

## 2009 Local Rule Revisions



United States District Court  
District of Oregon

## Scope of Discussion

- ▣ Changes to Local Rules
- ▣ Electronic Filing
- ▣ Courtroom Electronics

## Statutory Authority to Prescribe Rules

28 U.S.C. § 2071 is a grant of statutory authority which allows all federal courts to prescribe rules for the “conduct of their business”.

## Committee Membership

Appointed by Presiding Judge:

- ▣ 13 Practitioners
- ▣ 3 Judges
- ▣ Clerk of Court

Term - indefinite; works out to replacement of one to two members a year

## Function of the Committee

- ▣ Respond to changes in the Federal Rules, and judicial interpretation of those rules
- ▣ Receive input from membership of the Federal Bar, and Court staff
- ▣ Interface with the OSB Federal Practice and Procedure Committee

## Major Changes to the Local Rules

- ▣ 2007 Stylistic Changes
- ▣ 2009 Time Computation Changes

## Numbering Convention

- ❑ All rules have been revised to reflect the numbering conventions used by FRCP.
- ❑ From a practical standpoint, this means that all "dots" have been converted to "dashes".

Example: LR 1.1 is now LR 1-1

## Stylistic Changes

- ❑ The 2007 FRCP changes resulted in the word "shall" being changed to "must". This has been reflected in the Local Rules.
- ❑ All "permissive" rules have been removed from the Local Rules
- ❑ Also removed: rules whose sole purpose was to reference the FRCP

## Numbering Convention Changes

- ❑ The distinction between pleadings e-served and those conventionally served has been deleted from the rules
  - ❑ All deadlines are now in multiples of 7 days
  - ❑ Motion responses are now due 14 days after the motion, and replies 14 days later.
- Exception: A Rule 56 motion response is due 21 days following the motion, with the reply due 14 days later.

## LR 1-1: Scope and Purpose

- ❑ Any reference to conventionally filed pleadings has been deleted from the definitions found in this rule.
- ❑ Caveat: Initial pleadings are still filed conventionally, as are sealed documents and administrative records

## LR 3: Commencement of Action

### New Divisional Venue Rule

- ❑ The purpose of the rule is to distribute the work of the Court.
- ❑ In the caption of the initial case filing, the filing party must identify the division where "divisional venue" lies.

## LR 3: Commencement of Action (Con't.)

- ❑ For purposes of the Local Rules, "divisional venue" means the division of the court in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated.
- ❑ Reference: 28 U.S.C. § 1391

LR 5:

## Service and Filing of Pleadings and Papers

- ☐ The filing deadline cutoff is 11:59 p.m.
- ☐ If a responsive pleading is filed within three days of a hearing, the filer must call the courtroom deputy to advise of the filing
- ☐ Any document filed in subparts is not considered "filed" until all of the subparts are filed
- ☐ Initial complaints are still filed conventionally

LR 7:

## Motion Practice

- ☐ Responses due 14 days after the Motion
- ☐ Reply due 14 days later
- ☐ All "days" are calendar days
- ☐ No replies permitted on Discovery Motions

LR 10:

## Form of Pleadings

- ☐ Filing of paper pleadings has been eliminated from the rule
- ☐ However, the requirement for filing a Judge's paper copy has been retained
- ☐ A "Practice Tip" has been added which includes input from the Judges regarding their preference on how paper copies are formatted

LR 26:

## General Discovery Provisions

Local practice has been to opt out of mandatory disclosures. The former rule stated that the Court encouraged parties to do so. The rule has been modified to simply inform that if the parties wish to opt out, there is a form for doing so.

LR 33, 34, 36:Interrogatories  
Requests for Production  
Requests for Admissions

- ☐ Not filed with the Court, except as exhibits to motions
- ☐ Served conventionally, but with .pdf file emailed
- ☐ WordPerfect X4 includes .pdf maker
- ☐ Adobe offers discounts on Acrobat – link is on the PLF website

LR 41:

## Dismissal

- ☐ Failure to advise the trial judge's courtroom deputy of settlement, no later than 3:00 p.m. of the business day prior to commencement of a jury trial, and the Court may assess summons and jury fees against the parties

## LR 51: Instructions to the Jury

- ❑ When the desired instruction is covered by a 9th Circuit Model Civil Jury Instructions, only the model instruction number must be given when requesting jury instructions
- ❑ When Oregon law applies, the OSB Uniform Civil Jury Instructions should be used
- ❑ A complete set of requested instructions must be emailed - in plain text or rich text - to the Judge's Courtroom Deputy Clerk immediately following electronic filing of the proposed instructions. No word or wordperfect files.

## LR 56: Summary Judgment

- ❑ An evidentiary objection in a response or reply memorandum may be supported by argument and should be stated concisely in the response or reply memorandum.
- ❑ There is no need to make a separate motion to strike. See Pfingston v. Ronan Engineering Co., 284 F.3d 999, 1003 (9th Cir. 2002); Fed. R. Evid. 103(a)(1). If the case goes to trial, failure to challenge admissibility at the summary judgment stage does not forfeit the right to challenge admissibility at trial.

## LR 73: Magistrate Judges

- ❑ If a Magistrate Judge issues a ruling and/or Findings and Recommendations before all the parties have consented to a Magistrate Judge, and objections are filed pursuant to 28 U.S.C. § 636, a District Judge will review the objections, even if all the parties consent to a Magistrate Judge subsequent to the issuance of the ruling or findings and recommendations.

## Electronic Filing

- ❑ In November 2000, Oregon was one of four states selected for the initial rollout of Case Management/Electronic Case Files or CM/ECF
- ❑ Today, almost all federal courts have implemented CM/ECF in some form. Nation wide there are some 240,000 registered users
- ❑ Some courts, like the Court of Federal Claims, requires a "User" to pass a proficiency exam prior to receiving e-filing access

## Stress Test

- ❑ In the first two weeks of October 2005, over 600,000 bankruptcy cases were e-filed in response to the Bankruptcy Reform Act
- ❑ The "average" filings per month up to that point were about 53,000

## Financial Benefit

- ❑ The federal electronic filing system is fully funded through PACER revenues.
- ❑ Last year, PACER took in over \$40,000,000, all at .08 cents per page



## Security of Data

- ☐ All of the Western courts data is replicated on a server farm in Missouri
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- ☐ Security for these server farms is provided by the U.S. Courts Administrative Office concurrent with oversight from the National Security Agency
- ☐ Virtually all federal courts have redundant communications technology to maintain internet and intranet access

## Benefits of e-filing

- ☐ Simplicity
- ☐ Speed
- ☐ No paper required
- ☐ No postage required
- ☐ A document is considered "filed" when uploaded
- ☐ The system is available 24/7

## Detriments to e-filing

- ☐ With the maximum file size increased from 1.5 MB to 5 MB, getting the system to upload a file that size can take a fairly long time, especially if you have a slow internet connection
- ☐ Learning curve

## Courtroom Electronics

- ☐ ELMO evidence presentation equipment
- ☐ Audio/video cassette; DVD/CD multimedia players
- ☐ Annotation tablet with video marker
- ☐ Color flat panel touch monitors/displays on counsel table, in front of each juror, at witness stand and bench
- ☐ Laptop interface for counsel
- ☐ Video Teleconferencing
- ☐ Digital Whiteboard

Prior to trial, the Judge's Courtroom Deputy will ask if you want training on the electronic systems – this is a great opportunity to get the feel of the equipment without jurors looking on in wonderment as you try to find the "on" button.