

SUGGESTED CHANGES FOR THE LOCAL RULES

Local Rules of the United States District Court for the District of South Carolina

LOCAL CIVIL RULES

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 5.02

Service and Filing of Pleadings and Other Papers

Rule 5.02. Filing With the Clerk

If for any reason it is necessary for documents to be filed with the Court between the hours of 4:30 p.m. and 12:00 midnight on any ~~business~~ day for documents due that day, such emergency filings can be accomplished if the party making the request contacts the Clerk of Court or his designee during normal business hours to make arrangements to accept the after-hour filing. The Clerk of Court or his designee is authorized to accept the entire document, or a portion thereof, by having the party fax the document to a designated fax number. The party must also subsequently deliver the original document to the office of the Clerk of Court by 9:30 a.m. on the ~~first business~~next day following the request. Documents received under the procedure shall be date-stamped “FILED” as of the date and time occurring on the facsimile copy.

NOTE [FN6] under Rule 7.05: Form and Content of Memoranda

[FN6] Additional content and timing requirements for specific motions are addressed in separate rules relating to the subject matter of the motion. E.g., Local Civil Rules 5.03 (Filing Documents under Seal); 6.01 (Motion for Enlargement or Shortening of Time); 6.02 (Protection Requests); 16.00(C) (Stay of Deadlines and Entry of Scheduling Order); 30.04(C) (*Conduct During Depositions – motion required within ~~five~~seven days of directing a witness not to respond*); 83.I.05 (Appearances by Attorneys not Admitted in the District); and 83.I.07 (Withdrawal of Appearance).

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 7.06

Pleadings Allowed: Form of Motions

Rule 7.06: Responses to Motions.

Any memorandum or response of an opposing party must be filed with the Clerk of Court within ~~fifteen~~fourteen (~~15~~14) days of the service of the motion unless the Court imposes a different deadline. If no memorandum in opposition is filed within ~~fifteen~~fourteen (~~15~~14) days of the date of service, the Court will decide the matter on the record and such oral argument as the movant may be permitted to offer, if any.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 7.07

Pleadings Allowed: Form of Motions

Rule 7.07: Replies.

Replies to responses are discouraged. However, a party desiring to reply to matters raised initially in a response to a motion or in accompanying supporting documents shall file the reply within ~~five~~seven (~~5~~7) days after service of the response, unless otherwise ordered by the Court.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 7.10

Pleadings Allowed: Form of Motions

Rule 7.10: Draft Orders Submitted by Counsel.

(5) Unless otherwise ordered, opposing counsel will have ~~ten~~fourteen (~~10~~business 14) days from receipt in which to comment on the proposed order. Comment may be provided by letter.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 12.01

Time

Rule 12.01: Extensions of Time to Respond to a Pleading.

One extension in writing may be granted by a party to respond to an original or amended pleading in which a claim is asserted, provided the extension does not exceed the lesser of twenty-one (~~20~~21) days or the number of days within which the response was originally due. See also Local Civil Rules 6.01 (Motions to Enlarge or Shorten Time), 29.01 (Modifications of Discovery Procedures), and 37.01 (Motions to Compel Discovery).

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 16.00

Rule 16.00: Exemptions and Stay of Deadlines.

(A) Exempt Actions. Scheduling orders will generally not be entered in any action listed in Fed. R. Civ. P. 26(a)(1)(~~E~~B) (categories of actions exempted from the federal rule initial disclosure and conference requirements). To the extent discovery is appropriate in any action covered by Fed. R. Civ. P. 26(a)(1)(~~E~~B), it shall be governed by Local Civil Rule 26.04 absent entry of a specific scheduling order.

(B) Non Exempt Pro Se Actions. In any action in which a party is proceeding without counsel (“pro se”), but which is not covered by Fed. R. Civ. P. 26(a)(1)(~~EB~~)(iii) (prisoner pro se actions), the Court’s initial order shall address whether the Fed. R. Civ. P. 26(f) conference or any other federal or local rule requirements addressed in Local Civil Rules 16.01-16.02 are waived. [FN8] Except to the extent the requirements are waived, orders in pro se actions shall address all deadlines listed in Local Civil Rules 16.01- 16.02.

