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Proposed Changes to the Local Rules for the Middle District of Tennessee

By [Tricia Herzfeld](#)

(on behalf of the Local Rules Committee)

The new Draft Local Rules of Civil Procedure for the Middle District of Tennessee have been developed by actual Middle District civil practitioners and judges to address real issues and ambiguities in the current Rules and tailor the Rules to modern civil litigators' needs. While there are many cosmetic changes and minor nuances, the following are some of the more important alterations intended to improve an attorney's experience in the Middle District.

Call Me Maybe? Nope, Call Me Definitely

Spelled out in Rule 7.01 regarding motions in general, and reiterated in Rule 37.01 regarding discovery motions specifically, the Draft Rules make the Middle District's Meet and Confer requirements more robust and clear. With the explicit exception of dispositive motions, all motions will now be required to include a statement by the moving party that it has conferred with all other counsel and whether or not the relief requested by the motion is opposed. Draft Rule 7.01 further provides instruction for a moving party that has been unsuccessful in conferring with counsel for another party to detail its efforts to confer.

"Motions for Leave to Reply" are Leaving

Further updates to Rule 7.01 build in a right to reply. In the past, in order to submit a short reply to a nondispositive motion, the moving litigant was required to first seek leave of the Court. While a moving party maintains the option of not submitting a reply, leave of the Court is no longer required, and a five-page reply may be filed by right within seven days of receiving a response.¹

Unreported and Unattached

If you've ever found yourself asking, "Why do I need to attach this unreported opinion when I've included this citation to Westlaw or Lexis?" – you are in luck. Further updates to Rule 7.01 clarify that a Westlaw or Lexis citation will suffice for any recent or unreported decisions.

Commonality of Class Actions

The Draft Rules eliminate Local Rule 23.01 in its entirety, which in turn fully aligns the Middle District with the Federal Rules of Civil Procedure and removes any jurisdictional hurdles or local pleading nuances for class actions.

Acknowledging Computers Have Conquered Typewriters

Many years ago, a bright attorney realized he or she could save a great deal of time in responding to discovery requests by asking the propounding party to email an editable version of the requests. The Draft Rules aim to codify this now common practice of requesting an editable version (i.e., “Word version”) of propounded discovery requests under Local Rule 26.01. While it is hard to imagine a hardheaded party refusing such a request in the collegial Middle District, the Draft Rules nevertheless streamline the process and save busy attorneys and paralegals even more precious time by removing the need to even ask for a “Word version.”

Taking the Surprise Out of Subpoenas

Proposed changes to Rule 45.01 create new procedural notice requirements for litigants. First, a deponent cannot be subpoenaed until a Notice of Deposition has been served under Rule 30 of the Federal Rules of Civil Procedure. Further, all subpoenas *duces tecum* served on nonparties must first be served to all litigants at least three business days prior to issuing the subpoena.

Meet the Press

Proposed changes to Local Rule 83.03 revamp the rules regarding extrajudicial statements about litigation to fully comport with the Tennessee Rules of Professional Responsibility. The Draft Rules also confer a right for an attorney to rebut adverse recent publicity for his or her clients.

Lending a Hand to Loose Seals

Understandably, many practitioners find the procedures for filing documents under seal in the Middle District to be tricky, as there were no local rules to clarify each step of the process as in other districts. Luckily, new Rule 5.03 of the Draft Rules is the very hook we’ve been looking for, as it completely spells out the process from filing motions to seal, using confidential documents in court filings, and redacting materials. One important note—a clause in a protective order that requires any document designated as confidential to automatically be filed under seal will be stricken or cause your entire protective order to be denied.

... And More!

There are many other changes and tweaks in the language of the Draft Rules meant to provide more clarity on topics as diverse as what must be stated in a Motion to Amend, how many copies of exhibits are needed at trial, and the mechanics and requirements of a *pro hac vice* request, so it will be important to thoroughly vet the Draft Rules when they are published for public comment. And once adopted, it will also be important to familiarize yourself with the changes. Luckily, a major goal for developing the Draft Rules was generally streamlining them for practicality, so it should be an easy read. And to the criminal practitioners, no need to feel left out—the Middle District’s Local Rules of Criminal Procedure are undergoing a similar makeover.

¹ And while we’re on the subject of page limits, some devastating news to anyone who tries to cram content within the page limit through small-font footnotes—the Local Rules now clarify that all text, including footnotes, need to be in at least 12-point font.