

III. Pleadings and Motions

F.R.Civ.P. 7. Pleadings Allowed; Form of Motions

LRCiv 7.1

FORMS OF PAPERS

(b) Pleadings and Other Papers.

(3) Proposed orders prepared for the signature of a United States District Judge or a Magistrate Judge must be prepared on a separate document containing the heading data required by subparagraphs (a)(2) and (3) above as appropriate, and must not be included as an integral part of stipulations, motions, or other pleadings. The proposed order must not contain any information identifying the party submitting the order and must not incorporate by reference, but rather must set forth the relief requested or the terms of the parties' stipulation. Proposed orders submitted electronically must not contain a date or signature block. All other proposed orders must contain the following uniform signature block (Magistrate Judges should be adapted accordingly):

DATED this _____ day of _____, 20____.

(Judge's Name)
United States District Judge

LRCiv 15.1

MOTIONS AND STIPULATIONS FOR LEAVE TO AMEND PLEADINGS

~~(a) **Form; Attachments.**—~~A party who moves for leave to amend a pleading, or who seeks to amend a pleading by stipulation and order, must attach a copy of the proposed amended pleading as an exhibit to the motion or stipulation, which ~~must~~^{shall} indicate in what respect it differs from the pleading which it amends, by bracketing or striking through the text to be deleted and underlining the text to be added. The proposed amended pleading is not to incorporate by reference any part of the preceding pleading, including exhibits. If a motion or stipulation for leave to amend is granted, the party whose pleading was amended must file and serve the amended pleading on all parties under Rule 5 of the Federal Rules of Civil Procedure within fourteen (14) days of the filing of the order granting leave to amend, unless the Court orders otherwise.

~~(b) *Lodging of Original Proposed Amendments.*—~~ A party who moves for leave to amend a pleading, or who otherwise seeks to amend a pleading by leave of court including by stipulation and order, must lodge with the Clerk of Court an original of the proposed amended pleading. The original must not be physically attached or made an exhibit to a motion to amend, a stipulation to amend, or any other pleading and must contain the original signature of the attorney or unrepresented party proposing the amendment. The amended pleading is not to incorporate by reference any part of the proceeding pleading, including exhibits.

~~(c) *Effective Date of Filing Amendments; Service.*—~~ The entry of the order granting leave to amend the pleading

~~constitutes the filing date of the amended pleading and the Clerk of Court shall file the lodged pleading once the order is entered. The filing date of the amended pleading always constitutes the act from which the time for service begins to run. Unless otherwise ordered by the Court, or when the amendment adds a new party, the party who amended shall serve the amended pleading within ten (10) days of the filing date of such pleading and file a certificate of service.~~

LRCiv 42.1

RELATED CASES; CONSOLIDATION; SERVICE; ASSIGNMENT

(a) **Related Cases.**

~~(1) Any party may file a motion to transfer the case or cases involved to a single Judge whenever two or more cases are pending before different Judges and any party believes that such cases: (A1) arise from substantially the same transaction or event; (B2) involve substantially the same parties or property; (C3) involve the same patent, trademark, or copyright; (D4) call for determination of substantially the same questions of law; or (E5) for any other reason would entail substantial duplication of labor if heard by different Judges, any party may file a motion to transfer the case or cases involved to a single Judge.~~ The motion shall be filed in the case with the lowest case number assigned to a District Judge who shall hear and decide the motion. If the cases are assigned to only Magistrate Judges, a motion to transfer shall be heard by the Magistrate Judge assigned to the lowest case number. ~~and shall be heard by the Judge assigned to that case.~~

The caption of the motion to transfer shall list the case number of that case, followed by a complete listing of the case numbers of all the cases to be considered for reassignment. In addition, a notice of filing motion to transfer, with a copy of the motion attached, shall be filed in each case to be considered for reassignment.

(2b) **Consolidation.** A motion to consolidate pursuant to Rule 42(a), Federal Rules of Civil Procedure, shall contain the captions of all the cases sought to be consolidated, be filed in each case and shall be heard by the District Judge assigned the lowest case number.

(3c) **Service.** Service of any motion to transfer filed under subparagraph(a)~~(1)~~ or service of any motion to

consolidate filed under subparagraph (a)~~(2)~~ shall be made upon all parties and assigned Judges in such cases.