FN8 Due to the special concerns raised by oral communications between counsel and unrepresented (“pro se”) litigants, it is the general practice in this District to waive the Fed. R. Civ. P. 26(f) conference requirement when any party is proceeding pro se. See also, Local Civil Rule 7.02 (no consultation requirement in pro se actions). Because these concerns are not present as to written communications or submissions, it is the general practice in this District not to waive the disclosure requirements of Fed. R. Civ. P. 26(a)(1)-(3), the report requirement of Fed. R. Civ. P. 26(f), and the various requirements of Local Civil Rule 26 in a pro se action to which they otherwise apply. See Fed. R. Civ. P. 26(a)(1)(~~EB~~) (exempting prisoner pro se actions from the 26(a)(1) requirements absent order to the contrary); Local Civil Rule 26.03(D) (addressing submission of Fed. R. Civ. P. 26(f) report when the conference requirement is waived).

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 16.01

Pretrial Conferences, Scheduling and Management (Refs & Annos)

Rule 16.01: Pre-Scheduling Order.

(A) Upon the appearance of a defendant, and to the extent the requirements of Fed. R. Civ. P. 26(a)(1) and (f) are not otherwise waived by the Court or Fed. R. Civ. P. 26(a)(1)(~~EB~~), the Court shall either issue a tentative scheduling order which shall require a Fed. R. Civ. P. 26(f) conference and report and shall become binding absent objection after such report or, by order, set deadlines for the following:

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 16.02(~~D~~)

Pretrial Conferences, Scheduling and Management (Refs & Annos)

~~16.02~~16.02: Scheduling Conference and Scheduling Order.

(D) Timeliness of Requests and Disclosures.

(2) Witnesses who are not timely identified may be excluded. All witnesses should be identified as early in the discovery process as is feasible. Witnesses identified within the last ~~thirty~~ ~~(30)~~twenty-eight (28) days of the discovery period will be presumed not to be timely identified, absent a showing of good cause.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 16.06

Pretrial Conferences, Scheduling, and Management (Refs & Annos)

Rule 16.06: Appointment of Mediator.

(C) Selection of a Mediator by Agreement of the Parties. Unless otherwise ordered, the parties must select a mediator within twenty-one (~~20~~21) days after the date on which the Court issues its order referring the case to mediation.

(D) Appointment of Mediator by the Court. If the parties cannot agree upon the selection of a mediator within twenty-one (~~20~~21) days after the Court issues its order referring the case to mediation, the plaintiff's attorney shall advise the Court of this fact and request appointment of a mediator.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 16.08

Pretrial Conferences, Scheduling, and Management (Refs & Annos)

Rule ~~6.08~~16.08: Duties of the Parties, Representatives, and Attorneys at Mediation.

(D) Finalizing Agreement. If agreement is reached, the parties shall, before the adjournment of the mediation, reduce the agreement to writing and sign along with their attorneys. If the agreement executed by the parties and their attorneys in mediation envisions the execution of a more formal agreement, the mediator shall assign one of the parties' attorneys to prepare the formal agreement and such papers to be filed with the Court as may be necessary. Such documents shall be executed by the parties within ~~ten~~fourteen (~~10~~14) days of the date of the mediation conference. A copy shall be forwarded to the mediator.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 26.01

General Provisions Governing Discovery; Duty of Disclosure (Refs & Annos)

Rule 26.01: Interrogatories to be Answered by Each Party.

The following information is used for purposes of assigning cases and shall be filed with the Clerk of Court and served on all parties at the time a party first appears. In removed cases, the removing defendant shall file these responses with the removal papers. All other parties shall file responses no later than ~~ten~~fourteen (~~10~~14) days after service of the notice of removal. If a party fails to file the required responses on time, the Clerk of Court shall draw the requirement to the attention of the party (or counsel) and allow ~~ten~~fourteen (~~10~~14) days to file responses. The Clerk of Court shall have the authority to extend the time for responding. Absent order to the contrary,

categories of actions listed in Fed. R. Civ. P. 26(a)(1)(~~EB~~) are exempt from the requirements of this Local Civil Rule.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 26.02

General Provisions Governing Discovery; Duty of Disclosure (Refs & Annos)

Rule 26.02: Rules for Answering Court Interrogatories.

(F) The provisions of Local Civil Rules 26.01 and 26.03 shall not apply, absent order to the contrary, in actions exempted from the requirements of Fed. R. Civ. P. 26(a)(1) and (f) by Fed. R. Civ. P. 26(a)(1)(~~EB~~).

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 26.03

General Provisions Governing Discovery; Duty of Disclosure (Refs & Annos)

Rule 26.03: Rule 26(f) Report.

