

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED LOCAL RULE CHANGE AND OPPORTUNITY TO COMMENT

The United States District Court for the District of Columbia at its April Executive Session approved the publication of the following proposed rule changes for notice and comment.

PROPOSED AMENDMENTS TO LOCAL RULES

LCvR 83.2

PRACTICE BY ATTORNEYS

(a) PRACTICE BY MEMBERS OF THE BAR OF THIS COURT.

An attorney who is a member in good standing of the Bar of this Court may appear, file papers and practice in this Court, provided that the attorney complies with section (b) of this Rule.

(b) APPEARANCE AS SOLE OR LEAD COUNSEL IN A CONTESTED EVIDENTIARY HEARING OR TRIAL ON THE MERITS.

Each attorney who acts as sole or lead counsel in any contested evidentiary hearing or trial on the merits, civil or criminal, must have on file with the Clerk's Office a certificate, in a form prescribed by the Clerk, that the attorney

- (1) has previously acted as sole or lead counsel in a federal district court or the Superior Court of the District of Columbia or a state trial court of general jurisdiction in a contested jury or bench trial or other contested evidentiary hearing in which testimony was taken in open court and an order or other appealable judgment was entered; or
- (2) has participated in a junior capacity in an entire contested jury or bench trial in a federal district court or the Superior Court of the District of Columbia or a state trial court of general jurisdiction; or

- (3) has satisfactorily completed a continuing legal education trial advocacy course of at least 30 hours sponsored by the District of Columbia Bar or accredited by a state bar.

(c) PRACTICE BY NON-MEMBERS OF THE BAR OF THIS COURT.

- (1) An attorney who is a member in good standing of the bar of any United States Court or of the highest court of any State, but who is not a member of the Bar of this Court, may file papers in this Court only if such attorney joins of record a member in good standing of the Bar of this Court. All papers submitted by non-members of the Bar of this Court must be signed by such counsel and by a member of the Bar of this Court joined in compliance with this Rule.
- (2) Paragraph (1) above is not applicable to an attorney who engages in the practice of law from an office located in the District of Columbia. An attorney who engages in the practice of law from an office located in the District of Columbia must be a member of the District of Columbia Bar and the Bar of this Court to file papers in this Court.

(d) PARTICIPATION BY NON-MEMBERS OF THIS COURT'S BAR IN COURT PROCEEDINGS.

An attorney who is not a member of the Bar of this Court may be heard in open court only by permission of the judge to whom the case is assigned, unless otherwise provided by the Federal Rules of Civil Procedure. Any attorney seeking to appear *pro hac vice* must file a motion signed by a sponsoring member of the Bar of this Court, accompanied by a declaration by the non-member that sets forth: (1) the full name of the attorney; (2) the attorney's office address and telephone number; (3) a list of all bars to which the attorney has been admitted; (4) a certification that the attorney either has or has not been disciplined by any bar, and if the attorney has been disciplined by any bar, the circumstances and details of the discipline; (5) the number of times the attorney has been admitted *pro hac vice* in this Court within the last two years; and (6) whether the attorney, if the attorney engages in the practice of law from an office located in the District of Columbia, is a member of the District of Columbia Bar or has an application for membership pending. Each motion must be accompanied by a payment of \$100. Such sums will be deposited in the fund described in LCvR 83.8(f).

(e) ATTORNEYS EMPLOYED BY THE UNITED STATES

An attorney who is employed or retained by the United States or one of its agencies may appear, file papers and practice in this Court on behalf of the United States or that agency irrespective of (c) and (d) above. A government attorney must register and certify personal familiarity with the Local Rules of this Court and, as appropriate, other materials set forth in LCvR 83.8(b) and 83.9(a), prior to the initial appearance by the

attorney pursuant to this subsection. A government attorney must submit an updated registration and certification every three years, as requested by the Clerk's Office.

(f) ATTORNEYS EMPLOYED BY A STATE.

