This chapter was first published by IICLE®.

7 Motion Practice

RICHARD L. MILLER II
Siprut PC
Chicago

I. [7.1] SCOPE OF CHAPTER

This chapter addresses the procedural aspects of various pretrial motions in Illinois federal district courts. It focuses on the requirements of the Federal Rules of Civil Procedure and the local rules of the Illinois Northern, Central, and Southern Districts.

The chapter is divided into sections based on practice issues with respect to general matters applicable to all motions (§§7.2 – 7.23 below), motions directed to the pleadings (§§7.24 – 7.26 below), motions for judgment on the pleadings and summary judgment (§§7.27 – 7.33 below), and miscellaneous matters that tend to relate to specific types of motions (§§7.34 – 7.39 below).

There are specific federal motions that warrant an entire chapter unto themselves. Such motions are discussed elsewhere in this handbook. For example, motions relating to venue are covered in Chapter 5, *Venue in Federal Civil Cases;* motions relating to discovery are covered in Chapter 8, *Discovery;* and posttrial motions are discussed in Chapter 12, *Protecting the Record and Perfecting the Appeal.*

II. PRACTICE WITH RESPECT TO ALL MOTIONS

A. [7.2] Applicable Federal Rules

The Federal Rules of Civil Procedure governing motion practice are as follows:

Fed.R.Civ.P. 5: Serving and Filing of Pleadings and Other Papers

Fed.R.Civ.P. 6: Computing and Extending Time; Time for Motion Papers

Fed.R.Civ.P. 7(b): Pleadings Allowed; Form of Motions and Other Papers

Fed.R.Civ.P. 8(e): General Rules of Pleading; Construing Pleadings

Fed.R.Civ.P. 11: Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

Fed.R.Civ.P. 12: Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

Fed.R.Civ.P. 26(c): Duty to Disclose; General Provisions Governing Discovery; Protective Orders

Fed.R.Civ.P. 37: Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

Fed.R.Civ.P. 56: Summary Judgment

Fed.R.Civ.P. 72: Magistrate Judges: Pretrial Order

Fed.R.Civ.P. 73: Magistrate Judges: Trial by Consent; Appeal

B. [7.3] Applicable Local Rules

The local rules covering motion practice in the respective districts are as follows:

Northern District:

Local Rule 5.2: Form of Documents Filed

Local Rule 5.3: Motions: Notice of Motions and Objections

Local Rule 5.4: Motions: Filing Notice & Motion

Local Rule 5.5: Proof of Service

Local Rule 5.9: Service by Electronic Means

Local Rule 7.1: Briefs: Page Limit

Local Rule 24.1: Notice of Claims of Unconstitutionality

Local Rule 26.2: Sealed Documents

Local Rule 37.2: Motion for Discovery and Production

Local Rule 56.1: Motions for Summary Judgment

Local Rule 72.1: Designated Magistrate Judges: Referrals

Local Rule 73.1: Magistrate Judges: Reassignment on Consent

Local Rule 78.1: Motions: Filing in Advance of Hearing

Local Rule 78.2: Motions: Denial for Failure to Prosecute

Local Rule 78.3: Motions: Briefing Schedules, Oral Arguments, Failure to File Brief

Local Rule 78.4: Motions: Copies of Evidentiary Matter to be Served

Local Rule 78.5: Motions: Request for Decision; Request for Status Report

Central District:

Local Civ. Rule 5.1: Format of Filings

Local Civ. Rule 5.2: Electronic Filings Authorized

Local Civ. Rule 5.3: Service by Electronic Means Authorized

Local Civ. Rule 7.1: Motions

Local Civ. Rule 11.4: Electronic Signatures

Local Civ. Rule 26.3(C): Filing of Discovery or Disclosure Materials

Local Civ. Rule 37.3: Discovery

Local Civ. Rule 42.1: Consolidation and Transfer of Related Cases

Local Civ. Rule 72.1: United States Magistrate Judges

Southern District:

Local Rule 5.1: Serving and Filing Pleadings and Other Papers

Local Rule 7.1: Motion Practice

Local Rule 23.1: Class Actions

Local Rule 26.1(b)(3): Initial Disclosure Prior to Discovery; Filing of Disclosure and Discovery; Cooperative Discovery

Local Rule 72.1: Assignment of Matters to Magistrate Judges

Local Rule 72.2: Procedures Before the Magistrate Judge

Local Rule 73.1: Review and Appeal of Magistrate Judges' Orders or Recommendations

The local rules for each Illinois district are available on the courts' websites:

Northern District of Illinois: www.ilnd.uscourts.gov/localrules.aspx?rtab=localrule

Central District of Illinois: www.ilcd.uscourts.gov/sites/ilcd/files/local_rules/2013-06%20Rules.pdf (case sensitive)

Southern District of Illinois: www.ilsd.uscourts.gov/forms/localrulesrev6r.pdf

In addition, the Northern District of Illinois has a Standing Order Establishing Pretrial Procedure and a model pretrial order form available on that court's website at www.ilnd.uscourts.gov/legal/newrules/stordpt.htm. Because local rules and orders are subject to frequent revision, the respective clerk's office should be checked for the latest version before relying on printed or online materials.

Counsel should also determine whether the judge that is handling the case has his or her own procedures that govern one or more aspects of motion practice. For instance, some — but not all — federal judges have been known to require (1) that joint, uncontested, or agreed motions be identified as such in their titles; (2) that all motions be accompanied by a proposed order; (3) that courtesy copies of motions and materials relating to them be delivered either to a designated drop box or at the judge's chambers; (4) that motions in limine be filed at least ten business days prior to a final pretrial conference; and (5) that a telephone call be made to chambers prior to the filing of an emergency motion in order to obtain a time and date for a hearing.

Because the types of judge-specific requirements vary from judge to judge, among those judges that have them, counsel should review his or her individual judge's requirements. Often this can be done by navigating to the judge's web page using www.ilnd.uscourts.gov, www.ilcd.uscourts.gov, or www.ilsd.uscourts.gov. In addition, some judges use their respective district's website to disseminate rulings on motions before they are presented in court, thereby obviating the need for court appearances. Most often, the judges who use this system explain it on their official web pages and/or in their case management procedures.

C. [7.4] Requirements as to Form

A motion is simply a request for an order from the court. See Fed.R.Civ.P. 7(b)(1). The federal rules set forth three requirements with respect to all motions: (1) they shall be in writing unless made during a hearing or trial; (2) they shall state with particularity the grounds for the seeking of the order; and (3) they shall set forth the order sought. *Id.* The federal rules governing captions and the form of pleadings are equally applicable to motions. Fed.R.Civ.P. 7(b)(2).

Attorneys are required to sign every written motion. Fed.R.Civ.P. 11(a). Further, the motion must state the signer's address, e-mail address, and telephone number. *Id.* The presenting, signing, filing, submitting, or advocating of a motion constitutes a certification that, to the best of the person's knowledge, information, and belief formed after a reasonable inquiry, (1) the motion is not being presented for an improper purpose; (2) the motion is warranted by existing law or a nonfrivolous argument for a change in the law; (3) the motion's factual contentions have evidentiary support or likely will have after investigation; and (4) any denials of factual contentions contained in the motion are warranted or, if so identified, reasonably based on lack of information. Fed.R.Civ.P. 11(b). An unsigned motion can be stricken unless the omission is promptly corrected after being called to the attention of the attorney or party that filed it. Fed.R.Civ.P. 11(a).

Each of the three Illinois districts has its own requirements as to the form of motions. One of the few things on which all three districts agree is that paper size is limited to 8½ × 11 inches.

N.D.Ill. Local Rule 5.2(c); C.D.Ill. Local Civ. Rule 5.1(A); S.D.Ill. Local Rule 5.1(b); *Drews v. Patterson,* No. 09 C 2844, 2009 WL 3518160, *2 n.2 (N.D.Ill. Oct. 27, 2009). Also, all three districts require motions and briefs to be double spaced. See N.D.Ill. Local Rule 5.2(c); C.D.Ill. Local Civ. Rule 5.1(A); S.D.Ill. Local Rule 5.1(b).

