

Tammy Ludeman

From: Matthew Thelen
Sent: Thursday, December 8, 2022 3:16 PM
To: Roberto Lange
Cc: Tammy Ludeman
Subject: FW: Federal Practice Committee - Additional Proposed Local Rule Change

Judge Lange,

I just received this from Melissa. We will get the proposed rules posted to our public web site today.

Matt

Matthew W. Thelen
Clerk of Court
(605) 330-6614
400 S. Phillips Ave.
Sioux Falls, SD 57104

From: Melissa Hinton <mhinton@ehalawyers.com>
Sent: Thursday, December 8, 2022 3:11 PM
To: Matthew Thelen <Matt_Thelen@sdd.uscourts.gov>
Subject: Fwd: Federal Practice Committee - Additional Proposed Local Rule Change

CAUTION - EXTERNAL:

Matt:

Robbie Rohl's comment is the only substantive comment I received. Jason Tupman notified me that he had participated in the drafting of the Standing Order and was in favor of the local rule change, but I believe the Court is already aware of this. Please let me know if you or the Court need anything further. Regards, MCH

Sent from my iPhone

Begin forwarded message:

From: Robert Rohl <robert@605legal.com>
Date: December 5, 2022 at 2:57:39 PM CST
To: Matt_Thelen@sdd.uscourts.gov
Cc: Melissa Hinton <mhinton@ehalawyers.com>
Subject: RE: Federal Practice Committee - Additional Proposed Local Rule Change

Mr. Thelen and Ms. Hinton –

In reviewing the proposal, I think it is worthy of consideration to include a “good cause catch-all”. In particularly complex cases which can, and often do, involve a variety of different experts/subject matter – I would like to see a good cause catch-all enabling a party to move to increase the amount of time for the expert disclosure deadline in the appropriate circumstance(s). The ability to Motion the Court to Modify the Deadline may simply be implied and not necessarily stated, but that was my comment regarding LR 16.1 ... I hope the holiday season is treating you both well, Robbie

ROBERT J. ROHL, TRIAL LAWYER

2902 WEST MAIN STREET, SUITE 4
RAPID CITY, SOUTH DAKOTA 57702
PHONE: 605.519.7750 ♦ FAX: 605.519.7322
WWW.605LEGAL.COM

This email contains legal stuff. If it is not for you, please don't read it. You could get into a lot of trouble, and even more trouble if you tell anyone else about it. So, if it's not for you, please delete it and forget you ever saw it. Thank you.

From: Melissa Hinton <mhinton@ehalawyers.com>
Sent: Monday, December 5, 2022 1:34 PM
To: 'David_Barari@fd.org' <David_Barari@fd.org>; 'kbarker@barkerlawfirm.com' <kbarker@barkerlawfirm.com>; 'jlb@magt.com' <jlb@magt.com>; 'tbillion@robinskaplan.com' <tbillion@robinskaplan.com>; 'afick@fullerandwilliamson.com' <afick@fullerandwilliamson.com>; 'jfiner@rwwsh.com' <jfiner@rwwsh.com>; 'alicia@abourezk.com' <alicia@abourezk.com>; 'Alex Hagen' <ahagen@cadlaw.com>; 'shegge@gpna.com' <shegge@gpna.com>; 'sbaronhouy@bangsmccullen.com' <sbaronhouy@bangsmccullen.com>; 'ask@sgsllc.com' <ask@sgsllc.com>; 'Marshall Lovrien' <mlovrien@bantzlaw.com>; 'Lisa Marso' <lmarso@boycelaw.com>; 'Ron Parsons' <ron@janklowabdallah.com>; 'alison.ramsdell@usdoj.gov' <alison.ramsdell@usdoj.gov>; 'Reed Rasmussen' <RRasmussen@sbslaw.net>; 'Lindsey Riter-Rapp' <l.riter-rapp@riterlaw.com>; 'vroche@dehs.com' <vroche@dehs.com>; Robert Rohl <robert@605legal.com>; 'diana.ryan@usdoj.gov' <diana.ryan@usdoj.gov>; 'randyseilerlaw@gmail.com' <randyseilerlaw@gmail.com>; 'jason_tupman@fd.org' <jason_tupman@fd.org>; aholmstrom@dehs.com; john@murphylawoffice.org
Cc: Matt_Thelen@sdd.uscourts.gov
Subject: Federal Practice Committee - Additional Proposed Local Rule Change

Federal Practice Committee Members:

I am forwarding to you an email I received from Matt Thelen with one additional proposed local rule change—Criminal Local Rule 16.1. I realize this is a busy time of year, but I am requesting that you advise Matt Thelen or me by the end of the day on **Thursday, December 8** if you have any comments regarding the proposed change to Criminal Local Rule 16.1. Thanks in advance for your prompt attention to this matter.

Melissa C. Hinton
Evans, Haigh & Arndt, LLP
225 E. 11th Street, Suite 201
PO Box 2790
Sioux Falls, SD 57101-2790
Telephone: 605.275.9599
Direct Dial: 605.906.8903
Fax: 605.275.9602

Email: mhinton@ehalawyers.com

Confidential Communication: This email and any attachments may contain information that is privileged, confidential or protected from disclosure. If you suspect you received it in error, please notify us and destroy this email.

From: Matthew Thelen <Matt_Thelen@sdd.uscourts.gov>
Sent: Monday, December 5, 2022 2:14 PM
To: Melissa Hinton <mhinton@ehalawyers.com>
Cc: Tammy Ludeman <Tammy_Ludeman@sdd.uscourts.gov>
Subject: FW: draft email to FPC Chair

Good afternoon, Melissa,

When I sent you proposed local rule changes in October, they did not include changes to Criminal Local Rule 16.1. The purpose of this email is to ask the Federal Practice Committee to consider a change to this local rule as well.

A revision to Rule 16 of the Federal Rules of Criminal Procedure went into effect last Thursday, December 1, 2022. The change requires both the government and the defendant in a criminal case to make the same sort of formal written expert witness disclosures long required in civil cases. Both new Rule 16(a)(1)(G)(ii) concerning the government’s disclosure and new Rule 16(b)(1)(C)(ii) concerning the defendant’s disclosure have similar provisions stating “[t]he court, by order or local rule, must set a time for the [party] to make the [party’s expert] disclosures. The time must be sufficiently before trial to provide a fair opportunity for the [other party] to meet the [expert witness] evidence.”

Chief Judge Lange communicated with the U.S. Attorney Criminal Chief John Haak and the Federal Public Defender for North Dakota and South Dakota Jason Tupman about a standard approach for the district and to determine whether they could reach a consensus about what is a “time . . . sufficiently before trial to provide a fair opportunity” for the other party to respond. Jason Tupman looked at the recent history of how long before trial the government and the defendant have disclosed experts and proposed the 21-day before trial mutual deadline, to which John Haak agreed. They both agreed that seven days before trial is an appropriate deadline for any rebuttal report. Last week, Judge Lange signed Standing Order 22-06, which incorporates these deadlines and is attached.

We would like to amend Criminal LR 16.1 consistent with the standing order. A copy of the proposed changes to Crim. LR 16.1 is attached. Would you please forward this email to members of the Federal Practice Committee? We hope to post this change with the rest of the changes the committee previously reviewed on Friday but will wait until we hear from you.

Thank you.

Matt

Matthew W. Thelen
Clerk of Court
(605) 330-6614
400 S. Phillips Ave.
Sioux Falls, SD 57104

CAUTION - EXTERNAL EMAIL: This email originated outside the Judiciary. Exercise caution when opening attachments or clicking on links.