A State Attorney General or that official's designee, who is a member in good standing of the bar of the highest court in any State or of any United States Court, may appear and represent the State or any agency thereof, irrespective of (c) and (d) above. A state attorney must register and certify personal familiarity with the Local Rules of this Court and, as appropriate, other materials set forth in LCvR 83.8(b) and 83.9(a), prior to the initial appearance by the attorney pursuant to this subsection. A state attorney must submit an updated registration and certification every three years, as requested by the Clerk's Office.

(g) ATTORNEYS REPRESENTING INDIGENTS.

Notwithstanding (c) and (d) above, an attorney who is a member in good standing of the District of Columbia Bar or who is a member in good standing of the bar of any United States Court or of the highest court of any State may appear, file papers and practice in any case handled without a fee on behalf of indigents upon filing a certificate certifying that the attorney is providing representation without compensation and is personally familiar with the Local Rules of this Court and, as appropriate, the other materials set forth in LCvR 83.8(b) and LCvR 83.9(a).

(h) ENTRY AND WITHDRAWAL OF APPEARANCE.

Attorneys may enter and withdraw appearances in civil actions as provided in LCvR 83.6 of these Rules, and in criminal actions as provided in LCrR 44.5 of these Rules.

(i) STRIKING APPEARANCE FOR NONATTENDANCE AT COURT PROCEEDINGS.

The Court may, upon notice and after affording an opportunity to be heard, strike the appearance of any attorney in a particular case for failure, without adequate cause, to attend any hearing, conference or other proceeding. The fact that an attorney's residence or office is located at a place distant from the District of Columbia does not constitute grounds for rescheduling or failing to attend court proceedings.

~~**(j) CERTIFICATION BY NON-MEMBERS OF THE BAR OF THIS COURT.**~~

~~An attorney who appears, files papers and practices in this Court pursuant to (e), (f) or (g) above, shall file certification of personal familiarity with the Local Rules of this Court and, as appropriate, the other materials set forth in Rules LCvR 83.8(b) and LCvR 83.9(a) simultaneously with each initial appearance by the attorney before a judge of this Court.~~

COMMENT TO LCvR 83.2(c)(2): *LCvR 83.2(c)(2) has been added to conform the Rules of this Court to the current practice of the District of Columbia Committee on Unauthorized Practice, and to recognize that, as a general matter, attorneys who engage in the practice of law from an office located in the District of Columbia and who file papers in this Court should be a member of the Bar of this Court and the District of Columbia Bar.*

COMMENT TO LCvR 83.2(d): *The original intent of this rule was that the “submission” by non-members of the Bar seeking pro hac vice admission be provided in the form of a declaration or affidavit as is customary in such circumstances. This section has now been amended to clarify the responsibility of non-members of this Court’s Bar.*

COMMENT TO LCvR 83.2(g): *The provision under LCvR 83.10 has been deleted to avoid any confusion between this rule and the deleted rule, and to make clear that attorneys can represent parties pro bono without being approved by the Court.*

LCrR 44.1

PRACTICE BY ATTORNEYS

(a) PRACTICE BY MEMBERS OF THE BAR OF THIS COURT.

An attorney who is a member in good standing of the Bar of this Court may appear, file papers and practice in this Court, provided that the attorney complies with section (b) of this Rule.

(b) APPEARANCE AS SOLE OR LEAD COUNSEL IN A CONTESTED EVIDENTIARY HEARING OR TRIAL ON THE MERITS.

Each attorney who acts as sole or lead counsel in any contested evidentiary hearing or trial on the merits, civil or criminal, must have on file with the Clerk's office a certificate, in a form prescribed by the Clerk, that the attorney

- (1) has previously acted as sole or lead counsel in a federal district court or the Superior Court of the District of Columbia or a state trial court of general jurisdiction in a contested jury or bench trial or other contested evidentiary hearing in which testimony was taken in open court and an order or other appealable judgment was entered; or
- (2) has participated in a junior capacity in an entire contested jury or bench trial in a federal district court or the Superior Court of the District of Columbia or a state trial court of general jurisdiction; or

- (3) has satisfactorily completed a continuing legal education trial advocacy course of at least 30 hours sponsored by the District of Columbia Bar or accredited by a State Bar.

