents required to be sealed by law.

B. Cover Page. The cover page affixed to the outside of the sealed envelope must include:

1. the case caption;
2. the title of the paper or document;
3. the name, address, and telephone number of the attorney or *pro se* party filing the paper or document;
4. a notation that the paper or document is filed under seal;
5. the title and date of the court order pursuant to which the paper or document is sealed, if applicable; or
6. the citation of the statute or other authority pursuant to which the paper or document is sealed, if applicable.

~~**C. Copies.** Copies of the papers or documents in sealed envelopes shall be filed in accordance with D.C.COLO.LCivR 10.1L.~~

Revision Notes:

D.C.COLO.LCivR 7.3 applies to those parties authorized to file in paper format. All practitioners, however, are required to register with the Electronic Case Filing system. The ECF system provides the means of filing documents under seal with court, with the exception of documents submitted for in camera review. See Electronic Case Filing Procedures for the District of Colorado (Civil Cases), Part VI.

D.C.COLO.LCivR 10.1

FORMAT ~~AND COPIES~~ OF PAPERS PRESENTED FOR FILING

- L. Original Papers ~~and Copies.~~** Except for papers filed by facsimile pursuant to D.C.COLO.LCivR 5.1A and filings made electronically pursuant to D.C.COLO.LCivR 5.6A, an original paper ~~document and two copies of every paper~~ shall be filed with the court. ~~The clerk shall transmit one copy to the assigned district judge and one copy to the assigned magistrate judge.~~
- M. Notice of Change of Address, E-mail Address, or Telephone Number.** Within ~~ten~~ five days after any change of address, e-mail address (including any change of e-mail address to be used in the account maintenance link in ECF), or telephone number of any attorney or pro se party, notice of the new address, e-mail address, or telephone number shall be filed.

Revision Notes:

In the event a party is authorized to file in paper format, this revision eliminates the need to submit copies in addition to the original filed paper.

The rule requiring notification of a change of address, e-mail address or telephone number within ten days has been shortened to five days, to maintain uniformity with the time period required in the local criminal rules of practice.

D.C.COLO.LCivR 16.2
SCHEDULING ORDERS

B. Limitations. Unless otherwise ordered by a judicial officer, scheduling orders for ~~discovery, joinder, and amendment of pleadings~~ are unnecessary in:

1. appeals from the bankruptcy court (see D.C.COLO.LCivR 40.1E4); and
2. categories of proceedings listed in Fed. R. Civ. P. 26(a)(1)(~~E~~)(B).

Revision Notes:

D.C.COLO.LCivR 16.2 is revised to eliminate redundant language, and is updated for consistency with the current edition of the Federal Rules of Civil Procedure.

**D.C.COLO.LCivR 16.3
FINAL PRETRIAL ORDERS**

- A. ~~Instructions for Preparation of Final Pretrial Order.~~** Unless otherwise instructed by a judicial officer, when a final pretrial order is required, it shall be prepared in accordance with the Instructions for Preparation of Final Pretrial Order. See Appendix G.
- B. ~~Pretrial Disclosures.~~** ~~The tendering of a proposed final pretrial order in the form specified in Appendix G shall satisfy the requirement of Fed. R. Civ. P. 26(a)(3) that pretrial disclosures be filed with the court.~~

Revision Notes:

Paragraph B of D.C.COLO.LCivR 16.3 is identical to paragraph B of D.C.COLO.LCivR 26.1. As 26.1's purpose is to provide direction regarding compliance with the duties imposed by Fed. R. Civ. P. 26, the paragraph appropriately falls under D.C.COLO.LCivR 26.1.