In the Northern District, parties must provide a paper copy of their motion, notice of motion, and documents relating thereto to their judge. N.D.Ill. Local Rule 5.2(f); *Hu v. Cantwell,* No. 06 C 6589, 2008 WL 4200289, *4 (N.D.Ill. Sept. 10, 2008). The judge's copy must be bound on the left side and must include protruding tabs for exhibits. N.D.Ill. Local Rule 5.2(d); *LaFlamboy v. Landek,* 587 F.Supp.2d 914, 922 (N.D.Ill. 2008). Further, a list of exhibits must be provided for each document that contains more than one exhibit. N.D.Ill. Local Rule 5.2(d); *American Multi-Cinema, Inc. v. MCL REC, LLC,* No. 06 C 0063, 2008 WL 1744426, *1 (N.D.Ill. Apr. 11, 2008). For documents relating to motions that are filed electronically, a paper copy must be provided to the judge within one business day of filing unless the judge determines that no paper copy is required. N.D.Ill. Local Rule 5.2(f).

The Southern District requires that each motion include, or have attached to it, a certification that a copy of the motion has been properly served on each party as required by the Federal Rules of Civil Procedure. S.D.Ill. Local Rule 7.1(b).

D. [7.5] Filing Supporting Briefs

The Northern District does not explicitly require the filing of briefs in support of the vast majority of motions. But for summary judgment motions, a party must file a supporting memorandum of law (as well as a statement of material facts as to which the moving party contends there is no genuine issue), in addition to any other supporting documents the party chooses to attach. N.D.Ill. Local Rule 56.1(a). Various individual Northern District judges have their own case management procedures that require parties to attach unpublished opinions cited in a brief to the brief.

In the Central District, for every motion raising a question of law, parties must file, along with the motion, a memorandum of law. C.D.Ill. Local Civ. Rule 7.1(B)(1). That memorandum must include a statement of the specific points or propositions of law and supporting authorities on which the moving party relies and identify the rule under which the motion is filed. *Id.* The judge will presume that there is no opposition to a motion if no response is filed and, in such situations, may rule on the motion without further notice to the parties. C.D.Ill. Local Civ. Rule 7.1(B)(2); *Rhodes v. Merchant,* No. 06-1276, 2008 WL 824250, *1 (C.D.Ill. Mar. 25, 2008).

In the Southern District, supporting briefs are required when filing motions to remand, motions to dismiss, motions for judgment on the pleadings, motions for summary judgment, and all posttrial motions. S.D.Ill. Local Rule 7.1(c). With regard to such motions, the failure to timely file a response brief may, in the court's discretion, be considered an admission of the merits of the motion. *Id.* The Southern District does not require parties to file briefs in support of other types of motions. S.D.Ill. Local Rule 7.1(g).

E. [7.6] Briefing Schedules

The Federal Rules of Civil Procedure do not explicitly cover briefing schedules on motions. However, the Illinois district courts have adopted rules that do. In the Northern District, the court may set a briefing schedule on a motion if it so chooses, and, if it does, it determines the appropriate deadlines for the filing of briefs. N.D.Ill. Local Rule 78.3; *Feldman v. Trane*, No. 07 C 2694, 2008 WL 4814723, *2 (N.D.Ill. Nov. 4, 2008). There is one exception — a party opposing a motion for summary judgment must file a memorandum of law in support of its opposition. N.D.Ill. Local Rule 56.1(b)(2).

The Central District has taken a different approach. Every motion raising a question of law, other than a summary judgment motion, must be accompanied by a memorandum of law. C.D.Ill. Local Civ. Rule 7.1(B)(1); *Fleck v. City of Springfield, Illinois*, No. 04-3028, 2005 WL 2001172, *1 (C.D.Ill. Aug. 11, 2005). With the exception of summary judgment motions, a party opposing a motion must file a response within 14 days. C.D.Ill. Local Civ. Rule 7.1(B)(2); *Crawford v. Wildwood Industries, Inc.*, No. 07-1269, 2008 WL 4216326, *2 (C.D.Ill. Sept. 15, 2008); *Gillespie v. Cox*, No. 06-3048, 2006 WL 1749600, *1 (C.D.Ill. June 20, 2006). No reply is permitted. C.D.Ill. Local Rule 7.1(B)(3).

As for summary judgment motions, the Central District requires that the motion contain at least three sections — an introduction, a statement of undisputed material facts, and the argument. C.D.Ill. Local Civ. Rule 7.1(D)(1). The Central District allows 21 days for a response. C.D.Ill. Local Civ. Rule 7.1(D)(2). The Central District allows a party to file a reply on summary judgment, but it must be filed within 14 days of the service of the response. C.D.Ill. Local Civ. Rule 7.1(D)(3).

In the Southern District, there are certain types of motions to which a party receives 30 days from service to respond: motions to remand; motions to dismiss; motions for judgment on the pleadings; motions for summary judgment; and all posttrial motions. S.D.Ill. Local Rule 7.1(c); *Turner v. Office of Sheriff of Crawford County*, No. 08-cv-837-JPG, 2009 WL 2252242, *1 (S.D.Ill. July 29, 2009). Reply briefs on such motions, if any, must be filed within 14 days of service of the response. S.D.Ill. Local Rule 7.1(c). But such reply briefs are "not favored and should be filed only in exceptional circumstances." *Id.* Further, the party filing the reply brief is required to state the "exceptional circumstances" that apply, presumably in the reply brief itself. *Id.* Surreplies will not be accepted. *Id.*

In the Southern District, other than with respect to the types of motions identified above, responses to motions are due 14 days after service of the original motion. S.D.Ill. Local Rule 7.1(g). Replies to these other types of motions, if any, are due 7 days after service of the response. *Id.* But again, such reply briefs are not favored; they should be filed only in exceptional circumstances, and the party filing the reply is required to set forth the "exceptional circumstances" that require the filing of the reply. *Id.* Surreplies will not be accepted on these other types of motions. *Id.*

F. [7.7] Length of Memorandums in Support of Motions

There is not a great deal of consistency in the rules of the three Illinois federal districts regarding the length of memorandums in support of motions. The Northern District generally limits the length of any memorandum to 15 pages. N.D.Ill. Local Rule 7.1; *Jackson v. City of Joliet*, No. 03 C 4088, 2006 WL 695462, *2 (N.D.Ill. Mar. 15, 2006). Still, a party can exceed this limit if approval for a lengthier brief is obtained prior to its filing. N.D.Ill. Local Rule 7.1. However, if a brief exceeds 15 pages, it must have a table of contents and a table of cases. *Id.* The Northern District's Local Rules contemplate the filing of reply briefs but state that the failure to file one in a timely fashion shall be deemed a waiver of the right to file. N.D.Ill. Local Rule 78.3. Some Northern District judges have their own page limits, which can be found on their official web pages and/or in their case management procedures.

The Central District favors briefs in support of and in response to motions that are no longer than 15 pages. C.D.Ill. Local Civ. Rule 7.1(B)(4)(a). However, it permits parties to file a memorandum in excess of 15 pages if it meets certain volume limitation requirements. *Id.* To comply, such a memorandum must either (1) not contain more than 7,000 words or 45,000 characters or (2) use monospaced type and not contain more than 650 lines of text. C.D.Ill. Local Civ. Rule 7.1(B)(4)(b). All headings, footnotes, and quotations count toward the page, word, character, and line limitations. *Id.*

If such a lengthy memorandum is submitted in the Central District, it must include a certificate by counsel, or by the party if unrepresented, that the memorandum complies with the limitation. C.D.Ill. Local Civ. Rule 7.1(B)(4)(c). The certificate of compliance must state the number of words, characters, or lines of type in the memorandum, and the person preparing the certificate may rely on the word or character count of the word processor used to prepare the document. *Id.* Generally, the Central District does not allow the filing of a reply brief. C.D.Ill. Local Civ. Rule 7.1(B)(3). Nevertheless, a party may file a reply brief after moving for summary judgment, but the argument portion of that brief cannot exceed 5 double-spaced pages in length. C.D.Ill. Local Civ. Rule 7.1(D)(5).