(c) PRACTICE BY NON-MEMBERS OF THE BAR OF THIS COURT.

- (1) An attorney who is a member in good standing of the bar of any United States Court or of the highest court of any State, but who is not a member of the Bar of this Court, may file papers in this Court only if such attorney joins of record a member in good standing of the Bar of this Court. All papers submitted by non-members of the Bar of this Court must be signed by such counsel and by a member of the Bar of this Court joined in compliance with this Rule.
- (2) Paragraph (1) above is not applicable to an attorney who engages in the practice of law from an office located in the District of Columbia. An attorney who engages in the practice of law from an office located in the District of Columbia must be a member of the District of Columbia Bar and the Bar of this Court to file papers in this Court.

(d) PARTICIPATION BY NON-MEMBERS OF THIS COURT'S BAR IN COURT PROCEEDINGS.

An attorney who is not a member of the Bar of this Court may be heard in open court only by permission of the judge to whom the case is assigned, unless otherwise provided by the Federal Rules of Criminal Procedure. Any attorney seeking to appear *pro hac vice* must file a motion signed by a sponsoring member of the Bar of this Court, accompanied by a declaration by the non-member that sets forth: (1) the full name of the attorney; (2) the attorney's office address and telephone number; (3) a list of all bars to which the attorney has been admitted; (4) a certification that the attorney either has or has not been disciplined by any bar, and if the attorney has been disciplined by any bar, the circumstances and details of the discipline; (5) the number of times the attorney has been admitted *pro hac vice* in this Court within the last two years; and (6) whether the attorney, if the attorney engages in the practice of law from an office located in the District of Columbia, is a member of the District of Columbia Bar or has an application for membership pending. Each motion must be accompanied by a payment of \$100. Such sums will be deposited in the fund described in LCrR 57.21(f).

(e) ATTORNEYS EMPLOYED BY THE UNITED STATES.

An attorney who is employed or retained by the United States or one of its agencies may appear, file papers and practice in this Court on behalf of the United States or that agency, irrespective of (c) and (d) above. A government attorney must register and certify personal familiarity with the Local Rules of this Court and, as appropriate, other materials set forth in LCvR 83.8(b) and 83.9(a), prior to the initial appearance by the attorney pursuant to this subsection. A government attorney must submit an updated registration and certification every three years, as requested by the Clerk's Office.

(f) ENTRY AND WITHDRAWAL OF APPEARANCE.

Attorneys may enter and withdraw appearances in civil actions as provided in LCvR 83.6 of these Rules, and in criminal actions as provided in LCrR 44.5 of these Rules.

(g) STRIKING APPEARANCE FOR NONATTENDANCE AT COURT PROCEEDINGS.

The Court may, upon notice and after affording an opportunity to be heard, strike the appearance of any attorney in a particular case for failure, without adequate cause, to attend any hearing, conference or other proceeding. The fact that an attorney's residence or office is located at a place distant from the District of Columbia does not constitute grounds for rescheduling or failing to attend court proceedings.

~~**(h) CERTIFICATION BY NON MEMBERS OF THE BAR OF THIS COURT.**~~

~~An attorney who appears, files papers and practices in this Court pursuant to (e), (f) or (g) above, shall file certification of personal familiarity with the Local Rules of this Court and, as appropriate, the other materials set forth in LCrR 57.21 and LCrR 57.21.1 simultaneously with each initial appearance by the attorney before a judge of this Court.~~

COMMENT TO RULE LCrR 44.1(c)(2): LCrR 44.1(c)(2) has been added to conform the Rule of this Court to the current practice of the District of Columbia Committee on Unauthorized Practice, and to recognize that, as a general matter, attorneys who engage in the practice of law from an office located in the District of Columbia and who file papers in court should be a member of the Bar of this Court and the District of Columbia Bar.

COMMENT TO LCrR 44.1(d): The original intent of this rule was that the "submission" by non-members of the Bar seeking pro hac vice admission be provided in the form of a declaration or affidavit as is customary in such circumstances. This section has now been amended to clarify the responsibility of non-members of this Court's Bar.

