PUBLIC COMMENTS RECEIVED RELATED TO THE
PROPOSED AMENDMENTS TO USDC, EDLA LOCAL RULES 7.5, 78.1, 5.6, 26.3
May 1, 2023

The proposed amendment to LR 5.6 is well written and long overdue. In my experience far too many record filings are sealed without a sound basis and contrary to law. It has essentially become a default process. The proposed LR addresses the problem.

I would like to see a similar LR enacted with respect to confidentiality of settlements. The party seeking confidentiality should be required to show good cause why the settlement should be kept out of the public eye unless both parties want the agreement to remain confidential. Confidentiality is now the norm. It should not be.

Paul M. Sterbcow

I have reviewed EDLA's proposed amendments to the Local Rules and offer the following comments for consideration of the proposed amendment to **LR 7.5:**

First, thank you for incorporating into the local rules a right to reply and eliminating the motion-for-leave requirement. But I urge the Court to consider moving the deadline to file any reply *closer* to the submission date.

I firmly believe this will lead to more thoughtful, organized, and well-written replies. The three-working-day deadline creates too much of a burden on the moving party to drop whatever they may be doing on other cases (or in their personal lives) in order to meet the proposed reply brief deadline.

For example, with the Court's changes to LR 78.1 that allows each section of Court to pick their own submission dates, it's possible that judges will choose a Monday as a submission date. With a Monday submission date, the deadline for the opposition would be the preceding Monday (because the 8th day falls on a Sunday), and then the deadline for the reply would be due on Wednesday. That allows for only one business day between receipt of the opposition and the deadline for filing the reply. I think the Court will see an influx of motions to continue the submission date simply to allow the movant more time to reply.

Because the Court's submission date rules and briefing deadlines appear to be based on Louisiana's Uniform Rules for District Court (motion due 15 days before rule day, opposition due 8 days before), I encourage the Court to adopt Louisiana's uniform reply deadline for all motions other than summary judgment—which is by 4pm two working days before the submission date. Because reply briefs are limited to 10 pages and exhibits to replies are

typically not allowed, a by-4pm-two-working-days-before deadline still allows the court one full working day between receiving the reply and the submission date. Matching Louisiana's Uniform Rules for motions, oppositions, *and* replies will also result in less confusion about this Court's notice-of-submission-date procedures and better, widespread adherence to the Court's local rules. At bottom, EDLA's submission date briefing schedule is currently identical to the state court uniform rules, except the EDLA judges make their "rule days" publicly available ahead of time. [Which begs the question of why so many lawyers currently have trouble with the submission date, except I don't think anyone explains the LR deadlines this way – so maybe we should! But only if you revise the current proposed amendment to match Louisiana's Uniform Rules for District Courts too. I promise it will make both practitioners' and judges' lives easier!]

Thank you for your consideration,
Chloé M. Chetta

The proposed amendment to Local Civil Rule 7.5 provides that the original movant may file a reply brief no later than three working days before the noticed submission date. Consistent with state law practice, which provides that a reply brief be filed by 4:00 p.m. two working days before the hearing date (to allow one full working day between the filing and the hearing date), I would propose that the amendment be changed from three working days to two working days. Two working days is a better balance between providing sufficient time to digest and respond to an opposition brief and allowing some time (one day) for a motion for leave to file a surreply brief, which should rarely be necessary. (On a related note, I would suggest that the Local Rules be amended (similar to state court rules) to allow more time to oppose dispositive motions than non-dispositive motions.)

Imtiaz A. Siddiqui

I appreciate the change to LR 7.5 that would allow for the filing of a reply without the need to seek leave of court; however, I do not think that the rule as written allows enough time for a reply. Under the rule as written, if the submission date is on a Wednesday, an opposition would be filed the Tuesday before. The proposed rule would require that the reply be served no later than three working days before the noticed submission date – thus, the reply would be due on Friday, just three days after the opposition has been submitted. And if the Monday immediately prior to the submission date were a holiday, then the reply would be due the Thursday before, just two days after the opposition was submitted. This is simply not enough time to draft a well-reasoned reply, particularly for more substantive motions like motions for summary judgment. My preference would be to eliminate submission dates altogether and to instead have set timelines for when briefs should be filed, *i.e.*, oppositions are due 21 days after

a motion is filed, and reply briefs due 14 days after that. In the alternative, though, should the Court choose not to eliminate submission dates, then I think reply briefs should be due either on the submission date or the day before.

Thanks,
M. Rebecca Cooper, Esq.

