

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

PROPOSED AMENDMENTS TO LOCAL RULES

PUBLIC COMMENT PERIOD OCTOBER 21- NOVEMBER 20, 2015

**ALL WRITTEN COMMENTS DUE BY CLOSE OF BUSINESS
NOVEMBER 20, 2015**

Pursuant to 28 U.S.C. § 2071(b), Fed. R. Civ. P. 83(a)(1) and Fed. R. Crim. P. 57(a)(1), the United States District Court for the District of New Hampshire gives notice that the proposed amendments to the Local Rules published below are being considered for adoption to be effective 12/1/15. New matter is underlined; matter to be stricken is crossed out. The ***** denotes omitted text before and/or after the pertinent rule section.

Input from the public and the bar is encouraged. All comments, including suggestions or other correspondence, should reference the specific rule/subsection and may be submitted electronically to pamela_phelan@nhd.uscourts.gov or in writing directed to the Chief Deputy Clerk, U.S. District Court, Warren B. Rudman U.S. Courthouse, 55 Pleasant Street, Room 110, Concord, NH 03301-3941.

CIVIL RULES

1.2 Availability; Amendments to Local Rules

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(b) Amendments. Except as otherwise provided, the court shall give notice of proposed amendments to the local rules through a publication distributed by ~~in~~ the New Hampshire Bar Association News and/or the NHBA e-Bulletin, posting in the clerk's office, and posting on the court's web site. The court shall allow at least thirty (30) days from the date of notice for public comment.

When the court determines that there is an immediate need for an amendment, it may proceed without providing public notice or public comment, provided that the court promptly thereafter gives public notice and opportunity for public comment.

4.1 Summons; Waiver of Service for Summons

A summons or notice of lawsuit and request for waiver of service for summons for each named defendant shall be delivered to the clerk's office contemporaneously with the filings to be served with the summons. If a summons or notice/request form is not used, the summons or notice/request shall conform with the requirements of Fed. R. Civ. P. 4(a) and (d)(1). Summons or notice of lawsuit and request for waiver of service for summons forms are available in the clerk's office and on the court's web site (www.nhd.uscourts.gov). For those cases subject to preliminary review pursuant to LR 4.3(d)(1), (2) and

(4), the court shall not issue a summons for service and a notice of lawsuit/request for waiver of service of summons shall not be sent to any party until the preliminary review has been completed and service has been ordered.

7.1 Motions

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(e) Reply or Surreply Memorandum

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(4) Deadlines. The deadlines set in subsections (1), (2) and (3) apply unless otherwise modified or set by court order.

9.4 Cases under § 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1132(a)(1)(B).

...

(d) Discovery and Trial.

Initial disclosure under Fed. R. Civ. P. 26(a) shall not be made, discovery shall not be permitted except as stated herein, and a trial date shall not be set prior to the court's ruling on the motions for judgment on the administrative record. Any party may move the court to permit limited discovery ~~on issues of conflict of interest or bias~~ as permitted by case authority.

17.1 Settlements on Behalf of Minors. No settlement of any suit brought on behalf of a minor by a parent or next friend shall be valid unless approved by the court. To obtain approval of a settlement on behalf of a minor, the parties shall file a motion that is signed by the minor's parent, next friend, or guardian. If the minor is a New Hampshire resident, the motion shall contain the information required by New Hampshire Superior Court Civil Rule ~~44~~ 40. If the minor is a resident of a state other than New Hampshire, the motion shall contain the information required by sections ~~D~~ (d), ~~E~~ (e), ~~F~~ (f), and ~~K~~ (k) of Rule ~~44~~ 40 and a brief statement of law relative to minor settlements in the state of residence with citations to relevant authority.

26.2 Protective Orders

Civil Form 5, Attachment A

Change the use of the term "Confidentiality Order" to "Protective Order."

53.1 Alternative Dispute Resolution (ADR)

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(c) Mediation.