(~~4~~d) **Assignment.** In determining the Judge to whom the case or cases will be assigned pursuant to subparagraphs (a)~~(1)~~ or ~~(a)(2)(b)~~(b) above, the following factors may be considered: (~~A~~1) whether substantive matters have been considered in a case; (~~B~~2) which Judge has the most familiarity with the issues involved in the cases; (~~C~~3) whether a case is reasonably viewed as the lead or principal case; or (~~D~~4) any other factor serving the interest of judicial economy.

F.R.Civ.P. 43. Taking of Testimony

LRCiv 43.1

CONDUCT IN COURTROOM AND ENVIRONS

(b) Computers, Cellular Phones, and Other Equipment.

Unless otherwise ordered by the Court, laptop computers, personal digital assistants (PDAs), and pagers may be used in the courtroom provided they emit no sound, and are not disruptive to the proceedings. Unless otherwise ordered by the Court, Internet access is permitted. Cellular phones are prohibited from use in the courtroom. However, unless otherwise ordered by the Court, cellular phones may be utilized in the hallways, lobbies, and other areas of the environs. Any device which has the potential to emit sound or be disruptive to Court proceedings must be turned off or set on silent mode in the courtroom. The use of this equipment is permissible within a judge's chambers at the discretion of the judge. The use of any device described in this section or any other device for the purposes described in this Local Rule subsection (a)(1) is strictly prohibited.

F.R.Civ.P. 53. Masters

LRCiv 53.1

DUTIES OF MAGISTRATE JUDGES; SPECIAL MASTER

~~(a)~~ Subject to the Constitution and laws of the United States, ~~the full-time~~ Magistrate Judges in the District of Arizona ~~may shall perform the following duties:~~

~~—————(1) S~~ serve as a Special Master in appropriate civil cases in accordance with 28 U.S.C. § 636 (b) (2) and Rule 53 of the Federal Rules of Civil Procedure. ~~Upon the consent of the parties,~~ A Magistrate Judge may be designated by a District Judge to serve as a Special Master in any civil case ~~notwithstanding the limitations of~~ in accordance with Rule ~~53(b)~~ of the Federal Rules of Civil Procedure.

F.R.Civ.P. 72. Magistrate Judges; Pretrial Orders

LRCiv 72.1

ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

(a) **Civil Cases.** Upon the order of a District Judge, a civil case shall be referred by the Clerk of the Court to a Magistrate Judge by automated random selection for the conduct of such pretrial conferences as are necessary, and for the hearing and determination of any or all pretrial matters in accordance with the provisions of 28 U.S.C. § 636 (b)(1). If the referral is for a determination of one of the eight categories of dispositive motions set forth in 28 U.S.C. § 636 (b)(1) or is one for which a Magistrate Judge is prohibited from determining by the Constitution or laws of the United States, the Magistrate Judge shall file a written report and recommendation for final disposition by the referring District Judge.

(b) **Supplementary Proceedings.** The Clerk of the Court shall refer to a Magistrate Judge, in addition to the assignment made to a District Judge, any supplementary proceedings pursuant to Rule 69, Federal Rules of Civil Procedure, and post-judgment proceedings, such as garnishments and judgment-debtor examinations, unless: (1) the matter has already been referred by a District Judge to a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(3), or (2) the matter has been assigned to a Magistrate Judge for final determination pursuant to the express written consent of the parties according to 28 U.S.C. § 636(c).

(c) **Habeas Corpus, Other Post Conviction Petitions, and Prisoner and certain other Civil Rights Complaints.** All petitions for writs of habeas corpus, applications for post trial relief made by individuals convicted of criminal

offenses, civil rights complaints by state or federal prisoners challenging conditions of their confinement, and all other civil actions to which a District Judge has been assigned shall also be referred by the Clerk of the Court to a Magistrate Judge according to Local Rules of Civil Procedure, Rules 3.4(b), 3.5(c), or by automated random selection. The referred Magistrate Judge shall proceed in accordance with the Rules Governing Section 2254 Cases In The United States District Courts, or the Rules Governing Section 2255 Proceedings For The United States District Courts, as the case may be, and with 28 U.S.C. § 636 (b)(1)(A) and (B).

(d) **Part-Time Magistrate Judges.** The only limitations on the duties and responsibilities delegated to and performed by a part-time Magistrate Judge are those limitations specifically set forth in 28 U.S.C. § 636 or other applicable statute or General Order.

