

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Proposed Local Rule Amendments
Call for Public Comments
January 16, 2018

The Court has approved the following amendments to Local Civil Rule 83.1 (L) and Local Criminal Rule 57.4 (L). A summary of the amendments, along with a red line and clean version of the amendments, is available below:

- [Summary of amendments to Local Civil Rule 83.1 \(L\) and Local Criminal Rule 57.4 \(L\)](#)
- [Red line version of amendments](#)
- [Clean version of amendments](#)

The amendments will take effect on February 22, 2018, subject to revision in light of any comments received. Interested parties may submit comments on the proposed amendments by U.S. mail or e-mail on or before February 15, 2018, to:

Fernando Galindo
Clerk of Court
U.S. District Court for the Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510
localrulecomment@vaed.uscourts.gov

**Summary of Amendments to Local Civil Rule 83.1(L)
and Local Criminal Rule 57.4(L)**

The Court's current Local Civil Rule 83.1(L) and Local Criminal Rule 57.4(L) adopt the Federal Rules of Disciplinary Enforcement (FRDE) to govern disciplinary procedures for members of the district court bar, and the FRDE are included in the district court's local rules at Appendix B. The FRDE provide for a reciprocal discipline process in the district court when a member of the bar is disciplined by "any other court of the United States." FRDE II(A) and III. In order to make clear that the United States Bankruptcy Court for the Eastern District of Virginia is an "other court," such that the presumptive reciprocal discipline procedures in FRDE II and III apply, the proposed amendment adds the following sentence at the end of Local Civil Rule 83.1(L) and Local Criminal Rule 57.4(L): "For purposes of this rule, 'any other court of the United States,' as that phrase is used in Rules II and III of the Federal Rules of Disciplinary Enforcement set forth at Appendix B, includes the United States Bankruptcy Court for the Eastern District of Virginia." This change makes it clear that the presumptive reciprocity procedures in FRDE II and III apply to members of the district court bar who are disciplined by our bankruptcy court, just as such procedures apply to attorneys disciplined by any other court.

LOCAL CIVIL RULE 83.1

ATTORNEYS AND PRO SE PARTIES

(A) **Eligibility:** Any person who is an Active Member of the Virginia State Bar in good standing is eligible to practice before this Court upon admission.

(B) **Initial Appearance:** Any person who meets the requirements of the foregoing paragraph and who maintains a law office outside of Virginia shall set forth his or her Virginia State Bar I.D. Number on any initial pleading filed by such person.

(C) **Procedure for Admission:** Every person desiring admission to practice in this Court shall file with the Clerk written application therefor accompanied by an endorsement by two (2) qualified members of the bar of this Court stating that the applicant is of good moral character and professional reputation. The form for such application may be obtained from the Clerk's Office.

As a part of the application, the applicant shall certify that applicant has within ninety (90) days prior to submission of the application read or reread (a) the Federal Rules of Civil Procedure, (b) the Federal Rules of Evidence, and (c) the Local Rules of the United States District Court for the Eastern District of Virginia.

The applicant shall thereafter be presented by a qualified practitioner of the Court who shall in open Court by oral motion, and upon giving assurance to the Court that the practitioner has examined the credentials of the applicant and is satisfied the applicant possesses the necessary qualifications, move the applicant's admission to practice.

The applicant shall in open Court take the oath required for admission, subscribe the roll of the Court, and pay to the Clerk the required fee. For such payment, the applicant shall be issued a certificate of qualification by the Clerk. For good cause shown, the Court may waive payment of the fee.

Federal government attorneys, whether they are Department of Justice attorneys, or assistant United States attorneys, or employed by any other federal agency, are not required to pay the admission fee if they are appearing on behalf of the United States.

(D) Foreign Attorneys:

(1) Upon written motion by a member of this Court, a practitioner qualified to practice in the United States District Court of another state or the District of Columbia may appear and conduct specific cases *pro hac vice* before this Court including oral arguments of motions and trial, provided that:

(a) The rules of the United States District Court of the district in which the practitioner maintains an office extend a similar privilege to members of the bar of this Court; and

(b) That such practitioners from another state or the District of Columbia shall be accompanied by a member of the bar of this Court in all appearances before this Court.

For purposes of this Local Civil rule, a member of the bar of this Court shall be a person admitted to practice under Local Civil Rule 83.1(C).