LCrR 6.1

GRAND JURY MATTERS

A motion or application filed in connection with a grand jury subpoena or other matter occurring before a grand jury, all other papers filed in support of or in opposition to such a motion or application, and all orders entered by the Court in connection therewith, shall be filed under seal. ~~Such a motion or application shall be assigned a Miscellaneous case number.~~ All hearings on matters affecting a grand jury proceeding shall be closed, except for contempt proceedings in which the alleged contemnor requests a public hearing. Papers, orders and transcripts of hearings subject to this Rule, or portions thereof, may be made public by the Court on its own motion or on motion of any person upon a finding that continued secrecy is not necessary to prevent disclosure of matters occurring before the grand jury.

LCvR 40.3

MANNER OF ASSIGNMENT

(a) RANDOM ASSIGNMENT.

Except as otherwise provided by these Rules, civil, criminal and miscellaneous cases shall be assigned to judges of this Court selected at random in the following manner:

- (1) The Clerk shall create a separate assignment deck in the automated system for each subclassification of civil and criminal cases established by the Court pursuant to LCvR 40.2 of these Rules and a separate deck for miscellaneous cases¹. The decks will be created by the Liaison to the Calendar and Case Management Committee or the Liaison's backup and access to this function shall be restricted to these individuals to protect the integrity and confidentiality of the random assignment of cases. The Calendar and Case Management Committee will, from time to time determine and indicate by order the frequency with which each judge's name shall appear in each designated deck, to effectuate an even distribution of cases among the active judges.

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For the purpose of this Rule, miscellaneous cases that will be randomly assigned will include, but not be limited to, these proceedings: (a) actions to perpetuate testimony as in Rule 27, Federal Rules of Civil Procedure; (b) actions to enforce administrative subpoenas and summonses; (c) proceedings ancillary to an action pending in another district; (d) supplementary proceedings brought in aid of execution; (e) motions for return of property in criminal proceedings; and (f) requests for judicial assistance. ~~Grand Jury Miscellaneous cases will continue to be assigned to the Chief Judge and Pen Register Applications will continue to be assigned to magistrate judges.~~

(2) At the time a civil complaint is filed or an indictment or information is returned in a criminal case, the case shall be assigned to the judge whose name appears on the screen when the appropriate deck is selected. The Clerk shall also stamp on the indictment, information, complaint or other initial pleading of each case, and on the file jacket, the number of the case and the name of the judge to whom it is assigned. The numbering and assignment of each case shall be completed before processing of the next case is begun. Notwithstanding the foregoing, a civil case, requiring an emergency hearing, which is filed after normal business hours, shall not be assigned to a judge until the next business day.

(b) THREE-JUDGE COURT CASES.

Civil, including miscellaneous, cases requested or required to be heard by a Three-Judge Court shall be randomly assigned to a District Court judge, excluding the Chief Judge.

(c) BANKRUPTCY MATTERS.

Bankruptcy matters requiring the attention of a District Judge shall be submitted to the Motions Judge, except as otherwise provided in D.C. LBR 5011-1(f)' and except that appeals from a bankruptcy judge's decisions and cases requiring a jury trial shall be randomly assigned.

(d) PRISONER PETITIONS.

Petitions for a writ of habeas corpus and complaints filed pursuant to 42 U.S.C. § 1983 filed by a petitioner incarcerated in the District of Columbia shall be randomly assigned, except that related petitions from the same petitioner may be assigned to the judge who received the initial petition after consultation with that judge. Motions filed under 28 U.S.C. § 2255 shall, if possible be assigned to the sentencing judge.

(e) ASSIGNMENT TO VISITING AND SENIOR JUDGES.

Cases may be assigned to visiting and senior judges in accordance with procedures adopted from time to time by the Calendar and Case Management Committee.

(f) PROCEEDINGS AFTER ASSIGNMENT.