LRCiv 83.9

AMENDMENT OF THE RULES OF PRACTICE

(a) Rules of Practice Advisory Committee.

(1) Appointment. The Chief Judge shall appoint members of a Rules of Practice Advisory Committee (Committee) to serve such terms as the Chief Judge designates. The Chief Judge will appoint a District Judge as the Chair of the Committee (Chair).

(2) Responsibilities. The Committee shall make reports and recommendations to the Court regarding the following matters:

(~~i~~A) The consistency of the Rules of Practice (Local Rules) with the United States Constitution, Acts of Congress, the Federal Rules and General Orders of the Court; and

(~~i~~B) Proposed amendments to the Local Rules.

LRCrim 10.2

TRUE NAME TO BE GIVEN

When the defendant receives an initial appearance or is arraigned, the defendant shall be informed that if the name by which he or she is charged is not his or her true name, the defendant must then declare his or her true name or be proceeded against by the name in the charge. If the defendant alleges that another name is his or her true name, the Court shall direct its entry in the minutes of the arraignment and the subsequent proceedings on the charge may be had against the defendant by that name, referring also to the name by which the defendant was charged.

LR crim 12.2

EXCLUDABLE TIME AND MOTIONS - SPEEDY TRIAL ACT

(a) **Content of Motions.** Any motion submitted for filing in a criminal case, other than in a petty offense case, must contain a statement as follows:

(b) **Content of Orders.** Any written order prepared for signature by a United States District Judge or United States Magistrate Judge, other than in a petty offense case, must contain a final paragraph or statement as follows:

(c) **Content of Minute Entries.** All minute orders relating to disposition of criminal motions ruled upon in open court, other than in a petty offense case, shall contain a statement comparable to that outlined in (b) above.

Title VII. Post-Conviction Procedures
F.R.Crim.P. 32. Sentencing and Judgment
(~~NO LOCAL RULE~~)

LR crim 32.1

SENTENCING - PRESENTENCE INVESTIGATIONS

(a) Presentence Investigation. Upon conviction by trial or plea, a court shall order that defendant not leave the District of Arizona without prior authorization until he or she has been interviewed by a Probation Officer.

(b) Appeals. In all cases where a defendant has been sentenced to a period of probation, and files a notice of appeal, the period of probation and supervision shall begin on the date of judgment, notwithstanding the pendency of the appeal.

(c) Petition for Disclosure of Presentence or Probation Records. No confidential records of this Court maintained by the Probation Office, including presentence and probation supervision records, shall be sought by any applicant except pursuant to the provisions under General Order 05-12, Testimony of Judiciary Personnel and Production of Judiciary Records in Legal Proceedings

(d) Preparation and Use of Presentence Reports.

(1) Plea agreements, whether a public record or sealed by order of the Court, shall be made available to the Probation Office for the District of Arizona, for the limited use of the Probation Officer preparing the presentence report and exercising probation supervision.

(2) Unless the Court directs otherwise, the probation officer shall disclose the sentencing recommendation as part of the initial and final presentence reports. The Probation Office shall disclose the initial and final

presentence reports to the defendant's attorney or to the defendant, if pro per, and to the United States Attorney. The defendant's attorney may provide a copy to the defendant.

(3) The Probation Office, after sentencing, will retain the original copy of the presentence report on behalf of the Clerk of the Court. When a request is made to the Clerk's Office to view a copy of the presentence report, the request shall be referred to the Probation Office. If appropriate, the Probation Office shall prepare for the requestor a copy of the presentence report exclusive of the Rule 32(b)(3), Fed.R.Crim.P., information.

(4) Nothing in this Local Rule shall prohibit the Probation Office from disclosing the presentence report to an Arizona Superior Court Probation Office if that office agrees in writing, on a form approved by the Chief Judge of this Court, to maintain confidentiality of matters so specified by this Court.