The Southern District limits the length of any non-reply brief to 20 pages. S.D.Ill. Local Rule 7.1(d); *United States v. Wesselman*, No. 05-cv-4152-JPG, 2007 WL 627469, *3 (S.D.Ill. Feb. 26, 2007). It allows reply briefs in exceptional circumstances but limits them to 5 pages. S.D.Ill. Local Rule 7.1(d), 7.1(g); *Shelter General Insurance Co. v. Zurich Direct*, No. 07-cv-507-DRH, 2008 WL 4449873, *1 (S.D.Ill. Sept. 30, 2008) (refusing to consider portions of reply briefs that exceeded local rule's 5-page limit). Requests for additional pages are not allowed. S.D.Ill. Local Rule 7.1(d).

G. [7.8] Supporting Affidavits and Evidence

Affidavits supporting a motion are to be filed and served with the motion. Fed.R.Civ.P. 6(c)(2), 59(c). Except with respect to motions for a new trial, opposing affidavits may be served not later than 7 days before the hearing on the motion unless the court permits them to be served at some other time. Fed.R.Civ.P. 6(c)(2), 59(c). Affidavits in opposition to motions for a new trial may be served no later than 14 days after service of affidavits in support. Fed.R.Civ.P. 59(c). Reply affidavits on motions for a new trial are allowed at the court's discretion. *Id.*

The Northern District requires that copies of evidentiary materials supporting a motion be filed and served with the notice of motion. N.D.Ill. Local Rule 78.4. The Central District requires that, if documentary evidence can be conveniently copied, it be filed and served with the motion or, for the respondent, with the response. C.D.Ill. Local Civ. Rule 7.1(C). Also, in the Central District, if the documents are not susceptible to convenient copying, a concise summary or statement of the contents of the documents must be supplied with the motion, and the originals must be made available to the adverse party for examination prior to hearing. *Id.*

H. [7.9] Notices of Motions

Generally, written motions and notices of motions must be served on every party. Fed.R.Civ.P. 5(a)(1). However, a motion that can be heard ex parte does not need to be served on all parties. Fed.R.Civ.P. 5(a)(1)(D). No service is required on a party who is in default for failing to appear. Fed.R.Civ.P. 5(a)(2). Nevertheless, if a pleading contains new or additional claims for relief against an adverse party that is in default, that party must be served in the manner provided for the service of a summons. *Id.* (cross-referencing Fed.R.Civ.P. 4). Normally, motions and notices must be served not later than 14 days before the time of hearing unless a different period is fixed by court order (*e.g.*, in an emergency) or by rule. Fed.R.Civ.P. 6(c).

A court can enlarge the period of time for acts required under the Federal Rules of Civil Procedure, including the filing and service of motions and notices, (1) with or without motion or notice if the request to enlarge is made before the expiration of the period prescribed, or (2) upon motion made after the expiration of the specified period if the failure to act was the result of excusable neglect. Fed.R.Civ.P. 6(b). However, a court may not extend the time for taking any action under Fed.R.Civ.P. 50(b) (motion for judgment as matter of law), 50(d) (motion for new trial after entry of judgment as matter of law), 52(b) (motion to amend findings of court or for additional findings), 59(b) (motion for new trial), 59(d) (new trial allowed on court's own initiative), 59(e) (motion to alter or amend judgment), or 60(b) (relief from final judgment, order, or proceeding). Fed.R.Civ.P. 6(b).

In the Northern District, motions must be filed by 4:30 p.m. of the second business day preceding the date of presentment except when a judge fixes a different time. N.D.Ill. Local Rule 78.1. However, Northern District judges may fix a longer time for filing. If a judge does so, he or she must notify the clerk in writing of the practice to be adopted. The circuit clerk's office is required to maintain a list of the current motion practices of each of the judges at the assignment desk. *Id.*

The Northern District also requires that, except in the case of an emergency or a special order of court, written notice of an intent to present a motion must be given. N.D.Ill. Local Rule 5.3(a); *International Brotherhood of Electrical Workers v. CSX Transportion, Inc.*, 369 F.Supp.2d 982, 987 (N.D.Ill. 2005). That notice must specify the date on which the motion will be presented. N.D.Ill. Local Rule 5.3(a). It must be served, along with the motion, no later than 4:00 p.m. of the second day preceding presentment if delivered by personal service. N.D.Ill. Local Rule 5.3(a)(1). If mailed, the notice and motion must be sent seven business days prior to the date of presentment. N.D.Ill. Local Rule 5.3(a)(2). However, ex parte motions and agreed motions can be presented without notice. *Id.*

In the Northern District, a court may deny a motion when a moving party or counsel delivers a motion without proper notice or fails to serve notice of presentment within 14 days of properly delivering a copy of the motion to the clerk. See N.D.Ill. Local Rule 78.2. The Central and Southern Districts have no local rules that govern how much notice must be given in advance of presenting a motion.

All three Illinois district courts authorize the electronic filing of materials with the clerk of the court, including motions and notices relating to them. See N.D.Ill. Local Rules 5.2(a) (authorization), 5.5(a)(3) (proof of service), 5.9 (service by electronic means); C.D.Ill. Local Civ. Rules 5.2 (electronic filing authorized), 5.3 (service by electronic means authorized), 11.4 (electronic signatures); S.D.Ill. Local Rule 5.1(c) (electronic filing authorized). See also §§7.20 – 7.23 below.

As mentioned above, in the Northern District, ex parte motions and motions presented on stipulation may be presented without notice. N.D.Ill. Local Rule 5.3(a)(2). However, the Northern District requires that ex parte motions be accompanied by an affidavit that both (1) shows cause for the ex parte presentation, and (2) states whether a previous application for similar relief has been made. N.D.Ill. Local Rule 5.5(d).

I. [7.10] Serving and Filing Motions

If a party is represented by an attorney, service of motions and notices relating to them must be made on the attorney (absent a court order to the contrary). Fed.R.Civ.P. 5(b)(1). Such papers can be served on opposing counsel, or the party if the party is unrepresented, in various ways. Fed.R.Civ.P. 5(b). For example, service can be effected by handing a copy of the papers to the person or by leaving them at the person's office with a clerk or other person in charge or, if no one is in charge, by leaving them in a conspicuous place in the office. If the office is closed or the person to be served has no office, the papers can be served by leaving them at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing there. Fed.R.Civ.P. 5(b)(2). Also, service can be accomplished by mailing the papers to the person's last known address or by sending them by electronic means if the person consented to such service in writing. Fed.R.Civ.P. 5(b)(2)(C), 5(b)(2)(E).

In the Northern District, attorneys' court filings must be accompanied by a certificate of service stating that service, as required by the Federal Rules of Civil Procedure, has been made. N.D.Ill. Local Rule 5.5(b). The certificate must also indicate the date and manner of service. *Id.* No certificate is required for ex parte filings. *Id.* If the server is not an attorney of record in the case, proof of service can be established by affidavit, written acknowledgment of service, or any other means of proof that is satisfactory to the court. N.D.Ill. Local Rule 5.5(a)(2).

In the Northern District, service can also be made via facsimile. N.D.Ill. Local Rule 5.5(b). When service is made by facsimile, a copy of the transaction statement produced by the facsimile machine must accompany the proof of service. *Id.* The transaction statement must include the date and time of service, the telephone number to which the documents were transmitted, and an acknowledgment from the receiving fax machine that the transmission was received. *Id.* If the receiving machine does not produce the acknowledgment to the transaction machine, an affidavit

must be provided or, if executed by an attorney, a certificate can be provided setting forth the date and time of service and the telephone number to which the documents were transmitted. *Id.*

In the Northern District, in a case assigned to the court's electronic case filing (ECF) system, filing of the document results in an electronic notice of filing being sent to all e-filers on the case. This notice constitutes service on all e-filers except when it pertains to sealed documents. See N.D.Ill. Local Rules 5.5(a)(3), 5.9; N.D.Ill. General Order 14-0009, General Order on Electronic Case Filing §§X(B), X(C). Still, a paper copy must be provided to the judge within one business day of filing unless the judge determines that a paper copy is not required. N.D.Ill. Local Rule 5.2(f).