(2) All practitioners admitted before this Court for the purpose of participating in a particular proceeding *pro hac vice* shall be subject to the Local Rules of the United States District Court for the Eastern District of Virginia and the Federal Rules of Disciplinary Enforcement (Appendix B). Applicants for *pro hac vice* admission shall complete a written application certifying that they have read the Local Rules and shall pay the required fee to the Clerk. Federal government attorneys, whether they are United States Department of Justice attorneys, or assistant United States attorneys, or employed by any other federal agency, are not required to pay the admission fee if they are appearing on behalf of the United States. If the Court finds the application otherwise appropriate, upon payment of the required fee, the Court may order the *pro hac vice* admission of the applicant. Revenues from *pro hac vice* admission fees shall be deposited in the Court's non-appropriated funds account and disbursed by order of the chief judge of the district for such improvements to the Court's administration of justice as the chief judge finds appropriate.

(3) Except where a party conducts his or her own case, no pleading or notice required to be signed by counsel shall be filed unless signed by counsel who shall have been admitted to practice in this Court under subparagraphs (A), (B) and (C) of this Local Rule, with the office address where notice can be served upon said attorney, and who shall have such authority that the Court can deal with the attorney alone in all matters connected with the case. Such appearance shall not be withdrawn without leave of the Court. Service of notice or other proceedings on such an attorney shall be equivalent to service on the parties for whom the attorney appeared.

(4) Federal government attorneys appearing pursuant to the authority of the United States Attorney's Office for the Eastern District of Virginia are not required to secure private local counsel. All other federal government attorneys representing the interests of the United States, including the United States Department of Justice, shall secure local counsel by working with an assistant United States attorney assigned to the Eastern District of Virginia or secure local counsel in accordance with Local Civil Rule 83.1(D)(3).

(E) Western District of Virginia: Any attorney admitted to practice in the Western District of Virginia who is an Active Member of the Virginia State Bar in good standing shall be permitted to practice in the Eastern District of Virginia upon the filing of a certificate from the Clerk of the Western District of Virginia showing that such attorney has been duly admitted to practice in that district.

(F) Attorneys Filing Pleadings: Any counsel presenting papers, suits, or pleadings for filing, or making an appearance, must be members of the bar of this Court, or must have counsel who are members of the bar of this Court to join in the pleading by endorsement. Any counsel who joins in a pleading, motion, or other paper filed with the Court will be held accountable for the case by the Court. At least one person admitted to practice under subsection (C) of this Local Rule must personally be present at all hearings, pretrials, and trials. This obligation may not be avoided or delegated without leave of Court.

(G) Withdrawal of Appearance: No attorney who has entered an appearance in any civil action shall withdraw such appearance, or have it stricken from the record, except on order of the Court and after

reasonable notice to the party on whose behalf said attorney has appeared.

(H) Practicing Before Admission or While Disbarred or Suspended: Any person who, before admission to the bar of this Court or during any disbarment or suspension, exercises any of the privileges of a member of the bar of this Court, or who pretends to be entitled so to do, shall be guilty of contempt of court and subject to appropriate punishment therefor.

(I) Professional Ethics: The ethical standards relating to the practice of law in civil cases in this Court shall be Section II of Part Six of the Rules of the Virginia Supreme Court as it may be amended or superceded from time to time.

(J) Courtroom Decorum: Counsel shall at all times conduct and demean themselves with dignity and propriety. When addressing the Court, counsel shall rise unless excused therefrom by the Court. All statements and communications to the Court shall be clearly and audibly made from a standing position at the counsel table or, if the Court is equipped with an attorney's lectern, from a standing position behind the lectern, facing the Court or the witness. Counsel shall not approach the bench unless requested to do so by the Court or unless permission is granted upon the request of counsel.

Examination of witnesses shall be conducted by counsel standing behind the lectern or, if none, behind the counsel table. Counsel shall not approach the witness except for the purpose of presenting, inquiring about, or examining the witness with respect to an exhibit, unless otherwise permitted by the Court. Only one attorney for each party may participate in the examination or cross-examination of a witness.

(K) Third-Year Law Student: An eligible law student qualifying pursuant to Paragraph II of the Plan for Third-Year Practice filed in each division of this Court is herewith given leave to participate in any civil case pursuant to said plan and as said plan may, from time to time, be amended. The Plan for Third-Year Practice is Appendix A to these Local Rules.

(L) Federal Rules of Disciplinary Enforcement: All counsel admitted to practice before this Court or admitted for the purpose of a particular proceeding *pro hac vice* shall be admitted subject to the rules, conditions, and provisions set forth in full as Appendix B to these Local Rules. For purposes of this rule, "any other court of the United States," as that phrase is used in Rules II and III of the Federal Rules of Disciplinary Enforcement set forth at Appendix B, includes the United States Bankruptcy Court for the Eastern District of Virginia.

(M) Ghostwriting:

(1) Any attorney who prepares any document that is to be filed in this Court by a person who is known by the attorney, or who is reasonably expected by the attorney, to be proceeding *pro se*, shall be considered to have entered an appearance in the proceeding in which such document is filed and shall be subject to all rules that govern attorneys who have formally appeared in the proceeding.