F.R.Crim.P. 32.1. Revoking or Modifying Probation or
Supervised Release

LR crim 32.1.1

(NO LOCAL RULE)

~~PROBATION -- PRESENTENCE INVESTIGATIONS~~

~~(a) **Probation.** In criminal cases where the defendants are placed on probation, such defendants shall be subject to the supervision of the Probation Office of the Court, unless otherwise ordered, and shall comply with such reasonable rules and regulations as the Probation Officer shall prescribe, subject to modifications by the Court for cause shown.~~

~~(b) **Presentence Investigation.** Upon conviction by trial or plea, a defendant shall not leave the District of Arizona until he or she has been interviewed by a Probation Officer, unless otherwise ordered by the Court.~~

~~(c) **Appeals.** In all cases where a defendant has been sentenced to a period of probation, and files a notice of appeal, the period of probation and supervision shall begin on the date of judgment, notwithstanding the pendency of the appeal.~~

~~(d) **Petition for Disclosure of Presentence or Probation Records.**~~

~~(1) No confidential records of this Court maintained by the Probation Office, including presentence and probation supervision records, shall be sought by any applicant except by written petition to this Court establishing with particularity the need for specific information in the records.~~

~~(2) When a demand for disclosure of presentence and probation records is made, by way of subpoena or other judicial process, to a Probation Officer of the Court, the~~

~~Probation Officer may file a petition seeking instruction from the Court with respect to responding to the subpoena.~~

~~(3) Whenever a Probation Officer is subpoenaed for such records, he or she shall petition this Court in writing for authority to release documentary records or produce testimony with respect to such confidential Court information. In either event, no disclosures shall be made except upon an order issued by this Court.~~

~~(e) **Preparation and Use of Presentence Reports.**~~

~~(1) Plea agreements, whether a public record or sealed by order of the Court, shall be made available to the Probation Office for the District of Arizona, for the limited use of the Probation Officer preparing the presentence report and exercising probation supervision.~~

~~(2) The initial disclosure of the presentence report to counsel and pro se defendant under Rule 32(e) of the Federal Rules of Criminal Procedure must not include the Probation Officer's recommendation on the sentence. The subsequent submission of the presentence report to the Court and the parties under Rule 32(g) of the Federal Rules of Criminal Procedure must include the Probation Officer's recommendation on the sentence, unless the Court directs the Probation Officer not to disclose the recommendation.~~

~~(3) When a copy of a presentence report is released, the probation Office will advise the defendant's counsel and the U.S. Attorney by cover letter or form letter that (A) the report is not to be copied, (B) the report is not a public record, and (C) that the content may not be disclosed to unauthorized individuals. A receipt or charge-out system will be utilized by the Probation Office to monitor distribution and location of the reports.~~

~~(4) If the presentence report contains any~~

~~information or material that contains diagnostic opinions which might seriously disrupt a program of rehabilitation; source of information obtained upon a promise of confidentiality; or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other person; that information will be included in an addendum or attachment and not distributed to the defendant's counsel or the U.S. Attorney, and handled as provided in Rule 32(c)(3)(A) and 32(b)(5) of the Federal Rules of Criminal Procedure.~~

~~(5) The Probation Office, after sentencing, will retain the original copy of the presentence report on behalf of the Clerk of the Court. When a request is made to the Clerk's Office to view a copy of the presentence report, the request shall be referred to the Probation Office, which shall take care of the matter. If appropriate, the Probation Office shall prepare for the requestor of a copy of the presentence report exclusive of Rule 32(b)(5), Fed.R.Crim.P., information and/or other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other person, if latter information is not specifically relied upon by the Court in sentencing.~~

~~(6) The Probation Office will send to the U.S. Sentencing Commission a complete final draft presentence report, sentencing guideline worksheets, plea agreement (if written), judgment and commitment order, and the Court's written reasons for imposing sentence.~~

~~(7) Nothing in this Local Rule shall prohibit the Probation Office from disclosing the presentence report to an Arizona Superior Court Probation Office if that office agrees in writing, on a form approved by the Chief Judge of this Court, to maintain confidentiality of matters so specified by~~

~~this Court.~~

~~(f) **Release of Presentence Report to Parole Commission.**~~

~~Any copy of defendant's presentence report which the Court releases to the United States parole Commission, pursuant to 18 U.S.C. § 4205 (e), shall state thereon that:~~

~~(1) the presentence report is a confidential Court document;~~

~~(2) that the Court intends the report to remain confidential even though released to the Commission; and~~

~~(3) that the presentence report is merely loaned to the Commission in order for the Commission to serve its statutory functions and must be returned to the Court thereafter.~~

LR crim 57.6

UNITED STATES MAGISTRATE JUDGES

(a) **Duties Prescribed.** All Magistrate Judges in the District of Arizona shall perform the duties prescribed by 28 U.S.C. § 636(a). The only limitations on the duties and responsibilities delegated to and performed by a part-time Magistrate Judge are those limitations specifically set forth in 28 U.S.C. § 636 or other applicable statute or General Order.