My comment is to LR 5.6(E).
I can think of instances where a requirement to serve sealed motions on the government attorneys would be inappropriate in a criminal case; for example a motion for a psychiatric examination or a risk assessment in a child pornography case. Disclosure of such requests exposes potential defense strategies prematurely, especially if it turns out we do not use the report after it comes back unfavorable to our client. Another instance might be a Motion to Withdraw as Counsel where the facts might be prejudicial to the client. A one size fits all approach does not work in criminal defense cases and determinations of whether to allow the motion "under seal" and whom should be given notice should be left to the Judge in each instance.

Michael W. Boleware, Esquire

Proposed LR 5.6(D). The inclusion of the word "other" in the first sentence seems to indicate that a supporting memorandum is not required for the motions to seal described in subsection (C) (pleadings or briefs). It seems that a supporting memorandum should be required for all motions to seal. Deletion of the word "other" in subsection (D) would make that clearer.

Proposed LR 5.6(D)(2)(a). The requirement beginning with "When the document or other tangible item to be sealed is a declaration or an exhibit to a document filed electronically" seems to apply only to subsection (D)(2) because of its placement. However, subsection (D)(1) does not contain any instructions for "When the document or other tangible item to be sealed is a declaration or an exhibit to a document filed electronically." If the provision in subsection (D)(2)(a) is intended to apply to any motion to file an exhibit or declaration under seal, it would be clearer if it was moved to a new subsection (D)(3) or to a new subsection (K) or the same language should be added to subsection (D)(1)(a).

Proposed LR 5.6(D)(2)(d). This subsection contemplates the filing of a redacted version of the sealed document if the Court grants a motion to seal, but does not explain whether the designating party, the filing party, or the Court will determine the redactions. As worded, it also seems to provide that every time a document is sealed by the Court, there will be a redacted version. However, there will certainly be some instances when a document (e.g., an exhibit with entirely confidential information) is sealed in its entirety. Additionally, to the extent this provision is intended to apply to any Court ruling on a motion to seal (as opposed to only

motions discussed in subsection (D)(2)), the provision should be added to subsection (D)(1) or moved to a new subsection.

Proposed LR 5.6(E). The last sentence states that "The sealed document . . . shall include a certificate of service reflecting the means by which service was made." It might be more practical to require that the motion to seal include such a certificate of service.

Margot Want

As a lawyer who frequently practices before this Court, I would like to provide the following comment on the proposed amendment to EDLA Local Rule 7.5.

I support the proposal to formally recognize a moving party's right to file a reply brief in support of its motion and to establish a deadline for filing. In my experience, reply briefs play a very important role in litigation. Particularly when most motions are decided without oral argument, a reply brief usually provides the only opportunity for the moving party to respond to the opposing party's arguments. And in some circumstances, reply briefs are essential—for example, with respect to summary judgment motions, where a reply brief is the preferred mechanism for objecting to evidence put forth by the non-moving party to defeat summary judgment.

However, the proposed deadline—three working days before the noticed submission date—appears to be a departure from the current practice in this district, and I am concerned that it will not allow adequate time to draft a reply brief in many, or even most, cases. In my experience, most opposition briefs are not filed until the last permissible day (eight calendar days before the submission date). With the typical Wednesday submission dates, that means that the opposition brief is usually filed on Tuesday of the preceding week. In my understanding, the current standard practice in this district is for reply briefs to be filed up to the submission date, which typically allows one week to draft the reply.

If the proposed amendment is adopted and a reply brief is due three working days before the submission date, that would make it due (in the case of a typical Wednesday submission date) by Friday of the preceding week. Thus, in typical circumstances, the moving party would have only three days after receiving an opposition brief to draft a reply. In my opinion, this will impose serious burdens on attorneys and will likely decrease the quality of briefing filed with the Court. It will likely also result in frequent motions requesting additional time, which would reimpose on the Court some of the burden that is eliminated by allowing reply briefs to be filed without requesting leave from the Court.

Furthermore, there does not appear to be any compelling need for attorneys to submit reply briefs on this accelerated timeline. In my experience, most motions are decided without oral argument, and motions are not typically decided on the submission date. Even when oral argument is granted, it is often set on a separate date after the submission date. In the event

that a judge intends to hold oral argument on the submission date or otherwise expedite the decision of a motion, that judge of course has the ability to require that any reply brief be submitted by an earlier date. But as the standard rule for the entire district, a deadline of three working days before the submission date appears to be unnecessarily short. I would therefore respectfully suggest that the deadline for filing a reply brief should be one working day before the submission date. At the very least, it should not be due more than two days before the submission date, which would at least provide for drafting time over the weekend.

Respectfully submitted,
Matthew J. Paul