D.C.COLO.LCivR 30.3
SANCTIONS FOR ABUSIVE DEPOSITION CONDUCT

A. Prohibited Conduct. The following abusive deposition conduct is prohibited:

1. Making objections or statements which have the effect of coaching the witness, instructing the witness concerning the way in which he or she should frame a response, or suggesting an answer to the witness.
2. Interrupting examination for an off-the-record conference between counsel and the witness, except for the purpose of determining whether to assert a privilege. Any off-the-record conference during a recess may be a subject for inquiry by the opposing counsel or *pro se* party, to the extent the conference is not privileged.
3. Instructing a deponent not to answer a question except when necessary to preserve a privilege, to enforce a limitation on evidence directed by a judicial officer, or to present a motion under Fed. R. Civ. P. 30(d)~~(4)~~(3)(A).
4. Filing a motion for protective order or to limit examination without a substantial basis in law.
5. Questioning that unfairly embarrasses, humiliates, intimidates, or harasses the deponent, or invades his or her privacy absent a clear statement on the record explaining how the answers to such questions will constitute, or lead to, competent evidence admissible at trial.

Revision Notes:

D.C.COLO.LCivR 30.3 is updated for consistency with the current edition of the Federal Rules of Civil Procedure.

D.C.COLO.LCivR 72.1B

GENERAL AUTHORITY AND DUTIES OF MAGISTRATE JUDGES – DUTIES

B. Duties. Each magistrate judge may:

1. issue administrative inspection warrants;
2. issue civil seizure warrants pursuant to 21 U.S.C. § 881 and 18 U.S.C. § 981-983.
3. issue search and seizure warrants for levy pursuant to the Internal Revenue Code;
4. act on postjudgment matters arising under Fed. R. Civ. P. 69, including:
 - a. issue writs;
 - b. issue orders directing funds to be paid into or disbursed from the registry of the court;
 - c. hold hearings and make recommendations to the district judge on substantive issues including the liability of a party under a writ of garnishment or execution;
 - d. perform duties set forth in chapter 176 of Title 28 United States Code, as assigned by the court pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. § 3008;
5. make determinations and enter appropriate orders pursuant to 28 U.S.C. § 1915 with respect to any suit, action, or proceedings in which a request is made to proceed *in forma pauperis*;
6. perform duties set forth in D.C.COLO.LCivR 8.1 and 8.2;
7. make determinations and enter appropriate orders on discovery disputes in cases pending in other federal courts or courts of another country; ~~and~~
8. exercise contempt authority as authorized by law; and
9. issue administrative subpoenas as authorized by law.

Revision Notes:

D.C.COLO.LCivR 72.1B is revised to broaden the scope of magistrate judge duties to include additional matters pertaining to civil forfeiture proceedings and administrative subpoenas.

D.C.COLO.LCivR 83.3
THE BAR OF THE COURT

- A. Applicant Information.** An applicant for admission to the bar of this court must be a person ~~of good moral character~~ licensed by the highest court of a state, federal territory, or **the District of Columbia, be on active status in a state, federal territory or the District of Columbia**, and be a member of the bar in good standing in all courts and jurisdictions where he or she has been admitted. Each applicant for admission shall complete an approved form provided by the clerk. Each applicant shall pay to the clerk the fee prescribed by the court.

Revision Notes:

D.C.COLO.LCivR 83.3A is revised to delete the phrase “of good moral character” which lacks definition. The additional revision ensures that an attorney applicant is not only licensed to practice law but is also currently eligible to do so by being on active status.

D.C.COLO.LCivR 83.3
THE BAR OF THE COURT

E. Member in Good Standing. An attorney admitted to the bar of this court must remain in good standing in all courts where admitted. “In good standing” means not subject to suspension or disbarment by any court for any reason. An attorney who is not in good standing shall not practice before the bar of this court or continue to be an attorney of record in any pending case. ~~Upon~~ On notice to this court of lack of good standing from the suspending or disbaring jurisdiction, or otherwise, the clerk of this court shall make a notation in the court record of such lack of good standing.

1. *Self-Reporting Requirements.* Whenever a member of the bar of this court has been **suspended or disbarred for any reason by any court, including when the suspension is stayed**, the ~~disciplined~~ attorney shall, within 10 days of the date the disciplinary order enters, give written notice to the clerk of this court of the terms of discipline, the name and address of the court imposing the discipline, and the effective date of that court’s action.