LR crim 58.1

ASSIGNMENT OF ~~CRIMINAL MATTERS~~ MISDEMEANORS TO MAGISTRATE
JUDGES

~~(MISDEMEANORS)~~

~~(a) Criminal Cases.~~ All misdemeanor cases filed by indictment, complaint, or information shall be assigned to a ~~full-time~~ Magistrate Judge who shall proceed in accordance with 18 U.S.C. § 3401 and Rule 58 of the Federal Rules of Criminal Procedure. Misdemeanor cases filed by indictment or information shall be assigned to a ~~full-time~~ Magistrate Judge by automated random selection, with the exception of cases brought before the ~~full-time~~ Magistrate Judges sitting in Flagstaff and in Yuma, which shall be directly assigned such cases. All other misdemeanors, ~~except petty offense cases processed by the Central Violations Bureau,~~ shall be assigned to any Magistrate Judge designated by those rules to try misdemeanors. Any Magistrate Judge may act in the absence or unavailability of the assigned Magistrate Judge. In the case of a Class A misdemeanor, if the defendant does not waive trial, judgment, and sentencing before a District Judge of the District Court and does not consent to those proceedings before the Magistrate Judge, the case shall be promptly referred to the Clerk of Court for assignment to a District Judge and the defendant shall be directed to appear before the assigned District Judge.

LR crim 58.2

~~REVIEW AND APPEAL JUDGMENTS OF MAGISTRATE JUDGES~~
APPEAL FROM JUDGMENTS OF MAGISTRATE JUDGES IN MISDEMEANOR
CASES (18 U.S.C. § 3402)

~~(a) Appeal from Judgments in Misdemeanor Cases (18 U.S.C. § 3402).~~

~~(1)~~ (a) Notice of Appeal; Service. A defendant may appeal a judgment of conviction by a Magistrate Judge in a misdemeanor case by filing a notice of appeal with the Clerk of the Court within ten (10) days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the District Court to the Court of Appeals.

~~(2)~~ (b) Record on Appeal. The record on appeal to a District Judge shall consist of the original papers and exhibits filed with the Court and the transcript or tape recording of proceedings before the Magistrate Judge, if any.

~~(3)~~ (c) Opening Memorandum. The appellant shall, within thirty (30) days of the filing of the notice of appeal, file a typewritten memorandum with the Clerk of the Court. The memorandum shall include the following: ~~(A)~~ (1) A statement of the issues presented for review and a statement of ~~the case including a statement of~~ the nature of the case; ~~(B)~~ (2) the course of proceedings; and ~~(C)~~ (3) its disposition. There shall follow a statement of the facts relevant to the issues presented for review. The memorandum shall also include any argument which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefore, with citations to the authorities and statutes relied on. The argument shall be followed by a short

conclusion stating the precise relief sought. ~~The appellant shall serve a copy of the memorandum on the appellee.~~

(4) (d) Answering Memorandum. The appellee shall file an answering memorandum within twenty (20) days of the filing and service of the appellant's memorandum. The memorandum shall follow a format similar to the appellant's memorandum, except that a statement of the issues presented for review, a statement of the case, and a conclusion shall be optional.

(5) (e) Reply Memorandum. The appellant may file a reply memorandum within ten (10) days of the date of service of the appellee's memorandum.

(6) (f) Request for Oral Argument. ~~Upon the filing of the memorandum, the case will be deemed submitted for decision. Counsel may request oral argument, Either party may request oral argument by placing "Oral Argument Requested" immediately below the title of their memorandum. If oral argument is granted, notice shall be given in a manner directed by the Court. in writing, at the time their memoranda are filed, and the Court, in its discretion, may allow oral argument.~~

(7) (g) Extension of Time Limits; Dismissal of Appeal. The Court may extend the time limits set in this Local Rule upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file a memorandum within the time provided by this Local Rule, or an extension thereof, the Court may dismiss the appeal.