~~(1) **Discovery Plan.** Counsel shall confer regarding the suitability of their case for mediation and, if applicable, include in their discovery plan (See Civil Form 2, Discovery Plan) the date by which mediation will occur. The parties shall confer regarding the suitability of their case for mediation and, if applicable, include in their discovery plan (see Civil Form 2, Discovery Plan) the date by which mediation shall occur.~~

~~(2) — **Mediation Program.** Either by the court or by agreement of the parties, any eligible civil action may be referred to mediation according to the Guidelines for Mediation Program. A copy of the Guidelines may be obtained from the clerk's office or the court's web site. Should the parties agree to court sponsored mediation in the Discovery Plan or in a subsequently filed joint mediation statement, the parties shall within 48 hours conventionally file a list of five (5) possible mediators from the court's approved list in descending order of preference. The list of possible mediators shall not be maintained in the case file.~~

~~(2) **Joint Mediation Statement.** At any time following the submission of the discovery plan, the parties may request the court refer a case for mediation with a mediator from the court's approved panel of mediators or any district or magistrate judge by filing a Joint Mediation Statement, setting forth the date by which they request mediation occur.~~

~~(3) **Court Ordered Mediation.** The court at any time may refer a case to mediation.~~

~~(4) **Designation of Mediator.** If the parties agree that a case should be mediated by a district or magistrate judge, such request should be made in the Discovery Plan or the Joint Mediation Statement. If the parties intend that a mediator be selected from the court's mediation panel, within forty-eight (48) hours of requesting a case be referred for mediation, the parties shall provide the court with a joint list of five (5) possible mediators from the panel in descending order of preference from which the court will designate the mediator.~~

~~(5) **Mediation Process.** Unless otherwise ordered by the court, mediation requested through the court shall be conducted in accordance with the court's Guidelines for Mediation Program.~~

~~(6) **Private Mediation.** Nothing in this rule precludes parties from engaging a mediator or other neutral outside the court's Mediation Program to facilitate resolution of a case.~~

67.3 ~~Withdrawal of Deposit in Interest-Bearing Account~~ Disbursal of Registry Funds.

No funds may be paid out of the court's registry except by order of the court. ~~If a judgment has been issued or is to be issued, except as provided in Fed. R. Civ. P. 62,~~ no funds may be disbursed until fourteen (14) days after the entry of judgment, ~~except as provided in Fed. R. Civ. P. 62 or by agreement of the parties.~~ The authorized custodian shall disburse all registry principal and income, if applicable, less the registry fee assessment, pursuant to the court's order. Any such order shall distinctly set forth the

funds in question and name the payee. Should the named payee be other than the depositor of the funds, that fact shall be reflected in the order. The party presenting such order shall comply with LR 67.2(a)(3). If the funds have been deposited in an interest-bearing account or an interest-bearing instrument, the party shall provide, on a separate filing attached to the motion seeking withdrawal of the funds, the social security number or employer identification number of the ultimate recipient of the funds. The clerk shall forward this separate filing directly to the institution holding the money.

77.4 Bankruptcy

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(d) Appeals.

(1) Bankruptcy Court Authorization.

~~The bankruptcy court authorized and directed to dismiss an appeal filed after the time specified in B.R. 8002 and an appeal in which the appellant has failed to file a designation of items as required by B.R. 8006.~~

~~The bankruptcy court is authorized and directed under B.R. 8002(d) and 9006(d) to hear motions to extend deadlines and to consolidate appeals which present similar issues from a common record. Bankruptcy court orders entered under this subsection may be reviewed by the district court on motion filed within fourteen (14) days after entry of the order sought to be reviewed.~~

The bankruptcy court is authorized and directed under B.R. 8002(d) and 9006(d) to hear motions to extend the time for filing a notice of appeal. Bankruptcy court orders entered under this subsection may be reviewed by the district court on motion filed within fourteen (14) days after entry of the order sought to be reviewed. Further, the district court may dismiss an appeal in which the appellant has failed to file a designation of items as required by B.R. 8006.

~~(2) Notice of Docketing and Briefing Schedule. Upon the filing of an appeal, the clerk's office shall issue a notice of docketing. Parties shall file briefs in accordance with the deadlines established in B.R. 8009. Unless leave is granted to extend the deadlines, the case is submitted to the assigned judge fifty (50) days from the date of the notice.~~

Upon receiving the record or notice of its availability electronically, the clerk's office shall issue a notice confirming receipt of record. Parties shall file briefs in accordance with the deadlines established in B.R. 8018. Unless leave is granted to extend the deadlines, the case is submitted to the assigned judge after the time for filing a reply brief has expired.

