

# DISTRICT OF OREGON LOCAL RULES: BACKGROUND AND PRACTICE TIPS FROM THE OSB FEDERAL PRACTICE AND PROCEDURE COMMITTEE

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Recent changes to the District of Oregon Local Rules prompted the Oregon State Bar Federal Practice and Procedure Committee, aided by Advisory Member Hon. John Acosta, to examine the creation and amendment of local rules and to emphasize certain written and unwritten rules for practitioners.

## **Background**

28 U.S.C. §2071(a) provides that “all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business.” Local rulemaking authority is thus vested in the court and proceeds at its discretion. The District of Oregon has established a Local Rules Advisory Committee (LRAC) comprised of members of the judiciary, including Judges Stewart, Mosman, and Hubel, and civil practitioners from around the state who are appointed by the judiciary. Jim Hiller of Hitt Hiller Monfils Williams LLP chairs the committee. LRAC members have six-year terms but no term limits, so some members have served for extended

periods of time. The LRAC is in session on an as-needed basis, and is not currently in session.

Changes or additions to local rules originate within the LRAC and also from input provided by practitioners or judges. The Court of Clerk periodically receives comments from practitioners and collects these for the start of a new LRAC session. The LRAC then decides which rules it will add or amend, divides the tasks among committee members, and creates a proposal to present to the judges of the district. After they are reviewed by the court, the rules are published for public comment and these comments are considered by the LRAC, usually resulting in some changes. The rules then return to their judges for their final approval, and once approved, are sent to the Ninth Circuit and take effect.

The best way to provide input relating to the local rules is to contact an LRAC member or to leave a comment with the Clerk of Court.

## **Practice Tips from the Clerk of Court**

We interviewed the clerk’s office at the District of Oregon, Portland Division, and received the following advice:

- **General Advice**
  - The Clerk’s Office can help with filing but cannot provide legal advice, including advice on interpretation of the Local Rules. Before calling in, be sure to read the rules!

- Advance notice of complicated filings (under seal filings, TROs) is appreciated.
  - The Clerk's Office closes at 4:30 p.m. and it takes 15 minutes to open an average case.
  - Where forms are available on court website and uscourts.gov, use them!
  - For larger documents use a secure fastener (such as ACCO clips) rather than binder clips. (See below for advice regarding judges' copies.)
- **Sealed and In-Camera Documents (LR 3-8, 3-9, 100-5)**
    - Must submit an original and judge's copy.
    - Use official under-seal envelopes and fill them out!
    - If the pleading and attachments fit, it is possible to use only one envelope. If not, each attachment needs its own envelope. For larger documents, use expandable folders and attach under-seal envelopes to the front. Do not use boxes or legal-size envelopes.
    - Make sure to identify all attachments filed under seal with a pleading page as the cover.
    - It is not possible to seal only one attachment. The entire submission must be filed under seal.
- Parties should submit a copy of any protective order along with documents filed under seal.
  - In-camera submissions are for the judges' eyes only. Only one copy needed. Use official under-seal envelope and be sure to circle "in camera" on the envelope.
- **Initial Pleadings:**
    - Complaints require an original signature, preferably in blue ink.
    - When you file, provide an original civil complaint, one judge's copy, and a disc that contains a PDF of the complaint, summons, and civil cover sheet.
    - When you fill out the summons, it must include the return address of the attorney. Provide three copies of each summons to be issued.
- **Identification of Division and Judge**
    - Amended LR 3-2(b) and 3-3(a) required the identification of the division in which the submission is made, in both civil and criminal actions. Also remember to use judge's initials as part of the case number.

## **Practice Tips from the Judiciary**

Judge Acosta surveyed the judges in the District of Oregon, Portland Division, who emphasized the following:

- **General Advice**

Many judges have specific preferences, both for courtroom appearances and for filing of documents. It is always a good idea to know and follow these preferences when you appear in person (or in writing) before a judge. When in doubt about what to do for an appearance, or with a certain type of document, check with chambers. If you have questions about who to contact, the clerk's office can help direct you to the right person. Also, the Federal Bar Association produces the *Federal Court Practice Handbook*, a compilation of interviews with each judge in the District of Oregon. The *Handbook* provides helpful guidance on the judges' preferences on all aspects of both civil and criminal matters.

- **Judge's Copy (LR 100-7; LR 5-1; 10-1(e) & (g))**

- Although the LR 100-7 requires a judge's copy in civil cases only in certain circumstances (“[d]ispositive motions, motions for injunctive relief, and any documents in excess of five (5) pages”), it is good practice to make judges' copies of all e-filed documents.
- When you consider whether to submit a judge's copy,

remember that even though your pleading may be less than five pages, the exhibits or other attachments together with the pleading may add up to more than five pages.

- When you have a time-sensitive filing (e.g., a reply brief for a hearing that is scheduled to take place within the next few days), find out whether the judge would like delivery of the judge's copy directly to chambers. Filing the judge's copy with the intake desk can result in a delay in getting the documents to the judge.
- When submitting copies of pleadings and exhibits to the judge, take a moment to think about whether your submission is user-friendly. For example, although it is not the subject of a local rule, it is a good idea to separate and tab all exhibits, declarations, and attachments that are provided to the judge. Untabbed exhibits are difficult to work with and must be separated and tabbed by chambers staff or the judge, taking up time that could be spent considering the contents of the submission. Many judges have preferences for the ways in which pleadings and exhibits are submitted. Again, it is always wise to find out the preferences of the judge in your case.
- Note: Not all chambers are on ECF notification. Providing a judge's copy is the best way to ensure the court is aware of your filing.

- **Conferral Before Filing Motions (LR 7-1(a))**

- LR 7-1(a) provides that parties must make “good faith effort through personal or telephone conferences to resolve the dispute” before filing a contested motion.
- The Court interprets this local rule to mean what it says: that each party must communicate its position in person or on the telephone. Email or letters may supplement “real-time” conferral but are not a substitute for it. Judges are not pleased when it becomes clear during a status conference or other hearing on a motion that the personal communication requirement from this rule has been ignored.
- Some judges prefer that the LR 7-1 certification include a brief summary of the opposing party’s position, particularly on motions to compel and to extend pretrial dates. Again, checking with chambers or reviewing the specific judge’s interview in the *FBA Handbook* can be very helpful.

- **Information in Motions to Extend Pretrial Deadlines (LR 16-3)**

- Under LR 16-3, the parties must provide the court with specific information in a motion to extend a pretrial deadline. Simply stating the parties’ agreement is not sufficient! The motions must set forth (1) what the parties have done so far; (2)

what the parties have left to do; (3) why the parties have not been able to get this done already; (4) the parties’ preferred new deadlines, including the new proposed deadlines; and (5) a realistic assessment of how the proposed new deadlines will affect *all* remaining scheduled events such as expert disclosures, pretrial filings, and the trial date.

- In order to avoid having to file repeated motions to extend, the parties should come to the LR 16 conference with a realistic plan for discovery, including expected discovery, witnesses to be deposed, scheduling, and proposed forms for any protective orders the parties want entered. Generally, if the parties are in agreement, have given the matters due consideration, and have put forth a reasonable timeline, the judge is likely to adopt the parties’ proposal.

- **Compliance with Disclosure Statement Rule (LR 7.1-1)**

- Don’t forget that in diversity actions the local rule requires the parties to disclose the states of which the owners/members/partners of an LLC or LLP are citizens. See *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9<sup>th</sup> Cir. 2006) (“[L]ike a partnership, an LLC is a citizen of every state of which its owners/ members are citizens.”)