

2009 Amendments to the Local Rules - Summary of Changes

NOTE: The General, Civil, and Criminal Rules were thoroughly edited based primarily on the resources used in making recent changes to the federal rules. In the federal context, changes intended to be “stylistic only” are described as “general restyling of the rules to make them more easily understood” and to “make style and terminology consistent.” See Fed. R. Civ. P. 1, commentary to 2007 Amendment.

1. *General Guidelines Used:*
 - a. Bryan Garner, *Guidelines for Drafting and Editing Court Rules*, Administrative Office of the United States Courts (1996) (see attached PDF document);
 - b. Bryan Garner, *Dictionary of Modern Legal Usage*, (2d ed. 1995) (my personal copy is available); and
 - c. Joseph Kimble, *Guiding Principles for Restyling the civil Rules*, in *Preliminary Draft of Proposed Style Revision of the Federal Rules of Civil Procedure*, at x (Feb. 2005) (see attached PDF document).

General style questions were resolved by consulting *The Chicago Manual of Style*.

2. *Formatting Changes.* In a few instances, additional subparagraphs were used to make the rules easier to read.
3. *Changes to Reduce Inconsistent, Ambiguous, Redundant, Repetitive, or Archaic Words.* Many changes were made in an attempt to achieve these goals.
4. *Other Changes.* Additional changes were made, some of which were suggested in the sources listed above or noted in the restyled federal rules. For example:
 - a. the singular as opposed to the plural is used in many instances;
 - b. the use of prepositional phrases is reduced;
 - c. numbers are not spelled out; rather, only the numerals are used; and
 - d. links to Internet resources lead the reader to the specific relevant page.

Because every general, civil, and criminal rule was edited for style, the summaries below include only proposed substantive changes.

General Rules

- 1.1(d)(8) Adds a definition for “NEF” (Notice of Electronic Filing), which is used throughout the General Rules.
- 1.2(e)(2) Allows the clerk to issue refunds for duplicate or erroneous attorney assessments, as well as filing fees
- 1.2(i) Deletes section regarding the Federal Practice Fund.
- 1.3(a)(1)(A) Adds a reference to the Federal Rules of Criminal Procedure in addition to the federal civil rules.
- 1.3(a)(4) Adds a section per General Order 2006-01 relating to the Clerk’s striking of .pdf documents, listing the circumstances under which the Clerk may do so. The clerk is authorized to add “STRICKEN” in the docket entry of the stricken document.
- 1.3(c) Adds references to the recently added federal privacy rules, Federal Rule of Civil Procedure 5.2 and Federal Rule of Criminal Procedure 49.1.
- 1.3(h) & (l) Adds that when counsel is *retained*, as well as appointed, all further communications with the court must be made through counsel. Because of this addition, subsection (i) was added as a separate subsection because the information regarding communication with the court no longer applies only to appointed counsel, the subject of subsection (h).

Civil Rules

- 1.1(l) Adds a definition for “NEF” (Notice of Electronic Filing), which is used throughout the Civil Rules.
- 4.1(a) Adds “Subpoenas,” as the Clerk now has authority to issue subpoenas electronically.
- 5.01(a) Changes a citation to Federal Rule of Civil Procedure 5(d), per 2007 amendments to federal rules 5(d) and (e).
- 5.01(b) Deletes the date of June 30, 2007, because the date no longer applies.

- 5.03(a) & (c) Changes to this rule regarding privacy reflect recently added Federal Rule of Civil Procedure 5.2(a) and Federal Rule of Bankruptcy Procedure 9037.
- 6.1(b) Notes that the 3-day federal mailing rule applies.
- 7.01(a)(1)(A) Adds the statement that a party's failure to brief an issue in a motion may be considered a waiver of that issue.
- 7.02 Remedies inconsistencies between the initial paragraph and subsection (b) regarding the timing of submitting a proposed order in relation to filing a motion.
- 9.1(a)(2)(A) Eliminates the former subsection (A) as redundant. See NECivR 9.1(a)(2) and 10.1(a).
- 38.1 Adds a citation to an applicable federal rule, and deletes a citation to NECivR 81.1 per the deletion of NECivR 81.1.
- 40.1(b)(1) Deletes former subsection (1) as redundant. See NECivR 40.1(b).
- 41.1 Moves the section on settlement procedures to NECivR 41.1 from NECivR 68.1.
- 54.4(b)(3) Rewords a phrase for clarification.
- 55.1(c)(1) Adds language per Federal Rule of Civil Procedure 55(b)(2).
- 68.1 Moves the section on settlement procedures from NECivR 68.1 to NECivR 41.1.
- 72.2(c) Deletes section regarding the standard of review used when a party appeals from a magistrate judge's nondispositive order as redundant in light of Federal Rule Civil Procedure 72(b)(3) and 28 U.S.C. § 636(b)(1). Note that no corresponding section appears in NECivR 72.3 (objections to a report and recommendation).
- 72.4 Moves reference to Federal Rule of Civil Procedure 53(b) per 28 U.S.C. § 636(b)(2).
Corrects citation to Federal Rule of Civil Procedure 53(f).
- 81.1 Deletes section regarding demanding a jury trial in removed cases as redundant. See Fed. R. Civ. P. 81.1(c).

