

LCR 7

FORM AND SCHEDULING OF MOTIONS

(a) Reserved

(b) Motions and Other Papers

(1) *Obligations of Movant.* The moving party shall serve the motion and a proposed order on each party that has appeared in the action, and shall file the motion and proposed order with the clerk. The argument in support of the motion shall not be made in a separate document but shall be submitted as part of the motion itself. If the motion requires consideration of facts not appearing of record, the movant shall also serve and file copies of all affidavits, declarations, photographic or other evidence presented in support of the motion.

All motions shall include in the caption (immediately below the title of the motion) the date the motion is to be noted for consideration upon the court's motion calendar. See LCR 7(d) for scheduling motions and briefing deadlines. The noting date is the date by which all briefing is complete and the matter is ready for the court's consideration, although the court may not issue a ruling on that day. The form for this notation shall be as follows:

NOTE ON MOTION CALENDAR: [insert date noted for consideration]

(2) *Obligation of Opponent.* Each party opposing the motion shall, within the time prescribed in LCR 7(d), file with the clerk, and serve on each party that has appeared in the action, a brief in opposition to the motion, together with any supporting material of the type described in subsection (1). Except for motions for summary judgment, if a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit.

(3) *Reply Brief.* The moving party may, within the time prescribed in LCR 7(d), file with the clerk, and serve on each party that has appeared in the action, a reply brief in support of the motion, together with any supporting material of the type described in subsection (1).

(4) *Oral Argument.* Unless otherwise ordered by the court, all motions will be decided by the court without oral argument. Counsel shall not appear on the date the motion is noted unless directed by the court. A party desiring oral argument shall so indicate by including the words "ORAL ARGUMENT REQUESTED" in the caption of its motion or responsive memorandum. If a request for oral argument is granted, the clerk will notify the parties of the date and time for argument.

(5) *Decisions on Motions.* All motions will be decided as soon as practicable, and normally within thirty days following the noting date. The court encourages counsel to call the assigned judge's courtroom deputy clerk to verify that a motion is scheduled for

determination if a decision on the motion has not been received within forty-five days of the noting date.

(c) Reserved

(d) Noting Dates for Motions and Briefing Schedules

Unless otherwise provided by rule or court order, motions shall be noted for consideration as follows:

(1) *Same Day Motions.* Stipulated motions (see LCR 10(g)), motions to file over-length motions or briefs (see LCR 7(f)), motions for reconsideration (see LCR 7(h)), joint submissions pursuant to the optional procedure established in LCR 37(a)(2), motions to appoint a mediator (LCR 39.1(c)(3)), motions for default (see LCR 55(a)), requests for the clerk to enter default judgment (see LCR 55(b)(1)), ex parte motions, motions for the court to enter default judgment where the opposing party has not appeared (see LCR 55(b)(2)), and motions for a temporary restraining order (“TRO”) (see LCR 65) shall be noted for consideration for the day they are filed.

(2) *Second Friday Motions.* Except for same day motions, all other motions shall be noted for consideration on a Friday. Pursuant to a General Order of this court, the following motions may be noted for consideration no earlier than the second Friday after filing and service of the motion:

- (A) motions for relief from a deadline;
- (B) motions for protective orders;
- (C) motions to seal (see LCR 5(g)).

For any motion brought pursuant to this subsection, the moving party shall ensure that the motion papers are received by the opposing party on or before the filing date. Unless otherwise provided by court rule, any papers opposing motions of the type described in this subsection shall be filed and received by the moving party no later than the Wednesday before the noting date. Any reply papers shall be filed, and shall be received by the opposing party, no later than the noting date.

(3) *Third and Fourth Friday Motions.* Motions to dismiss, motions for summary judgment, motions seeking a preliminary injunction, motions for class certification, and motions directed toward changing the forum (through remand, transfer, or to compel arbitration) shall be noted for consideration on a date no earlier than the fourth Friday after filing and service of the motion. With the exception of the motions specifically listed in LCR 7(d)(1), 7(d)(2), and 7(d)(3), all other motions shall be noted for consideration on a date no earlier than the third Friday after filing and service of the motion.