(C) Exemptions. Absent order to the contrary, this Rule shall not apply to the categories of action listed in Fed. R. Civ. P. 26(a)(1)(~~EB~~) as those actions are exempt from the Fed. R. Civ. P. 26(f) conference and report requirements.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 26.04

General Provisions Governing Discovery; Duty of Disclosure (Refs & Annos)

Rule 26.04: Pretrial Discovery for Civil Actions Exempted from Fed. R. Civ. P. 26(a)(1).

Pretrial discovery in all civil cases that are exempt under Fed. R. Civ. P. 26(a)(1)(~~EB~~) must be completed within a period of ninety (90) days following the joinder of issues unless otherwise ordered. If any expert witnesses will be called, Fed. R. Civ. P. 26(a)(2) disclosures shall be made at least ~~thirty (30)~~twenty-eight (28) days before the close of discovery. Fed. R. Civ. P. 26(a)(3) disclosures shall be completed as set forth in that federal rule. No otherwise applicable deadline is waived absent order to that effect. [FN16]

In other appropriate cases not covered by Fed. R. Civ. P. 26(a)(1)(~~EB~~), the Court may, by order, waive some or all of the otherwise applicable requirements and direct the parties to proceed under this Local Civil Rule. See Local Civil Rule 16.00 (discussing non-exempt pro se actions).

[FN16] Cases listed in Fed. R. Civ. P. 26(a)(1)(~~EB~~) are expressly exempted from: (1) the initial disclosure requirements of Fed. R. Civ. P. 26(a)(1); (2) the conference and report requirements of Fed. R. Civ. P. 26(f); and (3) the related Fed. R. Civ. P. 26(d) bar on discovery before the

conference. Numerous other deadlines set by federal and local rule (e.g., Fed. R. Civ. P. 26(a)(2)-(3) and Local Civil Rule 26.05) remain in effect absent order to the contrary. See generally, Local Civil Rule 16.02(C) (listing most federal and local rule deadlines).

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 26.05

General Provisions Governing Discovery; Duty of Disclosure (Refs & Annos)

Rule 26.05: Civil Pretrial Briefs.

All attorneys having civil cases set for trial shall furnish the Court a pretrial brief at least five~~seven~~ (~~5~~)business7 days prior to the date set for jury selection in the term of court in which the case is set for trial unless another date is ordered by the Court. The pretrial brief shall contain the following information:

(O) Attached to the pretrial brief should be counsel's request for voir dire questions (see Local Civil Rule 47.04) and request for jury instructions. Copies of the requests for voir dire questions and jury instructions shall be served on opposing counsel. If the requests for voir dire and jury instructions are not submitted five~~seven~~ (~~5~~)7 days prior to the selection of the jury, counsel shall be deemed to have waived the right to submit voir dire questions and jury instructions, unless made necessary by events at trial.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 26.07

General Provisions Governing Discovery; Duty of Disclosure (Refs & Annos)

Rule 26.07: Trial Exhibits.

(A) In addition to the Fed. R. Civ. P. 26(a)(3) duty to file and serve exhibit lists and objections and serve objections thereto, and unless otherwise ordered by the Court, attorneys for each side shall meet at least five~~seven~~ (~~5~~)business7 days prior to the date set for submission for pretrial briefs for the purpose of marking and exchanging all exhibits (other than solely for impeachment purposes) intended to be used at trial. Where possible, counsel shall agree on the admissibility of all trial exhibits. In the event there is an unresolved objection to any exhibit, the attorneys shall notify the Court of such objection in the pretrial brief.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 30.02

Depositions Upon Oral Examination

Rule 30.02: Objections to Telephone Depositions.

A party who objects to a telephonic deposition shall make the objections known at least ~~ten~~fourteen (~~10~~14) days prior to the taking of the deposition. If the objection is not resolved by the parties or the Court before the scheduled deposition date, the deposition shall be stayed pending resolution of the dispute. See also Fed. R. Civ. P. 30(b)(7).

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 30.04

Depositions Upon Oral Examination

Rule 30.04: Conduct During Depositions. [FN17]

(C) Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the Court or unless that counsel intends to present a motion under Fed. R. Civ. P. 30(d)(1). In addition, counsel shall have an affirmative duty to inform their clients that unless such an objection is made, the question must be answered. Counsel directing that a witness not answer a question on those grounds or allowing their clients to refuse to answer a question on those grounds shall move the Court for a protective order under Local Civil Rule 26(c) or 30(d)(3) within five~~seven~~ (~~5~~business7) days of the suspension or termination of the deposition. Failure to timely file such a motion will constitute waiver of the objection, and the deposition may be reconvened.