~~(3) Failure to Comply with Briefing Deadlines. If the appellant's brief is not received within the time specified by B.R. 8018 8018, the court may impose an appropriate sanction, which may include dismissal of the appeal for lack of prosecution.~~

~~(4) Judgment. Upon receipt of the court's opinion, the clerk shall enter judgment in accordance with B.R. 8016(a) 8024(a) and provide notice of the judgment in accordance with B.R. 8016(b) 8024(b).~~

80.1 Record of Proceedings

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(b) Requests for Transcripts. Any person may purchase a written transcript of court proceedings from the court reporter or, for proceedings held in courtroom B, a copy of the tape ~~if electronically recorded~~, from the clerk's office. The court reporter or clerk's office shall notify all named parties to the action of such a request.

81.1 Removal Actions.

(a) Answer. Defendant(s) shall file an answer or present other defenses or objections available under the Federal Rules of Civil Procedure ~~within twenty one (21) days from the date of the filing of the notice of removal or, if any defendant is served after removal,~~ within the time frame established by Rule 81(c) of the Federal Rules of Civil Procedure. If such answer has previously been filed in State Court, it shall be refiled separately from other State Court pleadings and captioned "Answer".

83.1 Bar of District Court

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(b) Each applicant for admission to the bar of this court shall file with the clerk's office a completed Petition and Oath on Admission on a form provided by the clerk's office, along with the required fee as published on the court's website. ~~A copy shall be forwarded by the clerk's office to the United States Attorney for the District of New Hampshire who shall investigate each applicant's eligibility as is deemed necessary.~~ Submission of a completed Petition and Oath on Admission to the bar of this court constitutes the applicant's consent to have the clerk's office obtain the applicant's public and non-public disciplinary history from the New Hampshire Attorney Discipline Office. ~~a criminal background check performed by the United States Attorney's Office. If the United States Attorney determines that the applicant is eligible, a representative from that office shall move for the applicant's admission. If the United States Attorney is not satisfied, any member of the bar of this court may move for the applicant's admission, and the United States Attorney or an assistant may oppose the motion. If the United States Attorney files an objection, the clerk's office shall advise the applicant. Unless the applicant withdraws the application, the court shall conduct a hearing on the application. The court may grant or deny the application for admission or may continue the matter for further proceedings.~~

~~Unless the United States Attorney files an objection, the~~ Upon the court's approval of the application, the applicant shall be admitted to the bar of this court upon taking the prescribed oath or affirmation. Applicants must be sworn in as members of the district's bar within one year of the date their application is approved or their application will be deemed inactive and a new application will be required.

Upon payment of the admission fee as published on the court's website, which includes a fee for deposit to the United States District Court Library Fund, the applicant shall then be a member of the bar of this court.

83.8 Photographing; Broadcasting; Televising

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(c) Exceptions.

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(2) Unless otherwise prohibited by a judge or the clerk, members of the bar of this court or any other bar and their agents may possess and use cell phones, computers, pagers, personal digital assistants (PDAs), and similar electronic devices within the Rudman Courthouse. However, such devices shall be set on silence mode, and no telephone calls made or received, while in any courtroom or judge's chambers without specific advance authorization by the presiding judge. Additionally, the use of cell phones for telephone calls shall be restricted to conference rooms within the Rudman Courthouse.

In no event shall any such device be employed by counsel or anyone else in any manner designed to photograph, record (audio or video), broadcast, transmit, or televise any proceeding, scene, discussion, or event. It is the intent of this rule to preserve the prohibitions set out in subsection (a), while allowing some reasonable flexibility to members of ~~the~~ a bar (who are subject to professional sanction) to effectively perform their professional obligations.

Pro se litigants and others may be extended similar privileges upon application to the clerk of court and showing of good cause for or particular need for an exception.

83.12 Sealed Documents

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(b) Levels of Sealed Filings, Orders and Docket Entries.

(1) **Level I.** Filings, orders, and docket entries sealed at Level I may be reviewed by any attorney or pro se party appearing in the action without prior leave of court.