Criminal Rules

- 1.1(f) Adds a definition for “NEF” (Notice of Electronic Filing), which is used throughout the Criminal Rules.
- 9.1(a) Adds a section stating that the clerk is authorized to issue warrants and summonses electronically, per General Order 2008-04.
- 11.1(d) Changes reflect the judges’ decision to no longer require that plea petitions and plea agreements be filed before change of plea hearings. Requires that the copies of the plea documents, including a copy of any Information, be sent to the presiding judge at least 24 hours before the plea hearing, absent extenuating circumstances.
- 11.1(e) Adds a section requiring the government to bring the fully signed plea agreement and plea petition, and any Information, to the plea hearing.
- 12.3(b)(1) Adds the statement that a party’s failure to brief an issue raised in a motion may be considered a waiver of that issue.
- 12.3(c)(2) Adds the statement that a party’s failure to brief an issue when responding to a motion may be considered a waiver of that issue.
- 12.6 Section regarding “numbering exhibits” is moved here from NECrimR 49.2(d) and edited to encompass hearings as well as trials.
- 17.1(e) Adds a section indicating that clerk is authorized to issue subpoenas and writs electronically, per General Order 2008-04.
- 32.1(b)(6)(C) Adds a statement that any objections to a PSR that are not filed under ¶ 6 of the Order on Sentencing Schedule may be considered waived. This proposed change relates to situations in which counsel object informally to the probation officer, the objections are referred to in the Addendum of the PSR, but the objecting party does not file the objections with the court per ¶ 6 of the Order on Sentencing Schedule.
- 44.3(b)(2)(C) Phrase reworded for clarification.
- 45.1 States that the 3-day mailing rule applies.
- 49.1(a) Changes citations to federal rules per amendments to the federal rules.

- 49.2(c) Reformatted to address the signing of paper as well as electronic documents, making this rule consistent with NECivR 11.1.
- 49.2(d) Moves section regarding numbering trial exhibits to NECrimR 12.6 and expands the language to also include hearing exhibits.
- 49.3(a) Changes to rule regarding privacy reflect Federal Rule of Criminal Procedure 49.1.
- 49.3(e) Deletes section regarding who has the responsibility for redaction. No longer needed per Federal Rule of Criminal Procedure 49.1.
- 56.1 Deletes section regarding when the court is open as redundant given NEGenR 1.2(a).
- 56.2 Deletes section regarding the official clerk's station as redundant given NEGenR 1.2(b).
- 57.1(a)(11) Adds initial appearances in probation and supervised release revocation matters to those that a magistrate judge is authorized to handle.
- 57.1(a)(12) Clarifies the language per Federal Rule of Criminal Procedure 40.
- 57.1(a)(16) Adds that magistrate judges may determine issues regarding the release or detention of confidential informants.
- 57.1(a)(21) Deleted, as this is covered in NECrimR 57.1(a)(16).
- 57.2(c) Deletes section regarding the standard of review used when a party appeals from a magistrate judge's nondispositive order as redundant in light of Federal Rule of Criminal Procedure 59(a) and 28 U.S.C. § 636(b)(1). Note that no corresponding section appears in NECrimR 57.3 (objections to a report and recommendation).
- 58.1(a)(4) Adds that magistrate judges may conduct hearings relating to petitions to revoke supervised release as well as probation when the magistrate judge imposed the supervised release period in a misdemeanor case.