(H) Deposing counsel shall provide to opposing counsel a copy of all documents to be shown to the witness during the deposition, either before the deposition begins or contemporaneously with the showing of each document to the witness. If the documents are provided (or otherwise identified) at least three~~seven~~ (~~3~~business7) days before the deposition, then the witness and the witness's counsel do not have the right to discuss the documents privately during the deposition. If the documents have not been so provided or identified, then counsel and the witness may have a reasonable amount of time to discuss the documents before the witness answers questions concerning the document.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 37.01

Failure to Make Disclosure or Cooperate in Discovery: Sanctions

Rule 37.01: Motion to Compel Discovery.

(A) Timeliness of Motion. Motions to compel discovery must be filed within twenty-one (~~20~~21) days after receipt of the discovery response to which the motion to compel is directed or, where no response has been received, within twenty-one (~~20~~21) days after the response was due. If counsel are actively engaged in attempts to resolve the discovery dispute, they may agree to extend the time to comply with the discovery request so long as the extension does not place the due date beyond thirty (30) days before the deadline for completion of discovery as set by the scheduling order. See also Local Civil Rule 29.01 (Modifications of Discovery Procedure). This

extension will automatically extend the deadline for the motion to compel by an equal amount of time. The extension shall be confirmed in writing. In the event a later motion to compel is filed, the correspondence confirming the extension shall be attached.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 47.02

Selection of Jurors

Rule 47.02: Use of Juror Questionnaires.

The Court may require potential jurors to respond to written questionnaires and may make the responses available to counsel or parties with cases on the relevant trial roster seven (7)-~~working~~ days prior to jury selection. Counsel or any other persons obtaining juror questionnaire responses must ensure that the information contained therein is utilized solely for the purpose of evaluating potential jurors for a pending case and is not disseminated for any other purpose. The Clerk of Court shall institute procedures to draw these requirements and responsibilities to the attention of persons obtaining the questionnaire responses by completing the Juror Questionnaire/List Request Form. Any person desiring to obtain the information for any other purpose must petition the Court so that an appropriate hearing can be conducted.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 47.03

Selection of Jurors

Rule 47.03: Jury Lists.

Within seven (7)-~~working~~ days of the date the jury is scheduled to appear, the Clerk of Court may furnish a copy of the list to counsel or parties with cases on the relevant trial roster with an approved Juror Questionnaire/List Request Form. The list shall set out the name, city of residence, sex, race, and year of birth of each juror. The jurors and their families shall not be contacted either directly or indirectly by counsel or counsel's agents. For purposes of this Local Civil Rule, "families" shall include natural, adopted and stepchildren, brothers, sisters, nieces, nephews, aunts, uncles, parents, grandparents, and spouses. If it is deemed necessary, the Court may order the jury list sealed. In such cases, the jury list shall be given out only by order of the Court.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 54.01

Judgments and Costs

Rule 54.01: Assessment of Jury Costs.

Whenever any civil action scheduled for a jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all juror costs, including Marshal's fees, mileage, and per diem, may be assessed equally against the parties or otherwise assessed as determined by the Court, unless the Clerk of Court is notified at least one ~~full business~~ day prior to the date on which the action is scheduled for trial or in sufficient time to notify jurors that their presence will not be required.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 54.02

Judgments and Costs

Rule 54.02: Petition for and Interest on Attorney's Fees.

(A) Petition for Attorney's Fees. Any petition for attorney's fees shall comply with the requirements set forth in Barber v. Kimbrell's, Inc., 577 F.2d 216 (4th Cir. 1978), and shall state any exceptional circumstances and the ability of the party to pay the fee. Any memorandum in opposition to a petition for attorney's fees must be filed with the Clerk of Court within ~~fifteen~~twenty-one (~~15~~21) days of the service of the petition. See also Local Civil Rule 83.VII.07 (attorney's fees in social security cases).

(B) Interest on Attorney's Fee Awards Entered after Judgment. When attorney's fees are granted by order entered after entry of judgment and unless otherwise directed by the Court, the Clerk of Court shall: (a) apply the same interest rate to the attorney's fee award as applies to the underlying judgment; and (b) run interest from the next day following the date of entry of the order awarding fees. See Fed. R. Civ. P. 58(a)(1)(C) (a separate judgment is not required for an order disposing of a motion for attorney's fees).