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(c) **Motions to Seal.** A motion to seal must be filed conventionally together with the item to be sealed and both will be accepted provisionally under seal, subject to the court's subsequent ruling on the motion. The motion must explain the basis for sealing, specify the proposed date on which the requested seal order shall expire ~~duration of the sealing order~~, and designate whether the material is to be sealed at Level I or Level II. If a party is requesting that only certain portions of a document be sealed, the party must provide a full copy of the document clearly displaying the portions sought to be sealed. Departure motions based on substantial assistance need not contain a proposed seal duration and, unless extended upon motion for good cause shown, shall remain sealed for five (5) years or until the completion of any term of imprisonment, whichever occurs later. Any motion to seal, upon specific request, may also be sealed if it contains a discussion of the confidential material. If the court denies the motion to seal, any materials tendered under provisional seal will be returned to the movant.

(d) **Filing Procedures.** All material submitted by a party either under seal or requesting sealed status, provisionally or otherwise, must be submitted in compliance with this subsection and

Administrative Procedure for Electronic Case Filing 3.3. The documents and data storage device ~~3.5 floppy or compact disk~~ shall be placed in a sealed envelope with a copy of the document's cover page affixed to the outside of the envelope. The party shall designate the envelope with a conspicuous notation such as "DOCUMENTS UNDER SEAL," "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent. If the basis for the document's sealed status is not apparent, an explanatory cover letter should also be attached to alert the clerk's staff of its special status.

Parties cannot seal otherwise public documents merely by agreement or by labeling them "sealed."

83.16 Presentation of Electronic Evidence to a Deliberating Jury, Jury Evidence Recording System (JERS)

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(b) Production of Exhibits in Electronic Format. In addition to submitting their exhibits in paper as required by LR 83.14 and LCrR 16.1(gh), the parties shall simultaneously exchange and submit their exhibits in an electronic format that strictly conforms with naming and submission instructions on the JERS section of the court's website. Exhibits shall be described using neutral and non-adversarial terms. To the extent practicable, the parties should endeavor to have available at trial an electronic copy of any unlisted exhibit that is used to impeach a witness and is admitted into evidence. Exhibits that cannot practically be reduced to electronic format, such as large physical exhibits, or exhibits that the parties have agreed should not be submitted to the deliberating jury in electronic format need not be submitted electronically for entry into JERS.

CRIMINAL RULES

11.2 Request for Expedited Plea and Sentencing Hearing In Certain Reentry After Deportation Cases

(a) When the parties desire that a reentry after deportation case be expedited for a plea and sentencing hearing, a completed Notice for Expedited Plea and Sentencing Hearing (the "Notice") shall be filed with either a final executed Plea Agreement or an executed Acknowledgement and Waiver of Rights form. The form of the Notice shall substantially conform to Criminal Form 4.

(b) The plea and sentencing hearing shall be scheduled within forty-five (45) days after the filing of the Notice and either the Plea Agreement or Acknowledgement and Waiver of Rights, and the probation office shall prepare an abbreviated presentence investigation report without the need for any further order of the court. The abbreviated presentence investigation report need not include information ordinarily set forth in Section C of a full presentence investigation report.

(c) The probation office shall disclose its initial abbreviated presentence investigation report to the parties by no later than fourteen (14) days before the scheduled plea and sentencing hearing.

(d) Any objection to the initial abbreviated presentence investigation report shall be filed no later than seven (7) days before the scheduled plea and sentencing hearing.

(e) If any objections are made to the initial abbreviated presentence investigation report, the probation office shall conduct a further investigation as required under LCrR 32.1(f), and thereafter disclose a revised report and addendum to the parties by no later than two (2) days before the scheduled plea and sentencing hearing.

(f) The provisions of LCrR 32.1 requiring the filing of proposed Sentencing Options and Supervision Conditions do not apply to cases subject to this expedited plea and sentencing procedure.

(g) The deadlines set forth herein for cases subject to this expedited plea and sentencing hearing procedure supersede the deadlines set forth in LCrR 32.1. All other provisions of LCrR 32.1, not inconsistent with this rule remain in effect.

Criminal Form 4, Notice for Expedited Plea and Sentencing Hearing

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Criminal Case No. and Judge's Initials

Defendant(s)

NOTICE FOR EXPEDITED PLEA AND SENTENCING HEARING

The parties hereby notify the court that this case should be scheduled for an expedited plea and sentencing hearing within forty-five (45) days from the date of this filing.