Revision Notes:

The self-reporting requirement of D.C.COLO.LCivR 83.3E has been clarified to emphasize that the rule also pertains to attorneys who are subject to a stayed suspension.

D.C.COLO.LCrR 32.1 - DEADLINE AND SERVICE FOR OBJECTIONS, MOTIONS AND STATEMENTS TO ASSIST WITH SENTENCING

Fed. R. Crim. P. 32(f)(1) affords parties in a criminal case 14 days after receipt of a presentence report to state in writing any objections to the report. No less than 11 days before sentencing, the parties may file motions for a departure or a variance from the applicable sentencing guideline range. Such motions shall be served on the probation officer by the requesting party.

Revision Notes:

This new local rule provides the court and the U.S. Probation Office with consistency in the pre-sentence filings of the parties.

D.C.COLO.LCrR 47.1

MOTIONS TO SEAL; MOTIONS TO CLOSE COURT PROCEEDINGS

- E. Order.** No order to seal or close court proceedings will be entered before the date set forth in the public notice for filing objections, except in emergency circumstances ~~shown or referred to~~ stated in the motion ~~or~~ and at the discretion of the judicial officer.
- F. Exemptions.** The following documents are exempt from this rule and D.C.COLO.LCrR 47.2:
1. Unexecuted arrest warrants and supporting documents;
 2. Unexecuted search warrants and supporting documents;
 3. Unexecuted criminal and civil forfeiture seizure warrants and supporting documents;
 4. Unexecuted ex parte bond revocation orders and supporting documents;
 5. Title III and clone pager orders and supporting documents;
 6. Pen register and trap/trace orders and supporting documents;
 7. Orders and supporting documents regarding access to electronic communications; and
 8. Ex parte applications and orders for tax or bank account information.

Revision Notes:

This revision to D.C.COLO.LCrR 47.1 provides clarification to D.C.COLO.LCrR 47.1 and 47.2 and preserves the exemptions set forth in Administrative Order 2002-3: In the Matter of D.C.COLO.LCrR 47.1 and 47.2 unless otherwise ordered by the court.

D.C.COLO.LCrR 49.2

SERVICE BY OTHER MEANS, INCLUDING ELECTRONIC MEANS

- A. Electronic Case Filing Registration.** Registration with the court's Electronic Case Filing system shall constitute consent to electronic service of all documents in accordance with the Federal Rules of Criminal Procedure.
- B. Form and Content of Consent.** A party's consent to accept service by other means, ~~including electronic means~~, as authorized by Fed. R. Crim. P. 49(b), shall be expressly stated and filed in writing with the clerk. The consent shall include:
1. the persons to whom service should be made; and
 2. the appropriate address or location for such service, as authorized by Fed. R. Crim. P. 49(b) ~~such as the electronic-mail address or facsimile number.~~
- C. Duration of Consent.** A party's consent shall remain effective for all service authorized by Fed. R. Crim. P. 49(b) until expressly revoked or until the representation of a party changes through entry, withdrawal, or substitution of counsel.
- D. Notice of Change of Electronic-Mail Address or Facsimile Number.** ~~Within ten five~~ days after any change of electronic-mail address or facsimile number of any attorney or *pro se* party that has consented to service by other means, including electronic means, notice of the new electronic-mail address or facsimile number shall be filed.

Revision Notes:

With the adoption of Electronic Case Filing system, consent to electronic service is done by means of registration for the system. This local rule has been revised as the need remains for consent to service by means other than the methods listed in Fed. R. Civ. P. 5(b)(2)(A)-(E), (incorporated by reference in Fed. R. Crim. P. 49(b)).

The rule requiring notification of a change of e-mail address or facsimile number within ten days has been shortened to five days, to maintain uniformity with the time period required in the local civil rules of practice and D.C.COLO.LCrR 49.3M.