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 73.03

United States Magistrate Judges

Rule 73.03: Special Provisions for Consent for Reference of Civil Cases under 28 U.S.C. § 636(c).

(A) Notice. Unless otherwise directed by the Court, the Clerk of Court shall notify the parties in all civil cases that they may consent to have a Magistrate Judge conduct any and all proceedings in the case and order the entry of a final judgment. Notice may be provided by attachment of an appropriate form document to the scheduling order or pre-scheduling order. In categories of cases in which scheduling orders are not generally issued (i.e., cases exempt under Fed. R. Civ. P. 26(a)(1)(~~EB~~)) and which are not exempted by the Court from this requirement, the Clerk of Court will forward the notice to all parties after a defendant appears.

U.S. Dist. Ct. Rules D.S.C., Civ. RDE Rule II

Rules by District Court

Attorneys and Student Practice

Rule 83.I.08 Rules of Disciplinary Enforcement (“RDE”)

RDE RULE II. DISCIPLINE IMPOSED BY OTHER COURTS

(A) Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, inform the Clerk of Court in writing within ~~ten~~fourteen (~~10~~14) days of such action. See supra LCR 83.I.08(B) (Clerk of District Court shall inform Clerk of Bankruptcy Division).

U.S. Dist. Ct. Rules D.S.C., Civ. RDE Rule X

Rules by District Court

Attorneys and Student Practice

Rule 83.I.08 Rules of Disciplinary Enforcement (“RDE”)

~~RDE RULE X. DUTIES OF THE CLERK OF COURT~~ RDE Rule X. Duties of the Clerk of Court

(C) Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, the Clerk of Court, within ~~ten~~fourteen (~~10~~14) days of that conviction, disbarment, suspension, censure, or disbarment on consent, shall transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 83.II.01

Rules by District Court

Exhibits and Court Reporters

Rule 83.II.01 Handling of Exhibits

Upon the entry of final judgment, the Clerk of Court may, at any time following the expiration of thirty (30) days, notify the attorneys of record and the parties that the Clerk of Court intends to dispose of the exhibits in the manner indicated in the notice. If no attorney of record or a party in interest takes custody of or interposes an objection within ~~ten~~fourteen (~~10~~14) days of the posting of the notice, the Clerk of Court shall be authorized to dispose of the exhibits in the manner stated, unless otherwise ordered by the Court.

U.S. Dist. Ct. Rules D.S.C., Civ. Rule 83.VII.05

Rules by District Court

Social Security Cases

Rule 83.VII.05: Commissioner's Brief. The Commissioner will be allowed forty (40) days after service of the petitioner's brief to file its responsive brief. No extensions will be granted. The petitioner's reply brief, if any, will be filed within ~~ten~~fourteen (~~10~~14) days after service of the Commissioner's brief.

LOCAL CRIMINAL RULES:

U.S. Dist. Ct. Rules D.S.C., Crim. Rule 12.05

Motion Practice

Rule 12.05: Responses to Motions.

Any memorandum or response of an opposing party must be filed with the Clerk of Court as soon as possible but not later than the earlier of ~~fifteen~~fourteen (~~15~~14) days after service of the motion or one full business day prior to the pretrial conference, unless the Court imposes a different deadline.

U.S. Dist. Ct. Rules D.S.C., Crim. Rule 26.04

Trial Practice

Rule 26.04: Pretrial Submissions.

(A) Examination of Jurors. The court shall conduct the examination of prospective jurors. All proposed voir dire questions must be submitted for the court's review ~~five~~seven (~~5~~7) days prior to the selection of the jury. Copies of the requests for voir dire shall be served on opposing counsel.

(B) Jury Instructions. All proposed jury instructions must be submitted for the court's review ~~five~~seven (~~5~~7) days prior to the beginning of trial. Copies of the government's proposed jury instructions shall be served on opposing counsel. Proposed jury instructions from the defense are to be held in camera until all testimony is concluded.

U.S. Dist. Ct. Rules D.S.C., Crim. Rule 57.VI.02

Rules by District Court

Rule 57.VI.02: Requests for State Custody.

(B) The Marshal shall notify both the United States Attorney and the defendant's counsel of the request and allow each a period of ~~three~~seven (~~3~~7) days in which to consent or object. The ~~three~~seven-day (~~3~~7-day) period may be waived.