In the Central District, registration in the court's ECF system constitutes consent to electronic service and notice of all filed documents. C.D.Ill. Local Civ. Rule 5.3; *Hopkins v. Illinois*, No. 05-3231, 2007 WL 2701209, *8 (C.D.Ill. Aug. 23, 2007). When a document is filed, the court's system automatically generates a "Notice of Electronic Filing" that constitutes service of the document on any person who is a registered participant in the system. C.D.Ill. Local Civ. Rule 5.3(A).

The Southern District provides for proof of service by certification that proper service has been made as provided by the Federal Rules of Civil Procedure. S.D.Ill. Local Rule 7.1(b). In the case of motions to dismiss, for judgment on the pleadings, and for summary judgment, the filing of the motion must occur no later than 100 days before the first day of the presumptive trial month. S.D.Ill. Local Rule 7.1(f).

The Illinois Northern and Central Districts specifically prohibit the filing of documents by facsimile. N.D.Ill. Local Rule 5.5(c); C.D.Ill. Local Civ. Rule 5.1(D). The Southern District allows filing of documents submitted, signed, or verified by electronic means that comply with procedures established by the court. S.D.Ill. Local Rule 5.1(c).

J. [7.11] Oral Arguments on Motions

In all three Illinois districts, individual trial judges may exercise their discretion in deciding whether to have oral arguments or motions. N.D.Ill. Local Rule 78.3; C.D.Ill. Local Civ. Rule 7.1(A); S.D.Ill. Local Rule 7.1(h). However, the Central District requires that, if a party wishes oral argument, the party put its request in the motion or opposition thereto and that it state the reason oral argument is desired. C.D.Ill. Local Civ. Rule 7.1(A)(2), 7.1(D)(4). The Southern District requires the filing of a formal motion stating the reasons why oral argument is requested. S.D.Ill. Local Rule 7.1(h). Further, individual judges sometimes have their own procedures relating to oral arguments, which often can be found by reviewing their official web pages and/or case management procedures.

K. [7.12] United States Magistrate Judges

District judges are permitted to refer pretrial dispositive and non-dispositive matters to be heard before a United States magistrate judge. Fed.R.Civ.P. 72. This delegation of authority is

discretionary with the district court. *Id.* Each Illinois district has adopted rules providing for the transfer of matters to magistrate judges. N.D.Ill. Local Rule 72.1; C.D.Ill. Local Civ. Rule 72.1(A)(6); S.D.Ill. Local Rule 72.1(a)(1).

In all three districts, with the consent of the parties, magistrate judges may determine all motions, conduct trials, and order the entry of a final judgment. 28 U.S.C. §636(c). N.D.Ill. Local Rules 73.1(b), 73.1(c); C.D.Ill. Local Civ. Rule 72.1(A)(9); S.D.Ill. Local Rule 72.2(b)(1). See also Chapter 10 of this handbook, *Practicing Before United States Magistrate Judges.*

1. [7.13] Review of Magistrate Judges' Rulings on Non-Dispositive Matters

When referred a non-dispositive pretrial matter, a magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written decision. Fed.R.Civ.P. 72(a). Objections to a magistrate judge's order must be filed within 14 days after being served with a copy. 28 U.S.C. §636(b); Fed.R.Civ.P. 72(a); S.D.Ill. Local Rule 73.1(a). The district judge in the case must consider timely objections and modify or set aside any part of a magistrate judge's order that is clearly erroneous or contrary to law. Fed.R.Civ.P. 72(a).

2. [7.14] Review of Magistrate Judges' Rulings on Dispositive Matters

Any party may object to a magistrate judge's proposed findings of fact and recommendations on a dispositive matter within 14 days, and the district judge must make a de novo determination of those portions to which objection is made. Fed.R.Civ.P. 72(b); C.D.Ill. Local Civ. Rule 72.2(B); S.D.Ill. Local Rule 73.1(b); *Romero v. Senkowski*, 950 F.Supp. 573 (S.D.N.Y. 1996). A party may respond to another party's objections within 14 days of being served with a copy of the objections. Fed.R.Civ.P. 72(b)(2). The district judge need not, however, conduct a new hearing on the matter. Fed.R.Civ.P. 72(b)(3). Appeals from a judgment entered at a magistrate judge's direction may be taken to the court of appeals as would any other appeal from a district court judgment. Fed.R.Civ.P. 73(c). See also Chapter 10 of this handbook, *Practicing Before United States Magistrate Judges.*

L. Suggested Forms

1. [7.15] Form for Combined Notice and Motion

FORM(S) AVAILABLE BY PURCHASING HANDBOOK OR BY SUBSCRIBING TO THE IICLE® ONLINE LIBRARY.

COMMENT: Instead of the combined form above, a motion and a notice of motion may be filed as separate documents. Note that it is sufficient to name only the first plaintiff and the first defendant in the title of pleadings along with the complaint and summons as long as an appropriate indication of other parties is used. Fed.R.Civ.P. 10(a).

2. [7.16] Form for Supporting Affidavit

FORM(S) AVAILABLE BY PURCHASING HANDBOOK OR BY SUBSCRIBING TO THE IICLE® ONLINE LIBRARY.

3. [7.17] Form for Opposition to Motion

FORM(S) AVAILABLE BY PURCHASING HANDBOOK OR BY SUBSCRIBING TO THE IICLE® ONLINE LIBRARY.

4. [7.18] Form for Statement of Non-Opposition to Motion

FORM(S) AVAILABLE BY PURCHASING HANDBOOK OR BY SUBSCRIBING TO THE IICLE® ONLINE LIBRARY.

5. [7.19] Form for Proposed Order Granting or Denying Motion

FORM(S) AVAILABLE BY PURCHASING HANDBOOK OR BY SUBSCRIBING TO THE IICLE® ONLINE LIBRARY.

COMMENT: On ex parte motions and uncontested motions, it is advisable to attach a proposed order on a separate sheet of paper for the court's consideration and convenience.

M. [7.20] Electronic Filing

General orders governing electronic filing can be found on the websites for the three Illinois United States district courts. Essentially, they enable attorneys to file documents, including

motions, without leaving the comfort of their offices. In addition, they provide a means for giving notice of filings to all parties to a case. Finally, they provide a simple means by which counsel is given electronic notice of the court's orders virtually as soon as those orders are filed.

1. [7.21] Electronic Filing in the Northern District

The Northern District approved procedures for electronic case filing in 2004. Those procedures, which are encapsulated in N.D.Ill. General Order 14-0009, General Order on Electronic Case Filing (General Order), were initially implemented in 2005. Since then, they have been amended several times, including on October 16, 2014.

The General Order assigns all civil, criminal, and admiralty cases to the district's ECF system with the exception of four categories of cases: (a) petty offenses; (b) grand jury matters; (c) sealed cases (until unsealed); and (d) individual cases expressly ordered not to be assigned to ECF. General Order §III(A). Attorneys admitted to the Northern District, including those admitted pro hac vice, may register as electronic filers (e-filers). General Order §IV(A)(1). As a practical matter, all attorneys with a case pending in the Northern District should register as e-filers so that they may file and receive documents electronically.