D.C.COLO.LCrR 49.3

FORMAT ~~AND COPIES~~ OF PAPERS PRESENTED FOR FILING

- L. Original Papers ~~and Copies.~~** Except for papers filed by facsimile pursuant to D.C.COLO.LCrR 49.1A and filings made electronically pursuant to D.C.COLO.LCrR 49.4A, an original paper ~~document and two copies of every paper~~ shall be filed with the court. ~~The clerk shall transmit one copy to the assigned district judge and one copy to the assigned magistrate judge.~~
- M. Notice of Change of Address, E-mail Address, or Telephone Number.** Within ~~ten~~ five days after any change of address, e-mail address (including any change of e-mail address to be used in the account maintenance link in ECF), or telephone number of any attorney or pro se party, notice of the new address, e-mail address, or telephone number shall be filed.

Revision Notes:

In the event a party is authorized to file in paper format, this revision eliminates the need to submit copies in addition to the original filed paper.

The rule requiring notification of a change of address, e-mail address or telephone number within ten days has been shortened to five days, to maintain uniformity with the time period required in the local civil rules of practice and D.C.COLO.LCrR 49.2D.

**D.C.COLO.LCrR 50.1
ASSIGNMENT OF CASES**

C. Special Assignments.

1. On filing a new criminal case, the United States Attorney shall notify the clerk in writing when that defendant is involved in a pending civil forfeiture proceeding. The criminal case shall be assigned to the judicial officer to whom the civil case was assigned.
2. On filing a new criminal case, including new cases filed pursuant to 18 U.S.C. § 3605, Transfer of Jurisdiction Over a Probationer, and criminal cases transferred to the court pursuant to Fed. R. Crim. P. 20, the United States Attorney shall notify the clerk in writing when that defendant is currently serving, or has served, a sentence of probation or supervised release imposed by a district judge ~~currently serving on~~ **presently sitting on the bench of** this court, and the case shall be assigned to that judge. **In the event the defendant has had multiple cases before this court, the new case shall be reassigned to the judge who handled the oldest case.**

Revision Notes:

This revision to D.C.COLO.LCrR 50.1 incorporates *Administrative Order 2006-6: In the Matter of Special Assignment of Criminal Cases Pursuant to D.C.COLO.LCrR 50.1.*

D.C.COLO.LCrR 57.5
THE BAR OF THE COURT

- A. Applicant Information.** An applicant for admission to the bar of this court must be a person ~~of good moral character~~ licensed by the highest court of a state, federal territory, or **the District of Columbia, be on active status in a state, federal territory or the District of** Columbia, and be a member of the bar in good standing in all courts and jurisdictions where he or she has been admitted. Each applicant for admission shall complete an approved form provided by the clerk. Each applicant shall pay to the clerk the fee prescribed by the court.

Revision Notes:

D.C.COLO.LCrR 57.5A is revised to delete the phrase “of good moral character” which lacks definition. The additional revision ensures that an attorney applicant is not only licensed to practice law but is also currently eligible to do so by being on active status.

D.C.COLO.LCrR 57.5
THE BAR OF THE COURT

E. Member in Good Standing. An attorney admitted to the bar of this court must remain in good standing in all courts where admitted. “In good standing” means not subject to suspension or disbarment by any court for any reason. An attorney who is not in good standing shall not practice before the bar of this court or continue to be an attorney of record in any pending case. ~~Upon~~ On notice to this court of lack of good standing from the suspending or disbarring jurisdiction, or otherwise, the clerk of this court shall make a notation in the court record of such lack of good standing.

1. *Self-Reporting Requirements.* Whenever a member of the bar of this court has been **suspended or disbarred for any reason by any court, including when the suspension is stayed**, the ~~disciplined~~ attorney shall, within 10 days of the date the disciplinary order enters, give written notice to the clerk of this court of the terms of discipline, the name and address of the court imposing the discipline, and the effective date of that court’s action.

Revision Notes:

The self-reporting requirement of D.C.COLO.LCrR 57.5E has been clarified to emphasize that the rule also pertains to attorneys who are subject to a stayed suspension.