

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

MEMORANDUM

Date: November 15, 2012  
To: Clerk's Office Staff  
Cc: Jeffrey P. Colwell, Clerk  
David Egar, Chief Deputy Clerk of Operations  
From: Edward Butler, Legal Officer  
Subject: Summary of Federal and Local Rules Changes, effective Dec. 1, 2012

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The following is a summary of both the federal and local rules of procedure changes for the upcoming year. Regarding the federal rule changes, they were adopted by the Judicial Conference's Committee on Rules of Practice and Procedure, and approved by the U.S. Supreme Court earlier this year. Congress has taken no action on the amendments to date (i.e., has not taken action to reject, modify, or defer them) and under the Rules Enabling Act, 28 U.S.C. § 2072, the amendments to the federal rules will take effect on December 1, 2012.

About the district court's local rule amendments – recommendations to the District Judges were made by the Advisory Committee to the Local Rules of Practice, which were approved by a majority of the District Court bench in the month of September. After an appropriate comment period, no further revisions were made. The revised Local Rules also go into effect December 1.

**I. Revised Federal Rules**

The Supreme Court of the United States has approved the following rule amendments:

- Criminal Rules – Rule 5(c)(4) Rule 15(c)(3) and (f), and new Rule 37;
- Bankruptcy Rules – Rules 1007, 2015, 3001, and Official Forms 10 and 25A, 7054 and 7056;
- Civil Rules – no changes;
- Appellate Rules – no changes;
- Evidence Rule – no changes.

**Criminal Procedure Rules:**

- **Rule 5(c)(4):** This rule change clarifies where an initial appearance should take place for persons who have been surrendered to the United States pursuant to an extradition request to a foreign country. The amendment codifies the longstanding practice that persons who are charged with criminal offenses in the United States and surrendered to the United States following extradition in a foreign country make their initial appearance in the jurisdiction that sought their extradition – even if the defendant first arrives in another district.

- **Rule 15(c)(3) and (f):** The revision authorizes the taking of depositions outside the United States without the defendant’s presence in specified limited circumstances and with the district judge’s approval. The case-specific findings that a court must make include: (1) the importance of the witness’s testimony; (2) the likelihood that the witness’s attendance at trial cannot be obtained; (3) why it is not feasible to have face-to-face confrontation by either (a) bringing the witness to the United States for a deposition at which the defendant can be present or (b) transporting the defendant to the deposition outside the United States; and (4) the ability of the defendant to meaningfully participate in the deposition through reasonable means. Subdivision (f) states explicitly in the text of the rule that authorization to take a deposition does not determine admissibility.
- **Rule 37:** New Rule 37 clarifies that the procedure described in Appellate Rule 12.1<sup>1</sup> and Civil Rule 62.1 for obtaining “indicative rulings” also applies in criminal cases. This will have an impact on appellate matters in circumstances when a timely motion for relief is filed, but the district court lacks authority to rule on the matter because of a pending appeal – the court may state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue. The new rule establishes the same procedures as Civil Rule 62.1 for facilitating the remand of certain post-judgment motions filed after an appeal has been docketed in a case where the district court indicated it would grant the motion.

### **Bankruptcy Rules:**

The bankruptcy rule and form amendments are technical/procedural rules and very specific to bankruptcy practice.

- **Bankruptcy Rules 1007, 2015, 3001, and Official Forms 10 and 25A,** The changes are technical and conforming amendments or matters addressing purely bankruptcy procedural aspects –such as the documents required for proofs of claim based on an open-end or revolving consumer credit account, such as credit card debt. Accordingly, regarding these technical amendments, there is no direct impact on district court cases or the local rule of procedure regarding bankruptcy matters (D.C.COLO.LCivR 84.1).
- **Bankruptcy Rules 7054 and 7056** – are revised as well. Rules 7054 and 7056, being subparts of Part VII of the Bankruptcy Rules – Adversary Proceedings – have similar

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<sup>1</sup> Fed. R. App. P. 12.1. Remand After an Indicative Ruling by the District Court on a Motion for Relief That Is Barred by a Pending Appeal.

(a) Notice to the Court of Appeals. If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, the movant must promptly notify the circuit clerk if the district court states either that it would grant the motion or that the motion raises a substantial issue.