The electronic transmission of a document to ECF, together with the transmission of a notice of electronic filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure and the Northern District's Local Rules. General Order §V(A). The attorney's ECF login and password, which he or she must obtain to use ECF, serve as the attorney's signature on all electronic documents filed with the court. General Order §IX(A). Likewise, the login and password serve as a signature for purposes of the rules, including Fed.R.Civ.P. 11 (which prohibits presenting material for any improper or frivolous purposes). *Id.*

In the Northern District, electronically filed documents, including motions and notices relating to them, must include a signature block and set forth the attorney's name, address, telephone number, and bar registration number, if applicable. General Order §IX(A). In addition, the name of the filer under whose login and password the document is submitted must be typed in the space where the signature would otherwise appear, preceded by an "/s/." *Id.* Of course, no e-filer may knowingly permit or cause to permit his or her password to be used by anyone other than an authorized agent of the e-filer. General Order §IX(B).

When a document is filed electronically in a case assigned to ECF, ECF automatically generates a notice of electronic filing that is sent to e-filers on the case by electronic mail. General Order §X(B). Except in the case of sealed documents electronically filed, this notice constitutes service as to all e-filers on the case. General Order §X(C). For non-e-filers, proof of service must be established in the traditional manner, using a certificate of service or affidavit as appropriate. General Order §§X(D), X(E).

The 2009 amendment to the Northern District's General Order on Electronic Case Filing required the electronic filing of sealed and restricted documents in civil cases. This requirement covers all sealed and restricted documents filed in civil cases, state court records, administrative records, and ex parte motions. Instructions for e-filing such documents can be found on the Northern District's website, *i.e.,* www.ilnd.uscourts.gov/home/cmecf/pdfs/v60/v6_sealed_docs_0605.pdf.

2. [7.22] Electronic Filing in the Central District

Electronic filings in the Central District were previously governed by that court's Civil Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in the United States District Court for the Central District of Illinois. These procedures were eliminated effective January 20, 2010, subject to a 30-day period for public comment. Procedures for electronic filings in the Central District are now governed by new and revised local rules.

Unless otherwise provided by the court, all documents submitted for filing in civil cases in the Central District, no matter when a case was filed originally, must be filed electronically using CM/ECF (Case Management/Electronic Case Filing). C.D.Ill. Local Civ. Rule 5.5(A). The exceptions to the electronic filing requirement are few. For example, pro se litigants are not to file electronically absent leave of court. C.D.Ill. Local Civ. Rule 5.5(B)(1). Judges are free to deviate from the rules requiring electronic filing on a case-by-case basis as necessary to obtain a "just, speedy, and inexpensive determination of matters." C.D.Ill. Local Civ. Rule 5.5(B)(4).

Each attorney admitted to practice in the Central District and each pro se party given leave of court to proceed electronically must register for electronic filing and obtain a password. C.D.Ill. Local Civ. Rule 5.6. If the person's e-mail address, phone number, or other contact information changes, he or she must file notice of the change within 14 days and serve notice of the change on all other parties. A user who believes that the security of an existing password has been compromised or that a threat to the system exists must change his or her password immediately. *Id.*

All motions, pleadings, briefs, memoranda of law, and other documents (except for complaints) must be filed electronically. C.D.Ill. Local Civ. Rule 5.7(A). A document submitted electronically will not be considered filed until the system-generated Notice of Electronic Filing has been sent electronically to the filing party. C.D.Ill. Local Civ. Rule 5.7(A)(1). A document filed electronically by 11:59 p.m. central standard time will be deemed filed on that date. C.D.Ill. Local Civ. Rule 5.7(A)(3). Attachments and exhibits filed electronically must conform to the size limitations of the rules. C.D.Ill. Local Civ. Rule 5.8(A). If a document with attachments and exhibits is longer than 30 pages, a courtesy paper copy must be provided to the presiding judge's chambers. *Id.*

Whenever a document is electronically filed in the Central District, the ECF system's automated sending of a Notice of Electronic Filing is deemed the equivalent of service of the document by first-class mail if the recipient is a registered user of the system. C.D.Ill. Local Civ. Rule 5.3(A). Still, a certificate of service for all parties entitled to service or notice is required when a document is filed electronically. C.D.Ill. Local Civ. Rule 5.3(C). The certificate must state the manner in which service was accomplished on each recipient. *Id.* A party who is not a registered participant in the Central District's ECF system is entitled to a paper copy of any electronically filed pleading, document, or order. C.D.Ill. Local Civ. Rule 5.3(B).

In the Central District, a document requiring an attorney's signature must be signed in the following manner: "s/ Jane Doe." C.D.Ill. Local Civ. Rule 11.4(A)(2). The Central District also has specific requirements for documents requiring multiple signatures. C.D.Ill. Local Civ. Rule 11.4(A)(3). When filing motions, as well as other documents, attorneys must be careful to comply with the Central District's rules regarding privacy concerns. C.D.Ill. Local Civ. Rule 5.11.

The Central District does not approve of the electronic filing of documents under seal as a general matter, including motions. See C.D.Ill. Local Civ. Rule 5.10(A)(2). However, a party who has a legal basis for filing a document under seal without prior court order can electronically file an appropriate motion, such as a motion for leave to file under seal. The document at issue should not be attached to the motion but, rather, should be filed contemporaneously as a separate electronic event. In the rare event that a motion itself must be filed under seal, the motion must be electronically filed using the document event "Sealed Motion." *Id.* Similar rules apply to ex parte motions, ex parte documents, and documents submitted for in camera review. See C.D.Ill. Local Civ. Rule 5.10(C).

3. [7.23] Electronic Filing in the Southern District

The Southern District adopted its Electronic Case Filing Rules in 2003. These rules were revised in September 2007, in September 2010, and again in November 2012. They require attorneys to electronically file all documents in connection with all cases unless specifically exempted for good cause shown. S.D.Ill. E-Filing Rule 1. Pro se filers may, but do not have to, utilize the ECF system. *Id.*

All attorneys admitted to practice before the Southern District must either register as "Filing Users" of the court's ECF system or move for an exemption from doing so. S.D.Ill. E-Filing Rule 2. No filing user may knowingly permit or cause to permit his or her password to be used by anyone other than an authorized agent of the filing user. Assuming that the attorney has an Internet e-mail address, his or her registering as a filing user constitutes consent to electronic service of all documents. *Id.*

Electronic transmission of a document to the Southern District's ECF system, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure and the local rules of the Southern District. S.D.Ill. E-Filing Rule 3. The filing of a document must be completed before midnight local time, where the court is located, in order to be considered timely filed that day unless a specific time is set by the court. Whenever a document is served electronically in the Southern District, three days are added to the prescribed response period, pursuant to Fed.R.Civ.P. 6(e). *Id.*

In the Southern District, all documents, including motions and notices for motions, must be electronically filed. S.D.Ill. E-Filing Rule 5. If the document exceeds 5.0 Mb, it must be divided into segments, with the first segment being the main document and all subsequent segments being attachments to the main document. Each segment should not exceed 5.0 Mb. *Id.*

Information and documents that a party seeks to protect and/or seal, that a court has ordered sealed, or that by law must be sealed must be filed electronically. S.D.Ill. E-Filing Rule 6. The attorney responsible for the filing bears responsibility for ensuring that the sensitive information is properly redacted and/or sealed. *Id.*

The proper form of an electronic signature in the Southern District is " 's/' name." See S.D.Ill. E-Filing Rule 8. The originally executed hard copy of a filed document must be maintained by the filer for five years after resolution of the action, including final disposition of all appeals. S.D.Ill. E-Filing Rule 7.

All documents electronically filed, including attachments and exhibits, must include a certificate of service in accordance with the Federal Rules of Civil Procedure and applicable local rules. S.D.Ill. E-Filing Rule 9. Electronic service of the "Notice of Electronic Filing" by the district's automated system constitutes service of a filed document unless the filing party has actual knowledge of a technical failure resulting in non-receipt of a document. Attorneys exempted from utilizing the ECF system (as set out in S.D.Ill. E-Filing Rule 1) and pro se filers not registered for electronic service are entitled to receive a paper copy of any electronically filed document. A party's certificate of service must indicate the manner in which each party was served. *Id.*

By registering to use the Southern District's ECF system, an attorney endorses his or her electronic signature for purposes of local rules and the Federal Rules of Civil Procedure, including Fed.R.Civ.P. 11 (prohibiting the filing of documents for improper or frivolous purposes). S.D.Ill. E-Filing Rule 8. An electronic signature also serves as a valid signature for purposes of unsworn declarations (28 U.S.C. §1746), service and filing (Fed.R.Civ.P. 5), and establishing perjury pursuant to 18 U.S.C. §§1621 – 1623. S.D.Ill. E-Filing Rule 8.