Dated:

Defense Counsel

Dated:

Counsel for Government

32.1 Guideline Sentencing.

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(g) Disclosure of Revised Presentence Investigation Report and Addendum. No later than fourteen (14) days prior to the scheduled sentencing date, the probation officer shall provide the revised presentence investigation report and addendum, together with the proposed sentencing options and supervision conditions, to the court and the parties. One copy shall be given to counsel for the government. Two copies shall be given to defense counsel, who shall give one copy to the defendant for review. Defense counsel shall ensure that the defendant has timely reviewed and understands the revised presentence report as well as any addenda.

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(i) Deviations and Sentencing Memoranda. Any party seeking a departure or a variance under the sentencing guidelines, or seeking to submit a sentencing memorandum, must file the motion or memorandum no later than ten (10) days before the date of the scheduled sentencing hearing and shall serve a copy upon opposing counsel and the probation officer. Any objections to the proposed sentencing options and supervised conditions must be included in the sentencing memorandum. Any motion for a departure or variance shall specify the grounds for relief and the legal authority for the departure or variance. A response to a motion for departure or variance shall be filed no later than four (4) days before the date of the scheduled sentencing hearing and shall be served upon opposing counsel and the probation officer.

(j) Acknowledgment of Proposed Sentencing Options and Supervised Conditions. At the sentencing hearing, the defendant shall execute and file Criminal Form 5.

Criminal Form 5, Acknowledgment – Sentencing Options and Supervision Conditions

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Criminal Case No. and Judge's Initials

Defendant(s)

ACKNOWLEDGMENT

I, _____, acknowledge that I have received, reviewed and understand the proposed Sentencing Options and Supervision Conditions filed by the U.S. Probation Office in this case.

Date:

Defendant

Defense Counsel

Cc: Defendant
Defense Counsel
U.S. Attorney
U.S. Probation
U.S. Marshal

44.1 ~~Assignment~~ Appointment of Counsel.

(a) **Appointments.** If a defendant is financially unable to retain private counsel, the defendant shall file a financial affidavit. The court shall appoint counsel if the defendant is unable to afford counsel. However, the court may order partial or complete reimbursement of fees incurred. The appointment will first be presented to the Federal Defender's office. If there is a conflict of interest or if the Federal Defender is otherwise unable to accept the appointment, counsel will be selected from the court's Criminal Justice Act (CJA) Panel.

(b) **Filing of voucher for Fees and Expenses.** Counsel appointed under the CJA shall file their completed voucher for fees and expenses as soon as possible upon completion of services rendered but no later than forty-five (45) days from the date of disposition.

~~(c) — **Claim for Excess Fees and Expenses.** If an appointed counsel's claim for fees and expenses exceeds the statutory limit, counsel shall file a motion requesting approval of the excess amount and outlining the reasons why such excess amount is justified. See CJA Panel Reference Manual, § 4.b.~~

(c) **Authorizations and Vouchers Under 18 U.S.C. § 3006A(d) and (e).** All requests made pursuant to 18 U.S.C. § 3006A(d) and (e) shall be filed and maintained in the court's eVoucher application.

SUPPLEMENTAL RULES FOR ELECTRONIC CASE FILING

2.3(b) **Format and Quality Control**

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~~(b) **PDF Documents Exceeding Five Ten Megabytes.** No individual PDF document exceeding 5 10 megabytes will be accepted in ECF. Any individual PDF document exceeding 5 10 megabytes must be divided into separate PDF documents of less than 5-10 megabytes. Except as provided in AP 2.6, individual PDF documents that exceed 15 megabytes shall not be electronically filed, but instead shall be submitted on a data storage device. If an individual PDF document exceeds 15 megabytes and is an attachment/non-trial exhibit, it shall be submitted consistent with AP 2.5(d).~~

2.6 **Certified Documents/Records and Social Security Administrative Records**

Except as provided herein, the following shall be electronically filed consistent with AP 2.3: (a) certified documents and records, including the state court record filed in removal proceedings, and (b) to the extent available in electronic format, the administrative record filed in social security cases. In social security cases, (1) the record must be submitted in segments of less than 5 10 megabytes ~~but the cumulative 15 megabyte filing limit does not apply~~, and (2) the government shall provide the court with a conventionally filed courtesy copy of the record.