Any opposition papers shall be filed and served not later than the Monday before the noting date. If service is by mail, the opposition papers shall be mailed not later than the

Friday preceding the noting date. Any reply papers shall be filed and served no later than the noting date.

(4) *Motions in Limine*. Except upon a showing of good cause, any motions in limine shall be filed as one motion and shall be noted for consideration no earlier than the third Friday after filing and service of the motion but no later than the Friday before any scheduled pretrial conference. Any opposition papers shall be filed and served no later than the Monday before the noting date. No reply papers shall be filed.

Any motion in limine must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve which matters really are in dispute. A good faith effort to confer requires a face-to-face meeting or a telephone conference. If the court finds that counsel for any party, or a party proceeding pro se, willfully refuses to confer, fails to confer in good faith, or fails to respond on a timely basis to a request to confer, the court may take action as stated in LCR 11 of these rules.

(5) If the deadline for a party's response or reply to a motion falls on a date that is a legal holiday as defined by Fed. R. Civ. P. 6, the party's response or reply is due on the following day that is not a Saturday, Sunday, or legal holiday.

(6) When a motion is filed on a Friday, that day is excluded from the time period under Fed. R. Civ. P. 6(a), so the following Friday is the first Friday after filing. When calculating time periods, parties should refer to LCR 6 and Fed. R. Civ. P. 6.

(7) *Cases Involving Prisoners and Detainees*. Except for petitions for habeas corpus and motions filed pursuant to 28 U.S.C. § 2255, all motions filed in a case in which a party is under civil or criminal confinement shall be subject to the briefing schedule under Rule 7(d)(1) or 7(d)(3), not 7(d)(2). Petitions for habeas corpus and motions filed pursuant to 28 U.S.C. § 2255 are addressed by LCR 100.

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(e) Length of Motions and Briefs

Except as otherwise provided by court order or rule, the length of motions and briefs shall be as follows:

(1) Motions noted under LCR 7(d)(1), except motions for temporary restraining orders, shall not exceed six pages.

(2) Motions noted under LCR 7(d)(2) and briefs in opposition shall not exceed twelve pages. Reply briefs shall not exceed six pages.

(3) Motions for summary judgment, motions to dismiss, motions for class certification, motions for a temporary restraining order, motions for preliminary injunction, and motions aimed at changing the forum (*e.g.*, motions to remand, transfer, or compel arbitration) and briefs in opposition shall not exceed twenty-four pages. Reply briefs shall not exceed twelve pages.

Absent leave of the court, a party must not file contemporaneous dispositive motions, each one directed toward a discrete issue or claim.

(4) All other motions noted under LCR 7(d)(3) and briefs in opposition shall not exceed twelve pages. Reply briefs shall not exceed six pages.

(5) Any motion in limine noted under LCR 7(d)(4) and any brief in opposition shall not exceed eighteen pages.

(6) The court may refuse to consider any text, including footnotes, which is not included within the page limits. Captions, tables of contents, tables of authorities, signature blocks, and certificates of service need not be included within the page limit.

(f) Motions to File Over-length Motions or Briefs

Motions seeking approval to file an over-length motion or brief are disfavored but may be filed subject to the following:

(1) The motion shall be filed as soon as possible but no later than three days before the underlying motion or brief is due, and shall be noted for consideration for the day on which it is filed, pursuant to LCR 7(d)(1).

(2) The motion shall be no more than two pages in length and shall request a specific number of additional pages.

(3) No opposition to the motion shall be filed unless requested by the court.

(4) If the court grants leave to file an over-length motion, the brief in opposition will automatically be allowed an equal number of additional pages. In all cases, the reply brief shall not exceed one-half the total length of the brief filed in opposition.

(g) Requests to Strike Material Contained in Motion or Briefs; Surreply

Requests to strike material contained in or attached to submissions of opposing parties shall not be presented in a separate motion to strike, but shall instead be included in the responsive brief, and will be considered with the underlying motion. The single exception to this rule is for requests to strike material contained in or attached to a reply brief, in which case the opposing party may file a surreply requesting that the court strike the material, subject to the following:

(1) That party must file a notice of intent to file a surreply as soon after receiving the reply brief as practicable.