III. MOTIONS DIRECTED TO PLEADINGS

A. [7.24] Motions Raising Defenses

In federal court, a distinction between what were once called "general" and "special" appearances is no longer recognized. Thus, unlike in the past, a voluntary appearance does not waive the "defense" of lack of jurisdiction over the person, provided that the appearance is not made by filing an answer or a motion under Fed.R.Civ.P. 12.

Subject to certain exceptions, every defense to a claim must be asserted in a party's responsive pleading if a responsive pleading is required. Fed.R.Civ.P. 12(b). The exceptions are that a pleader may elect to assert the following defenses by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; (5) insufficiency of service of process; (6) failure to state a claim on which relief can be granted; and (7) failure to join a party. A motion asserting any of these defenses must be made by the moving party before a responsive pleading is filed if such a pleading is permitted. *Id.*

A party who brings a motion raising any of these seven defenses but omits from it any defense or objection then available cannot thereafter make a motion based on the defense or objection omitted. Fed.R.Civ.P. 12(g)(2). This rule is subject to exceptions for the defenses of failure to state a claim, failure to join an indispensable party, and failure to state a legal defense to a claim. These three defenses may be made (1) in any pleadings allowed under Fed.R.Civ.P. 7(a) (such as an answer), (2) by motion for judgment on the pleadings, or (3) at trial. Fed.R.Civ.P. 12(h)(2). Further, a challenge to the court's subject-matter jurisdiction can be made at any stage of the proceedings. Fed.R.Civ.P. 12(h)(3).

B. [7.25] Motion for a More Definite Statement

If a pleading is so vague and ambiguous that a party cannot frame a responsive pleading, the party may move for a more definite statement. Fed.R.Civ.P. 12(e). However, such a motion must be made before a responsive pleading is filed. Moreover, the motion must identify the complaint's defects and the details desired. *Id.*

There is a vast body of lower-court decisions considering the purpose and propriety of this motion but relatively few appellate opinions on the subject. The purpose of this motion was possibly best expressed in *Garza v. Chicago Health Clubs, Inc.*, 329 F.Supp. 936, 942 (N.D.Ill. 1971), which held that it was designed to strike at unintelligibility rather than want of detail. A motion for a more definite statement should seek factual details sufficient to enable the pleader to respond intelligently. It is not designed as a substitute for discovery procedures to obtain facts or particulars to prepare for trial. *Re v. Fullop*, 22 F.R.D. 52, 56 (E.D.Ill. 1958).

The motion for a more definite statement must be made within the time allowed for a responsive pleading, and it should be made before answering. Fed.R.Civ.P. 12(e). It extends the time for filing a responsive pleading, and, although it may be joined with other defenses or objections, the failure to join other defenses or objections will not constitute a waiver when, for example, the information sought is necessary to plead a defense, such as statute of limitations.

C. [7.26] Motion To Strike

A court, on motion or its own volition, may strike from any pleading "an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed.R.Civ.P. 12(f). If a party wishes to bring a motion to strike, that party must file such a motion either (1) before responding to the pleading containing the improper material; or (2), if a response is not allowed, within 21 days after being served with the pleadings. *Id.*

A motion to strike will be granted if the offensive allegations have no possible relation to the controversy. *Talbot v. Robert Matthews Distributing Co.*, 961 F.2d 654, 664 – 665 (7th Cir. 1992). A party should never overlook the value of a motion to strike an insufficient defense. Cases can be lost based on evidence bearing on a defense that is inadequate as a matter of law but that has emotional appeal. If the defense is stricken from the pleadings, the evidence may be deemed inadmissible.

In the Central District, whenever amended pleadings are filed, any motions attacking the original pleading are deemed moot unless specifically revived by the moving party within 14 days after the amended pleadings are filed. C.D.Ill. Local Civ. Rule 7.1(E). Hence, if an amended pleading is filed after a party moves to strike the original pleading, the party moving to strike should file a new motion to strike the amended pleading.

IV. MOTIONS FOR JUDGMENT ON THE PLEADINGS AND SUMMARY JUDGMENT

A. [7.27] Generally

Motions for judgment on the pleadings and motions for summary judgment are distinct proceedings that are governed by different rules of procedure. Fed.R.Civ.P. 12(c), 56. They are related in the sense that each seeks an end to a controversy by the entry of a judgment. They differ in that a motion for judgment on the pleadings is typically (but not always) brought early in the proceedings, while a motion for summary judgment is more often (but not always) brought after some or all discovery has been completed.

B. [7.28] Motion for Judgment on the Pleadings

Generally, a motion for judgment on the pleadings is proper when the material facts are undisputed and judgment on the merits is possible merely by considering the contents of the pleadings. *National Fidelity Life Insurance Co. v. Karaganis*, 811 F.2d 357, 358 (7th Cir. 1987); *Roberts v. Robert V. Rohrman, Inc.*, 909 F.Supp. 545, 552 (N.D.Ill. 1995).

A motion for judgment on the pleadings must be sustained if the undisputed facts appearing in all of the pleadings, supplemented by any facts of which the court will take judicial notice, clearly entitle the moving party to judgment as a matter of law. 5C Charles Alan Wright et al., FEDERAL PRACTICE AND PROCEDURE §1368 (3d ed. 2004). For the purposes of such a motion, all well-pleaded material allegations of the opposing party's pleading are to be taken as true, and all allegations of the moving party that have been denied are to be taken as false. Conclusions of law are disregarded. *Id.*

When matters outside the pleadings are presented to and not excluded by the court on a motion for judgment on the pleadings, the motion is to be treated as one for summary judgment. Fed.R.Civ.P. 12(d). Similarly, on a motion to dismiss for failure to state a claim on which relief can be granted, when matters outside the pleadings are presented to and not excluded by the court, the matter is treated and disposed of as a motion for summary judgment. *Id.*

1. [7.29] Procedure for Motion for Judgment on the Pleadings

A motion for judgment on the pleadings can be made at any time after the pleadings are closed as long as the motion's disposition will not delay the trial. Fed.R.Civ.P. 12(c). The court has the discretion to defer the hearing and determination of the motion until trial. Fed.R.Civ.P. 12(i).

2. [7.30] Form for Motion for Judgment on the Pleadings

FORM(S) AVAILABLE BY PURCHASING HANDBOOK OR BY SUBSCRIBING TO THE IICLE® ONLINE LIBRARY.

C. [7.31] Motion for Summary Judgment

A motion for summary judgment is proper if there is no genuine issue as to any material fact even though such an issue may have been raised by the formal pleadings. As Justice Cardozo remarked in an early New York case, *Richard v. Credit Suisse,* 242 N.Y. 346, 152 N.E. 110, 111 (1926):

> **The very object of a motion for summary judgment is to separate what is formal or pretended in denial or averment from what is genuine and substantial, so that only the latter may subject a suitor to the burden of a trial.**

Even though an issue may be raised formally by the pleadings, summary judgment will be granted if there is no genuine issue of material fact. To attain this end, the rule permits a party to pierce the allegations of fact in the pleadings and to obtain relief by summary judgment when facts set forth in detail — in affidavits, depositions, answers to interrogatories, and admissions on file — show that there are no genuine issues of material fact to be tried. Fed.R.Civ.P. 56(c).

Summary judgment may be rendered on the issue of liability even though a genuine issue remains on damages. See Fed.R.Civ.P. 56(a) (referring to "the part of each claim or defense"). Still, a party utilizing this provision must be careful not to run afoul of Fed.R.Civ.P. 54(b). It permits judgment as to one or more, but fewer than all, of the claims or parties but not the splitting of the issue of liability.