3.1 **Conventional Filings in Criminal Cases**

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(a) **Criminal Charging Documents.** All charging documents, including indictments, superseding indictments, informations, complaints and citations or violation notices, and

accompanying documents such as supporting affidavits, warrants for arrest, praecipe for summons or warrant, summons (if applicable) and criminal case cover sheets, shall be conventionally filed. Issued warrants for arrest and criminal case cover sheets will not be scanned and added to the court's public electronic docket.

(b) Criminal Applications and Accompanying Affidavits. The following applications, accompanying affidavits and warrants/proposed orders, shall be conventionally filed: seizure warrants, search warrants, pen registers (wiretap requests), and electronic tracking device requests. Issued search/seizure warrants and pen registers (wiretap requests) will not be scanned and added to the court's public electronic docket.

...

(d) Grand Jury Matters. All grand jury matters shall be conventionally filed and not added to the court's public electronic docket, including but not limited to the following: record of grand jurors concurring, motions to quash subpoena, motions to compel production/testimony, motions for immunity, motions for appointment of counsel, petitions for writ of habeas corpus ad testificandum/prosequendum, applications to disclose income tax returns/information, and notification required by Fed. R. Crim. P. 6(e)(3)(B) & (D).

(e) Documents Signed by Criminal Defendants. All documents containing the signature of a criminal defendant shall be conventionally filed. Financial Affidavits will not be scanned and added to the court's public electronic docket.

~~**(f) Violations of Conditional Release.** All Petitions for Violations of Probation, Supervised Release, and Pretrial Release shall be conventionally filed.~~

~~**(g) Undocketed Submissions.** . . .~~

~~**(h) CJA Materials.** All requests under the CJA shall be filed using eVoucher, and will not be added to the court's public electronic docket. following CJA documents shall be conventionally filed: CJA 21 Vouchers and related Motions to Exceed the Statutory Maximum Compensation Limits, CJA 20 Vouchers, and other non-public documents submitted by a CJA Panel member. CJA 20 and 21 Vouchers will not be scanned and added to the court's electronic docket.~~

~~**(i) Juvenile Matters.** . . .~~

6.2 Registration

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(e) Obligation to Update Information. A Filing User has an obligation to notify the clerk's office of any change in the following information associated with their ECF filing account: contained in the original Registration Form through the Notice of Change of Address form: name; mailing address; firm name or affiliation; or telephone number. If participating in an active ECF case, a Filing User shall provide written notice of such change inform the court and parties of such a change through the use of the "Notice of Change of Address" event in ECF in each active case. Filing Users are required to maintain the primary and any secondary email addresses associated with their account by logging into ECF and making changes in a timely manner. Filing Users are also obligated to ensure that the email addresses associated with their ECF account are able to successfully accept notices from the court. The court is not responsible for

notices that are rejected by a Filing User's primary and/or secondary email address. The court reserves the right to remove invalid email addresses from a Filing User's account without notice.

SUPPLEMENTAL RULES FOR PATENT CASES

6.1 Claim Construction Proceedings

(a) Exchange of Proposed Terms for Construction. Not later than fourteen (14) days after service of the Preliminary Invalidity Contentions, or not later than sixty (60) days after service of the Preliminary Infringement Contentions in those actions in which validity is not at issue (and SPR 5.1(c) does not apply), each party shall serve on all other parties a list of claim terms which that party contends should be construed by the court, and identify any claim term which that party contends should be governed by 35 U.S.C. § 112(~~6f~~).

(b) Exchange of Preliminary Claim Constructions and Extrinsic Evidence, and Conference of the Parties. (1) Not later than fourteen (14) days after the exchange of the proposed terms for construction pursuant to SPR 6.1(a), the parties shall simultaneously exchange proposed constructions of each term identified by either party for claim construction. Each such "Preliminary Claim Construction" shall also, for each term which any party contends is governed by 35 U.S.C. § 112(~~6f~~), identify the function of that term and the structure(s), act(s), or material(s) corresponding to that term's function;

...