(2) All litigants who are proceeding *pro se* shall certify in writing and under penalty of perjury that a document(s) filed with the Court has not been prepared by, or with the aid of, an attorney or shall identify any attorney who has prepared, or assisted in preparing, the document.

Each document filed with the court by a *pro se* litigant shall bear the following certification:

CERTIFICATION

I declare under penalty of perjury that:

(1) No attorney has prepared, or assisted in the preparation of this document.

Name of *Pro Se* Party (Print or Type)

Signature of *Pro Se* Party

Executed on: _____ (Date)

OR

(2) _____
(Name of Attorney)

(Address of Attorney)

(Telephone Number of Attorney)

Prepared, or assisted in the preparation of, this document.

(Name of *Pro Se* Party (Print or Type)

Signature of *Pro Se* Party

Executed on: _____ (Date)

LOCAL CRIMINAL RULE 57.4

ATTORNEYS AND PRO SE PARTIES

(A) **Eligibility:** Any person who is an Active Member of the Virginia State Bar in good standing is eligible to practice before this Court upon admission.

(B) **Initial Appearance:** Any person who meets the requirements of the foregoing paragraph and who maintains a law office outside of Virginia shall set forth his or her Virginia State Bar I.D. Number on any initial pleading filed by such person.

(C) **Procedure for Admission:** Every person desiring admission to practice in this Court shall file with the Clerk written application therefor accompanied by an endorsement by two (2) qualified members of the bar of this Court stating that the applicant is of good moral character and professional reputation. The form for such application may be obtained from the Clerk's Office.

As a part of the application, the applicant shall certify that applicant has within ninety (90) days prior to submission of the application read or reread (a) the Federal Rules of Criminal Procedure, (b) the Federal Rules of Evidence, and (c) the Local Rules of the United States District Court for the Eastern District of Virginia.

The applicant shall thereafter be presented by a qualified practitioner of the Court who shall in open Court by oral motion, and upon giving assurance to the Court that the practitioner has examined the credentials of the applicant and is satisfied the applicant possesses the necessary qualifications, move the applicant's admission to practice.

The applicant shall in open Court take the oath required for admission, subscribe the roll of the Court, and pay to the Clerk the required fee. For such payment, the applicant shall be issued a certificate of qualification by the Clerk. For good cause shown, the Court may waive payment of the fee.

Federal government attorneys, whether they are Department of Justice attorneys, or assistant United States attorneys, or employed by any other federal agency, are not required to pay the admission fee if they are appearing on behalf of the United States.

(D) **Foreign Attorneys:**

(1) Upon written motion by a member of this Court, a practitioner qualified to practice in the United States District Court of another state or the District of Columbia may appear and conduct specific cases *pro hac vice* before this Court including oral arguments of motions and trial, provided that:

(a) The rules of the United States District Court of the district in which the practitioner maintains an office extend a similar privilege to members of the bar of this Court; and

(b) That such practitioners from another state or the District of Columbia shall be accompanied by a member of the bar of this Court in all appearances before this Court.

For purposes of this Local Rule, a member of the bar of this Court shall be a person admitted to practice under Local Criminal Rule 57.4(C).

(2) All practitioners admitted before this Court for the purpose of participating in a particular proceeding *pro hac vice* shall be subject to the Local Rules of the United States District Court for the Eastern District of Virginia and the Federal Rules of Disciplinary Enforcement (Appendix B). Applicants for *pro hac vice* admission shall complete a written application certifying that they have read the Local Rules and shall pay the required fee to the Clerk. Federal government attorneys, whether they are United States Department of Justice attorneys, or assistant United States attorneys, or employed by any other federal agency, are not required to pay the admission fee if they are appearing on behalf of the United States. If the Court finds the application otherwise appropriate, upon payment of the required fee, the Court may order the *pro hac vice* admission of the applicant. Revenues from *pro hac vice* admission fees shall be deposited in the Court's non-appropriated funds account and disbursed by order of the chief judge of the district for such improvements to the Court's administration of justice as the chief judge finds appropriate.

(3) Except where a party conducts his or her own case, no pleading or notice required to be signed by counsel shall be filed unless signed by counsel who shall have been admitted to practice in this Court under subparagraphs (A), (B) and (C) of this Local Rule, with the office address where notice can be served upon said attorney, and who shall have such authority that the Court can deal with the attorney alone in all matters connected with the case. Such appearance shall not be withdrawn without leave of the Court. Service of notice or other proceedings on such an attorney shall be equivalent to service on the parties for whom the attorney appeared.