In *Commonwealth Insurance Company of New York v. O. Henry Tent & Awning Co.,* 273 F.2d 163 (7th Cir. 1959), an action for declaratory judgment to determine an insurer's liability under a fire insurance policy, the insured sustained a loss of $32,188.29, for which a counterclaim

was filed. The insurer conceded liability in the amount of $14,360.76 and contended that that amount was the limit of its liability under a reporting form endorsement on which the insured reported total cash values of insured property. A partial summary judgment in the amount of conceded liability was entered by the trial court. The court of appeals, in reversing, held this to be piecemeal litigation of a single cause of action.

1. [7.32] Procedure for Motion for Summary Judgment

Unless a local rule or court order states otherwise, both plaintiffs and defendants may move for summary judgment "at any time until 30 days after the close of all discovery." Fed.R.Civ.P. 56(b). The court must give the nonmoving party a "reasonable time to respond" to a summary judgment motion. Fed.R.Civ.P. 56(f).

Summary judgment should be rendered if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). Partial summary judgment may be entered on a part of each claim or defense. *Id.* An affidavit supporting a summary judgment motion must be made on personal knowledge, set forth facts admissible in evidence, and show that the affiant is competent to testify to the matters contained therein. Fed.R.Civ.P. 56(c)(4).

A party opposing a motion for summary judgment must support any assertions made by that party by citing materials in the record such as depositions, documents, affidavits, admissions, and interrogatory answers. Fed.R.Civ.P. 56(c)(1). Or that party may show that the opposing party's evidence does not establish the absence or presence of a genuine dispute. *Id.* Or the party opposing the motion may object based on the fact that the material cited by the moving party cannot be presented in a form that would be admissible in evidence. Fed.R.Civ.P. 56(c)(2).

Parties should not submit affidavits in opposition to a summary judgment motion in bad faith or solely for purposes of delay. If a court is satisfied that this has occurred, after notice and a reasonable time to respond, the court must order the submitting party to pay to the other party the reasonable expenses, including attorneys' fees, it incurred as a result. Fed.R.Civ.P. 56(h). The offending party may also be held in contempt. *Id.*

In the Northern District, a moving party filing a motion for summary judgment must serve and file, in addition to any affidavits and other materials referred to in Fed.R.Civ.P. 56, (a) a supporting memorandum of law, and (b) a statement of material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to a summary judgment. N.D.Ill. Local Rule 56.1(a). The statement of material facts must include a description of the parties and all facts supporting venue and jurisdiction and specific references to the affidavits, parts of the record, and other supporting materials relied on to support the facts set forth. Failure to submit such a statement is grounds for denial of the motion. *Id.*

In the Northern District, parties opposing a summary judgment motion must serve and file, along with any opposing affidavits and other supporting materials, a supporting memorandum of law and a concise response to the movant's statement that contains (a) a response to each numbered paragraph of the movant's statement, including, in case of any disagreement, specific

references to the affidavits, parts of the record, and other supporting material relied on; and (b) a statement consisting of short, numbered paragraphs of any additional facts requiring denial of summary judgment along with references to the affidavit, parts of the record, and all other supporting materials relied on. N.D.Ill. Local Rule 56.1(b). All material facts set forth in the statement are deemed admitted unless controverted by the opposing party's statement. N.D.Ill. Local Rule 56.1(b)(3)(C). *See also Midwest Imports, Ltd. v. Coval*, 71 F.3d 1311 (7th Cir. 1995).

In the Northern District, any party moving for summary judgment against a party proceeding pro se shall serve and file as a separate document, together with the papers in support of the motion, a Notice to Pro Se Litigant Opposing Motion for Summary Judgment. N.D.Ill. Local Rule 56.2. When the pro se litigant is not the plaintiff, the movant should amend the form notice as necessary to reflect that fact. *Id.*

In the Central District, a motion for summary judgment must include sections, with appropriate headings, for (a) an introduction, (b) a statement of undisputed material facts, and (c) an argument. C.D.Ill. Local Civ. Rule 7.1(D)(1). The statement of undisputed material facts must numerically list each undisputed material fact relied on in the movant's argument, with citations to discovery materials or affidavits that support the contention that the fact is undisputed. C.D.Ill. Local Civ. Rule 7.1(D)(1)(b).

In the Central District, any party opposing a motion for summary judgment must file a response within 21 days after service of the motion. C.D.Ill. Local Civ. Rule 7.1(D)(2). A failure to respond to a motion for summary judgment will be deemed an admission of the motion. *Id.*

The response must include (a) an introduction, (b) a listing of the moving party's facts that are conceded to be undisputed and material, (c) a listing of the moving party's facts that are conceded to be material but are disputed (supported by evidence), (d) a listing of the moving party's facts that are claimed to be both immaterial and disputed (with an explanation and evidentiary support), (e) a listing of the moving party's facts that are undisputed but claimed to be immaterial (with an explanation), (f) a listing of any additional material facts that support the opposition to the motion and an argument that responds directly to the moving party's argument. C.D.Ill. Local Civ. Rule 7.1(D)(2) (setting forth detailed summary judgment response brief requirements). A failure to respond to any of the movant's facts will be deemed an admission of the facts alleged. *Id.*

A moving party in the Central District may file a reply brief within 14 days after service of the response. C.D.Ill. Local Civ. Rule 7.1(D)(3). That brief should address the "additional material facts" asserted by the respondent and contain an argument section that is limited to new matters raised in the response. *Id.* (setting forth detailed summary judgment reply brief requirements). The additional material facts section must state, for each fact set forth in the response, whether it is material and/or disputed. Depending on the positions taken, support may be required for the moving party's statement. A failure to respond to any of the respondent's facts will be deemed an admission of the facts alleged. *Id.*

In the Central District, the court has the option of ruling without oral argument or holding an oral argument after giving notice to the parties. C.D.Ill. Local Civ. Rule 7.1(D)(4). A party may file a request for oral argument and hearing at the time of filing either a motion for summary judgment or a response. *Id.*

In the Southern District, motions for summary judgment must be supported by a brief. S.D.Ill. Local Rule 7.1(c). The motion and brief may be combined into a single submission. *Id.*

2. [7.33] Form for Motion for Summary Judgment

FORM(S) AVAILABLE BY PURCHASING HANDBOOK OR BY SUBSCRIBING TO THE IICLE® ONLINE LIBRARY.

V. MISCELLANEOUS

A. [7.34] Motions for Extensions of Time and Continuances

For a variety of reasons, attorneys often find themselves in need of additional time to complete their tasks. Accordingly, motions for the extension of deadlines are common. Of course, the likelihood of such a motion being granted often depends on the practices of the particular judge who is presiding over the case.

A federal court may extend the time within which any act is required or allowed to be done, "with or without motion or notice" and for cause shown, if the request is made within the originally prescribed period. Fed.R.Civ.P. 6(b). If the original period passes, the court may extend the time only on motion showing excusable neglect. *Id.*

In the Northern District, many judges have adopted their own case management procedures, setting a high standard for granting motions seeking additional time. Also, at least one court requires parties seeking an extension to include a statement in the extension motion (1) indicating that the movant has sought the other side's agreement to extension, and (2) specifying the result of that request. Thus, counsel should check the official web page and case management procedures for his or her judge prior to filing such a motion.

In the Central District, a motion for extension of time must be filed before the original deadline. C.D.Ill. Local Civ. Rule 6.1. Motions filed thereafter are to be denied unless the presiding judge determines that denial would create a substantial injustice. All such motions must state the amount of additional time requested and must state whether opposing counsel has an objection. *Id.*

The Southern District allows the court to condition a continuance on payment of expenses caused to the other party and/or jury fees incurred by the court. S.D.Ill. Local Rule 54.3.