All proceedings in a case after its assignment shall be conducted by the judge to whom the case is assigned, except as otherwise provided in these Rules. A judge who declares a mistrial shall retain the case for subsequent proceedings including, where appropriate, retrial.

COMMENT TO LCvR 40.3: To ensure an even distribution of cases filed on the miscellaneous docket these cases will now be randomly assigned to a judge of this Court at the time of filing. The assigned judge will maintain jurisdiction of the miscellaneous

case for all purposes. The assignment of miscellaneous cases does not affect the duties of the Motions Judge as specified in LCvR 40.8

LCrR 57.10

MANNER OF ASSIGNMENT

(a) RANDOM ASSIGNMENT.

Except as otherwise provided by these Rules, civil, criminal and miscellaneous cases shall be assigned to judges of this Court selected at random in the following manner:

- (1) The Clerk shall create a separate assignment deck in the automated system for each subclassification of civil and criminal cases established by the Court pursuant to LCrR 57.9 of these Rules and a separate deck for miscellaneous cases². The decks will be created by the Liaison to the Calendar and Case Management Committee or the Liaison's backup and access to this function shall be restricted to these individuals to protect the integrity and confidentiality of the random assignment of cases. The Calendar and Case Management Committee will, from time to time, determine and indicate by order the frequency with which each judge's name shall appear in each designated deck to effectuate an even distribution of cases among the active judges.
- (2) At the time a civil complaint is filed or an indictment or information is returned in a criminal case, the case shall be assigned to the judge whose name appears on the screen when the appropriate deck is selected. The Clerk shall also stamp on the indictment, information, complaint or other initial pleading of each case, and on the file jacket, the number of the case and the name of the judge to whom it is assigned. The numbering and assignment of each case shall be completed before processing of the next case is begun. Notwithstanding the foregoing, a civil case, requiring an emergency hearing, which is filed after normal business hours, shall not be assigned to a judge until the next business day.

(b) ASSIGNMENT TO VISITING AND SENIOR JUDGES.

Cases may be assigned to visiting and senior judges in accordance with procedures adopted from time to time by the Calendar and Case Management Committee.

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For the purpose of this Rule, miscellaneous cases that will be randomly assigned will include, but not be limited to, these proceedings: (a) actions to perpetuate testimony as in Rule 27, Federal Rules of Civil Procedure; (b) actions to enforce administrative subpoenas and summonses; (c) proceeding ancillary to an action pending in another district; (d) supplementary proceedings brought in aid of execution; (e) motions for return of property in criminal proceedings; and (f) requests for judicial assistance. ~~Miscellaneous cases will continue to be assigned to the Chief Judge and Pen Register Applications will continue to be assigned to magistrate judges.~~ **Grand Jury**

(c) PROCEEDINGS AFTER ASSIGNMENT.

All proceedings in a case after its assignment shall be conducted by the judge to whom the case is assigned, except as otherwise provided in these Rules. A judge who declares a mistrial shall retain the case for subsequent proceedings including, where appropriate, retrial.

(d) WIRETAP ORDER APPLICATIONS.

Applications by the United States Attorney for orders authorizing interception of wire or oral communications shall be assigned in rotation by seniority among the active judges, excluding the Chief Judge.

COMMENT TO LCrR 57.10: To ensure an even distribution of cases filed on the miscellaneous docket these cases will now be randomly assigned to a judge of this Court at the time of filing. The assigned judge will maintain jurisdiction of the miscellaneous case for all purposes. The assignment of miscellaneous cases does not affect the duties of the Motions Judge as specified in LCvR 40.8 (a)(b)(c).

Pursuant to Local Civil Rule 1.1 (b), the Court is required to advise that the proposed rule will be adopted unless modified or withdrawn by the Court after receiving comments from organized bar associations, members of the bar, and the public. Such comments must be made in writing by May 31, 2018 and should be addressed to Kevin M. Hodges, Esq., Chairman, Advisory Committee on Local Rules, Williams & Connolly LLP, 725 Twelfth St., N.W; Washington, DC 20005.

ANGELA D. CAESAR, CLERK