(b) Remand After an Indicative Ruling. If the district court states that it would grant the motion or that the motion raises a substantial issue, the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal. If the court of appeals remands but retains jurisdiction, the parties must promptly notify the circuit clerk when the district court has decided the motion on remand.

time-computation changes to those that occurred in the 2009-2010 cycle. Rule 7054 increases the time for the clerk to notify a party of taxation of costs and the time to object to the clerk's actions – changes intended to make these time periods consistent with Civil Rule 54. Rule 7056 establishes a default deadline to file a summary judgment motion – and because hearings in bankruptcy cases sometimes occur shortly after the close of discovery, the proposed amendment to Rule 7056 bases the default deadline on the scheduled hearing date (rather than the close of discovery, as the civil rule equivalent mandates). Under Rule 7001 of the Federal Rules of Bankruptcy Procedure, “An adversary proceeding is governed by the rules of this Part VII.”

Rules 7054 and 7056 pertain to adversary proceedings in bankruptcy matters, and therefore do not impact civil actions in the district court by following district court rules. One aspect to keep in mind is that in a bankruptcy appeal where the party elects to appear before the district court – if costs are taxed against the losing party – they are taxed under the bankruptcy rules, and by the bankruptcy clerk, under Rule 8014.

## **II. Revised Local Rules**

The following notice with regards to this year's local rule revisions has been posted on the district court's website:

The United States District Court for the District of Colorado has reviewed and approved revisions to its Local Rules which will become effective December 1, 2012. The changes this year are relatively modest. The Local Rules Advisory Committee has begun a comprehensive review of the Local Rules which is a multi-year project. Most comments and suggestions made during 2012 were deferred until the comprehensive review of the Local Rules is completed.

### **CIVIL RULE CHANGES:**

D.C.COLO.LCivR 1.1  
D.C.COLO.LCivR 1.2  
D.C.COLO.LCivR 3.1  
D.C.COLO.LCivR 3.3  
D.C.COLO.LCivR 5.1  
D.C.COLO.LCivR 10.1  
D.C.COLO.LCivR 16.2  
D.C.COLO.LCivR 16.3  
D.C.COLO.LCivR 26.1  
D.C.COLO.LCivR 41.2  
D.C.COLO.LCivR 65.1  
D.C.COLO.LCivR 72.1  
D.C.COLO.LCivR 72.2  
D.C.COLO.LCivR 83.3  
D.C.COLO.LCivR 83.4  
D.C.COLO.LCivR 83.5

## CRIMINAL RULE CHANGES:

D.C.COLO.LCrR 1.1  
D.C.COLO.LCrR 1.2  
D.C.COLO.LCrR 11.1  
D.C.COLO.LCrR 32.1  
D.C.COLO.LCrR 49.1  
D.C.COLO.LCrR 49.3  
D.C.COLO.LCrR 57.5  
D.C.COLO.LCrR 57.6  
D.C.COLO.LCrR 57.7

## LAPR RULE CHANGES:

D.C.COLO.LAPR 1.1  
D.C.COLO.LAPR 1.2  
D.C.COLO.LAPR 3.1  
D.C.COLO.LAPR 16.1

### **I. Rule Revisions made with regard to Forms/ Appendices.**

Local Civil, Criminal and AP rules have been amended to eliminate reference to an appendix or appendices. Instead the references have been changed to Forms and a new website address provided.

Local Civil, Criminal and AP Rules 1.2 now state:

#### **D.C.COLO.LCivR 1.2 FORMS**

**Any court approved form is found on the court's website - [www.cod.uscourts.gov](http://www.cod.uscourts.gov). The A forms referred to in these rules may be modified by the court or a judicial officer at any time. Parties may refer to the court's web site or contact the clerk's office to confirm that they are using the most current forms, if any, used by the judicial officer assigned to their action. A form modified by a judicial officer may be found under the judicial officer's procedures on the court's website.**

Further example of a reference to an Appendix being replaced by a hyperlink to the court's Forms page:

#### **D.C.COLO.LCivR 3.3 PAYMENT OF FEES**

**A. Filing Fee.** The clerk shall require payment of a filing fee before a civil action, suit, or proceeding is filed. When a pleading is received for filing without the required fee, the clerk shall notify the filing party that the pleadings will be held and not accepted for filing until the required fee is received or an order allowing the party to proceed in

forma pauperis is entered. When the filing fee or order is received, the clerk shall file the pleading.

- B. Fees. See Schedule of Fees (~~Appendix C~~ found at <http://www.cod.uscourts.gov/Forms.aspx>).

## II. Amendments by the Committee on Conduct to Attorney Discipline Rules

Amendments to D.C.COLO.LCivR 83.3 and 83.5. and D.C.COLO.LCrR 57.5 and 57.7 were made in accordance with the request of the Committee on Conduct. The following two rule changes are more substantive in nature; other changes were technical needs of the Committee.