B. [7.35] Discovery Motion's Statement on Efforts To Reach an Accord

Discovery motions are addressed in detail in Chapter 8 of this handbook, *Discovery*. That chapter, and the law cited therein, should be closely reviewed in conjunction with discovery motions. Still, it bears mentioning here that a common mistake is for counsel to overlook the fact that a motion to compel must contain a certification that the movant, in good faith, conferred or attempted to confer with the person or party that failed to make the requested disclosure in an effort to obtain it without court action. Fed.R.Civ.P. 37(a)(1).

In bringing discovery-related motions, attorneys litigating in the Northern District should be careful to comply with that district's specific requirement that such motions contain a statement that (1) after consultation in person or by telephone and good-faith attempts to resolve differences, counsel for the parties were unable to reach an accord; or (2) the moving party's counsel's attempts to engage in such consultation were unsuccessful due to no fault of counsel's. N.D.Ill. Local Rule 37.2.

The Northern District further requires that the motion contain the details concerning the date, time, and place for the conference and the names of the parties participating or, if no conference occurred, the efforts made to engage in consultation. *Id. See also Autotech Technologies Limited Partnership v. Automationdirect.com, Inc.*, No. 05 C 5488, 2007 WL 2713352 (N.D.Ill. Sept. 12, 2007); *Autotech Technologies Limited Partnership v. Automationdirect.com, Inc.*, No. 05 C 5488, 2007 WL 2736681 (N.D.Ill. Sept. 10, 2007).

C. [7.36] Motions for Protective Orders

As a general proposition, pretrial discovery takes place in public unless compelling reasons exist for denying the public access to the proceedings. *Jepson, Inc. v. Makita Electric Works, Ltd.*, 30 F.3d 854, 858 (7th Cir. 1994). Still, Fed.R.Civ.P. 26(c) permits a party or any person from whom discovery is sought to move for a protective order. When a party moves for a protective

order, the court may "*for good cause*, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." [Emphasis added.] Fed.R.Civ.P. 26(c)(1).

Such orders are commonly sought when, for example, commercial litigants are exchanging information relating to trade secrets that they wish to keep from the view of the public, including their competitors. The orders typically prohibit parties from disclosing information produced in the case to anyone other than the litigants to the case, their attorneys, experts, and court personnel. Unfortunately, over time a "growing tendency throughout both federal and state courts [developed], especially in commercial cases, for litigants to agree to seal documents produced during the discovery process as well as pleadings and exhibits filed with the court." *Jepson, supra,* 30 F.3d 858, quoting *Nault's Automobile Sales, Inc. v. American Honda Motor Co.,* 148 F.R.D. 25, 43 (D.N.H. 1993).

The Seventh Circuit addressed this matter repeatedly, finding that, in deciding whether to issue a stipulated protective order, the district court must independently determine whether "good cause" exists for the entry of such an order. *Jepson, supra; Citizens First National Bank of Princeton v. Cincinnati Insurance Co.,* 178 F.3d 943, 946 (7th Cir. 1999). S*ee also Union Oil Company of California v. Leavell,* 220 F.3d 562, 568 (7th Cir. 2000) ("People who want secrecy should opt for arbitration. . . . Judicial proceedings are public rather than private property."). Consequently, a motion for entry of a protective order should explain why the entry of a protective order is necessary and indicate that the party or parties seeking the order are not seeking a blanket protection for all materials produced in the case.

A motion seeking a protective order 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 the dispute without court action." Fed.R.Civ.P. 26(c). In addition, it is wise for the motion to contain, among other things, a detailed definition of the materials to be protected, procedures for the use of confidential materials at depositions, requirements regarding retaining copies of documents produced pursuant to the protective order, a provision indicating that the protective order will not affect the admissibility of information produced in accordance with the order, and a procedure by which a party or member of the public can challenge the confidential designation of materials filed under seal. *See Jessup v. Luther,* 227 F.3d 993, 997 – 999 (7th. Cir. 2000) (addressing newspaper's right to intervene to challenge its lack of access to court documents).

Counsel should also check the United States district court's web page for their particular judge, if such a page exists, to determine whether that judge has specific orders relating to protective orders. Various federal judges have case management procedures that address this subject. See also N.D.Ill. Local Rule 26.2 (governing the use, disclosure, and filing of restricted and sealed documents); C.D.Ill. Local Civ. Rule 26.3(C) (relating to the attachment of disputed materials to a protective order motion); S.D.Ill. Local Rule 26.1(b)(3) (relating to attaching disputed materials to a protective order motion or quoting from them).

D. [7.37] Motions for Default Judgment

When a party fails to defend an action, it is common for a plaintiff to bring a motion for default judgment. A default judgment can be obtained only when a judgment for affirmative relief

is sought. Fed.R.Civ.P. 55(a). The nonmoving party's failure to defend must be "shown by affidavit or otherwise." *Id.* In such a case, the clerk — rather than the court — must enter the nonmoving party's default. *Id.*

If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk must enter judgment for the amount shown to be due in an affidavit. Fed.R.Civ.P. 55(b)(1). The moving party also is entitled to costs. However, such a judgment is not available if the defendant is a minor or an incompetent person. *Id.*

In all other cases, the moving party must apply to the court for a default judgment. Fed.R.Civ.P. 55(b)(2). If the party against whom the default is sought has appeared, the party or the representative that appeared on the party's behalf must be served with written notice of the application for default judgment at least seven days prior to the hearing. The court is free to conduct hearings or make referrals as necessary to enter or effect judgment. Finally, a default judgment may be entered against a minor or incompetent person only if the person is represented by a general guardian or conservator or if a similar fiduciary party has appeared. *Id.*

In the Southern District, any motion for a default judgment must contain a statement that a copy of the motion was mailed to the last known address of the party from whom default judgment is sought. S.D.Ill. Local Rule 55.1(b). If the moving party knows, or reasonably should know, the identity of an attorney thought to represent the party to be defaulted, the moving party must mail a copy of the motion to that attorney and include a statement indicating this was done. *Id.*

E. [7.38] Requests for a Decision and Requests for a Status Report

On occasion, federal judges lose track of pending motions. In order to address this problem, the Northern District permits any party, on notice, to call a motion to the attention of the court for the purpose of obtaining a decision. N.D.Ill. Local Rule 78.5.

The Northern District also allows parties to seek updates on the status of motions through the clerk of the court. Such updates can be sought on motions that have been (1) on file for at least 7 months without a ruling, or (2) on file and fully briefed for at least 60 days. Such requests must be in writing. Once the clerk determines that these requirements have been met, the clerk notifies the judge before whom the motion is pending that a request for a status report has been made. *Id.*

The clerk does not disclose the name of the requesting party to the judge. If the judge provides status information, the clerk notifies all parties. If the judge provides no information within ten days of the clerk's notice to the judge, the clerk notifies all parties that the motion is pending and that it has been called to the judge's attention. *Id.*

F. [7.39] Notice of Claim of Unconstitutionality

Motions to dismiss are occasionally based on claims that a law is unconstitutional. In federal court, in particular, this can lead to a violation of local rules if a practitioner is not careful.

There is a federal statute that requires courts to inform the Attorney General when the "constitutionality of any Act of Congress affecting the public interest is drawn in question" if the United States or any agency, officer, or employee thereof is not a party. 28 U.S.C. §2403(a). The statute states further that the court must permit the United States to intervene for the presentation of evidence, if evidence is admissible in the case, and for argument on the question of constitutionality. *Id.* The same statute contains a comparable provision for issues of constitutionality of state statutes. 28 U.S.C. §2403(b).

Both the Northern and Southern Districts have local rules that effectively force litigants to advise the court when the federal statute is implicated. The Northern District requires that the party raising the issue "promptly advise the court in writing of such fact." N.D.Ill. Local Rule 24.1. The Southern District allows this notice to be given to the court either by checking the appropriate box on the civil cover sheet or by stating on the pleading immediately following the title "Claim of Unconstitutionality or the equivalent." S.D.Ill. Local Rule 24.1(a).