Federal government attorneys appearing pursuant to the authority of the United States Attorney's Office for the Eastern District of Virginia are not required to secure private local counsel. All other federal government attorneys representing the interests of the United States, including the United States Department of Justice, shall secure local counsel by working with an assistant United States attorney assigned to the Eastern District of Virginia.

(E) **Western District of Virginia:** Any attorney admitted to practice in the Western District of Virginia who is an Active Member of the Virginia State Bar in good standing shall be permitted to practice in the Eastern District of Virginia upon the filing of a certificate from the Clerk of the Western District of Virginia showing that such attorney has been duly admitted to practice in that district.

(F) **Attorneys Filing Pleadings:** Any counsel presenting papers, suits, or pleadings for filing, or making an appearance, must be members of the bar of this Court, or must have counsel who are members of the bar of this Court to join in the pleading by endorsement. Any counsel who joins in a pleading, motion, or other paper filed with the Court will be held accountable for the case by the Court. At least one person admitted to practice under subsection (C) of this Local Rule must personally be present at all hearings, pretrials, and trials. This obligation may not be avoided or delegated without leave of Court.

(G) **Withdrawal of Appearance:** No attorney who has entered an appearance in any criminal action shall withdraw such appearance, or have it stricken from the record, except on order of the Court and after reasonable notice to the party on whose behalf said attorney has appeared.

(H) **Practicing Before Admission or While Disbarred or Suspended:** Any person who, before

admission to the bar of this Court or during any disbarment or suspension, exercises any of the privileges of a member of the bar of this Court, or who pretends to be entitled so to do, shall be guilty of contempt of court and subject to appropriate punishment therefor.

(I) **Professional Ethics:** With the exception of Virginia Rule of Professional Conduct 3.6 (the subject of which is covered by Local Criminal Rule 57.1), the ethical standards relating to the practice of law in criminal cases in this Court shall be Section II of Part Six of the Rules of the Virginia Supreme Court as it may be amended or superceded from time to time.

(J) **Courtroom Decorum:** Counsel shall at all times conduct and demean themselves with dignity and propriety. When addressing the Court, counsel shall rise unless excused therefrom by the Court. All statements and communications to the Court shall be clearly and audibly made from a standing position at the counsel table or, if the Court is equipped with an attorney's lectern, from a standing position behind the lectern, facing the Court or the witness. Counsel shall not approach the bench unless requested to do so by the Court or unless permission is granted upon the request of counsel.

Examination of witnesses shall be conducted by counsel standing behind the lectern or, if none, behind the counsel table. Counsel shall not approach the witness except for the purpose of presenting, inquiring about, or examining the witness with respect to an exhibit, unless otherwise permitted by the Court. Only one attorney for each party may participate in the examination or cross-examination of a witness.

(K) **Third-Year Law Student:** An eligible law student qualifying pursuant to Paragraph II of the Plan for Third-Year Practice filed in each division of this Court is herewith given leave to participate in any criminal case pursuant to said plan and as said plan may, from time to time, be amended. The Plan for Third-Year Practice is Appendix A to these Local Rules.

(L) **Federal Rules of Disciplinary Enforcement:** All counsel admitted to practice before this Court or admitted for the purpose of a particular proceeding *pro hac vice* shall be admitted subject to the rules, conditions and provisions set forth in full as Appendix B to these Local Rules. For purposes of this rule, "any other court of the United States," as that phrase is used in Rules II and III of the Federal Rules of Disciplinary Enforcement set forth at Appendix B, includes the United States Bankruptcy Court for the Eastern District of Virginia.

(M) **Ghostwriting:**

(1) Any attorney who prepares any document that is to be filed in this Court by a person who is known by the attorney, or who is reasonably expected by the attorney, to be proceeding *pro se*, shall be considered to have entered an appearance in the proceeding in which such document is filed and shall be subject to all rules that govern attorneys who have formally appeared in the proceeding.

(2) All litigants who are proceeding *pro se* shall certify in writing and under penalty of perjury that a document(s) filed with the Court has not been prepared by, or with the aid of, an attorney or shall identify any attorney who has prepared, or assisted in preparing, the document.

Each document filed with the court by a *pro se* litigant shall bear the following certification:

CERTIFICATION

I declare under penalty of perjury that:

(1) No attorney has prepared, or assisted in the preparation of this document.

(Name of *Pro Se* Party (Print or Type))

(Signature of *Pro Se* Party)

Executed on: _____ (Date)

OR

(2) _____
(Name of Attorney)

(Address of Attorney)

(Telephone Number of Attorney)

Prepared, or assisted in the preparation of, this document.

(Name of *Pro Se* Party (Print or Type))

(Signature of *Pro Se* Party)

Executed on: _____ (Date)