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

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**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 whose suspension or disbarment has been stayed by order of the disciplining court prior to the effective date of the suspension or disbarment remains in good standing.** 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. 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.

### D.C.COLO.LCivR 83.5 ATTORNEY DISCIPLINE

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#### F. Resolution of the Complaint by the Committee on Conduct.

**2. Letter of Admonition.** If the Committee concludes, based on the report of the Subcommittee, that the misconduct or, in the case of alleged disability or substance abuse, the cause for concern, is sufficiently significant that the complaint should not be dismissed as without merit, but ~~it does~~ **may** not warrant submitting charges to the Panel, the Committee may issue a **private** letter of admonition to the respondent, ~~with a copy to the complainant.~~ **The complainant shall be notified that the letter of admonition was issued but shall not be provided with a copy of the letter of admonition. Neither the fact that the letter of admonition was issued nor its content otherwise shall be disclosed by the Committee.** An attorney receiving a letter of admonition shall be advised of the right to request in writing, within 20 days after receiving the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct

upon which the admonition is based. On timely filing of such a request, the letter of admonition shall be vacated and the Subcommittee shall proceed to prepare charges in accordance with the formal procedures provided in these rules.

### III. Proposed Rule Change to Harmonize with Other Local Rules

Amendment to D.C.COLO.LCivR 72.1 was necessary to expressly list early neutral evaluations among the authorized duties of magistrate judges. This will comport with the District's ADR plan.

#### **D.C.COLO.LCivR 72.1 GENERAL AUTHORITY AND DUTIES OF MAGISTRATE JUDGES**

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**C. Other Duties.** On reference by a district judge, a magistrate judge may:

1. conduct pretrial conferences, **early neutral evaluations**, settlement conferences, and other nondispositive pretrial proceedings;

### IV. Proposed Miscellaneous Changes

Language was added to D.C.COLO.LCivR 41.2 to address the issue of unresolved motions when an administratively closed case is reopened. An unresolved motion may no longer be of importance to the parties when a case is reopened, therefore the parties should advise the court if determination of the motion is necessary.

#### **D.C.COLO.LCivR 41.2 ADMINISTRATIVE CLOSURE**

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A district judge or a magistrate judge exercising consent jurisdiction may direct the clerk to close a civil **case action** administratively subject to reopening for good cause. **Administrative closure of a case terminates any pending motion. Reopening of a case does not reinstate any such motion.**

D.C.COLO.LCrR 32.1 was revised to impose a deadline on the filing of responses to motions for departure and variance in sentencing hearings. This was done to harmonize the procedures among various courtrooms. Note that the reference to electronic filing of the presentence report was eliminated, because it is done automatically under the rules and ECF procedures.

#### **D.C.COLO.LCrR 32.1 SENTENCING DOCUMENTS**

**A. Sentencing Statements.**

1. Within 30 days after a verdict of guilty is returned by a jury or the court, the attorney for the government shall file a sentencing statement that analyzes the sentencing factors to be considered at sentencing.

2. Within 14 days after the government files its sentencing statement, a defendant may file a sentencing statement that analyzes the sentencing factors to be considered at sentencing.

**B. Objections to Presentence Report.** Objections to a presentence report shall not be included in or combined with a motion for a sentence departure or a motion for a sentence variance.

~~1. Objections to a presentence report shall be filed electronically.~~

~~2. Objections to a presentence report shall not be included in or combined with a motion for a sentence departure or a motion for a sentence variance.~~

**C. Motions for Departure or Variance.** A motion for departure or variance shall be filed not less than No fewer than 14 days before sentencing., the parties may file motions for a departure or a variance from the applicable sentencing guideline range. Any response shall be filed not less than seven days before sentencing.

**D. Restricted Access.** A motion for a sentence departure or a motion for a sentence variance may not be filed as a restricted document without leave of the sentencing court.

Finally, D.C.COLO.LCivR 1.1, D.C.COLO.LCrR 1.1, and D.C.COLO.LAPR 1.1 were revised to provide authorization for the adoption of pilot projects without amendment of the Local Rules.

## **D.C.COLO.LCrR 1.1 SCOPE OF THE LOCAL RULES**

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**I. Pilot Projects.** Upon appropriate notice, without amendment of the local rules of practice, the court may adopt and implement pilot programs or special projects by general order. The general order shall address:

1. the purpose of the pilot program or special project;
2. the term of the pilot program or special project;
3. the effect upon any local rule of practice; and
4. any requirement necessary to implement or facilitate the pilot program or special project.