(2) The surreply must be filed within five days of the filing of the reply brief, and shall be strictly limited to addressing the request to strike. Extraneous argument or a surreply filed for any other reason will not be considered.

(3) The surreply shall not exceed three pages.

(4) No response shall be filed unless requested by the court.

(5) This rule does not limit a party's ability to file a motion to strike otherwise permitted by the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 12(f) motions to strike material in pleadings. The term "pleadings" is defined in Fed. R. Civ. P. 7(a).

(h) Motions for Reconsideration

(1) *Standard.* Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.

(2) *Procedure and Timing.* A motion for reconsideration shall be plainly labeled as such. The motion shall be filed within fourteen days after the order to which it relates is filed. The motion shall be noted for consideration for the day it is filed. The motion shall point out with specificity the matters which the movant believes were overlooked or misapprehended by the court, any new matters being brought to the court's attention for the first time, and the particular modifications being sought in the court's prior ruling. Failure to comply with this subsection may be grounds for denial of the motion. The pendency of a motion for reconsideration shall not stay discovery or any other procedure.

(3) *Response.* No response to a motion for reconsideration shall be filed unless requested by the court. No motion for reconsideration will be granted without such a request. The request will set a time when the response is due, and may limit briefing to particular issues or points raised by the motion, may authorize a reply, and may prescribe page limitations.

(i) Telephonic Motions

Upon the request of any party, and with the court's approval, a motion may be heard by telephone without the filing of motion papers. No request for a telephonic motion shall be considered unless all counsel participate in the call making the request, or unless it is represented by counsel making the call that reasonable efforts have been made to include all counsel in the call, and that such efforts were unavailing. Whether such telephonic motions will be considered, what procedural requirements will be imposed, and the type of relief granted are within the sole discretion of the court.

(j) Motions for Relief from a Deadline

A motion for relief from a deadline should, whenever possible, be filed sufficiently in advance of the deadline to allow the court to rule on the motion prior to the deadline. Parties should not assume that the motion will be granted and must comply with the existing deadline unless the court orders otherwise.

If a true, unforeseen emergency exists that prevents a party from meeting a deadline, and the emergency arose too late to file a motion for relief from the deadline, the party should contact the adverse party, meet and confer regarding an extension, and file a stipulation and proposed order

with the court. Alternatively, the parties may use the procedure for telephonic motions in LCR 7(i). It is expected that if a true emergency exists, the parties will stipulate to an extension.

(k) Cross Motions

Parties anticipating filing cross motions are encouraged to agree on a briefing schedule and to submit it to the court for approval through a stipulation and proposed order. The court may order parties filing cross motions for summary judgment to combine their memoranda and forego reply briefs in exchange for an enlarged response brief.

A party filing a cross motion must note it in accordance with the local rules. Even if the motion and cross motion are noted for different days, the court will typically consider them together.

(l) Withdrawing and Renoting Pending Motions

A moving party may renote its own pending motion itself by promptly filing a document titled Notice of Motion Renoted and changing the noting date in CM/ECF before any opposing party files a response to the motion. Once a response has been filed, the motion may be renoted only by filing a stipulation signed by all parties or by order of the court.

The court may renote a pending motion to ensure compliance with applicable court rules or for other reasons.

A moving party may withdraw its own pending motion by filing a Notice to Withdraw Pending Motion. If the noting date for the motion has already passed, the party must also immediately telephone the assigned judge's chambers to notify his or her staff that the pending motion has been withdrawn; the failure to do so may result in the imposition of sanctions.

(m) Praecipe

Parties are expected to file accurate, complete documents, and the failure to do so may result in the court's refusal to consider later filed corrections or additions to the record. In the event that an error is discovered, a party should file, as promptly as possible, a praecipe requesting that the court consider a corrected document, which must be filed with the praecipe. The praecipe must specify by docket number the document being corrected and the corrections by page and line number. If the party seeks to add an additional document in support of a previous filing, the praecipe must set forth why the document was not included with the original filing and reference the original filing by docket number.

(n) Notice of Supplemental Authority

Before the court rules on a pending motion, a party may bring to the court's attention relevant authority issued after the date the party's last brief was filed by serving and filing a Notice of Supplemental Authority that attaches the supplemental authority without argument.