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# Doing Like the Locals Do: Using the Legal Writing Classroom to Teach Local-Rule Practice

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## Doing Like the Locals Do: Using the Legal Writing Classroom to Teach Local-Rule Practice

By Cheryl S. Bratt

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### Introduction

Ever since the adoption of the Federal Rules of Civil Procedure in 1938, federal courts have had the power to create their own local rules to “promot[e] uniform practice within a district.”<sup>1</sup> Although some debate whether these rules actually further “the just, speedy, and inexpensive determination of every action and proceeding,”<sup>2</sup> local rules are here to stay and we owe it to our students to give attention to these rules in the legal writing classroom. As a practical matter, students would benefit from early exposure to the local rules, which continue to proliferate, dictating the minutia of litigation generally, and even extending their reach to direct the processes of particular types of actions. Further, teaching students to read and adhere to a jurisdiction’s local rules—regardless of which—helps instill good habits of attention to detail and professionalism, and it sets our students up for success as junior lawyers. Finally, although lessons on the local rules are grounded in practical application, they need not involve only a superficial how-to explanation. Rather, teaching local rule practice opens the door to more

substantive discussions about legal strategy and the theoretical underpinnings of litigation generally.

As an adjunct legal writing professor and clinical law instructor, I require my students to read and adhere to local rules, even when doing so can seem tedious (“Can’t you just *tell* us whether we need to seek concurrence from the opposing party?”). My hope is that my students leave my courses appreciating the substantive effects of procedural practice and having a leg up when they begin their careers.

### Why Learn the Local Rules?

Educating our students about the existence of and need to adhere to local rules is a critical lesson for the legal writing classroom. Nearly every state and federal jurisdiction has a set of local rules that governs the nitty-gritty details of litigation and, of particular concern to legal writing instructors, motion practice. As instructors, we can alert our students to the fact that districts vary widely on procedural matters that greatly impact brief-writing. For instance, whether a brief may be 25 pages or only six pages,<sup>3</sup> whether a reply brief is as of right or prohibited absent court order,<sup>4</sup> or whether a filing deadline is 6:00 p.m. or 11:59:59 p.m.<sup>5</sup> plays an important role in motion practice and strategy.

<sup>1</sup> Fed. R. Civ. P. 83 advisory committee’s notes (1985 amendment).

<sup>2</sup> Fed. R. Civ. P. 1. For a summary of the critique on local rules, see Steven Flanders, *Local Rules in Federal District Courts: Usurpation, Legislation, or Information?*, 14 Loy. L.A. L. Rev. 213 (1981). See also 12 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3152 (2d ed.); Charles S. Fax, *Does Federalism Work for the Federal Rules?*, ABA Litig. News, Winter 2012, available at [http://apps.americanbar.org/litigation/litigationnews/civil\\_procedure/012512-federalism-federal-rules.html](http://apps.americanbar.org/litigation/litigationnews/civil_procedure/012512-federalism-federal-rules.html).

<sup>3</sup> For example, Local Rule 7.1(d)(3)(A) of the Eastern District of Michigan permits 25 pages for a brief, whereas Local Rule 7(e) of the Western District of Washington dictates that briefs may be anywhere from 6 to 24 pages, depending on the type of motion filed.

<sup>4</sup> For example, the Eastern District of Michigan allows for a seven-page reply brief as of right, E.D. Mich. LR 7.1(d)(1)(A) & (3)(B), whereas the District of Massachusetts requires leave of court for a reply brief, D. Mass. LR 7.1(b)(3).

<sup>5</sup> Local Rule 5.4(d) of the District of Massachusetts requires all ECF transmissions occur before 6:00 p.m. to be considered timely filed that day, whereas Local Rule 77.1 of the District of Colorado allows for documents to be filed until 11:59:59 p.m.

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Additionally, we can expose our students to the relatively new wave of action-specific local rules cropping up around the country. Since 2001, at least twenty-six jurisdictions have adopted a particular set of rules governing patent litigation,<sup>6</sup> and a handful of districts have rules dedicated solely to admiralty and maritime law and habeas corpus actions.

Further, and perhaps more important than simple exposure to these rules, we can teach our students to adhere to them so as to instill good habits of professionalism that they will take into practice. Although almost any practicing lawyer will agree on the need to comply with local rules, students may need a bit of persuading, and I offer them three concrete rationales. First, just like clear, organized writing and proper grammar and spelling, local-rule adherence builds credibility by demonstrating attention to detail and know-how, or at the very least ensures that credibility doesn't erode from simple and preventable errors.<sup>7</sup> No attorney wants to be the target of an opinion lambasting his or her poor editing skills over a page-limit rule—an unfortunate outcome for one attorney who sought to skirt a local rule.<sup>8</sup>

Second, and perhaps more immediate to our students, knowing the local rules makes a junior associate valuable to her superiors.<sup>9</sup> Although new lawyers may not yet have the judgment to establish a core theory of the case or develop a litigation strategy with the client's general counsel, they can

certainly read the local rules and ensure that all of the firm's papers comply with the court's requirements—particularly when a case is litigated outside the firm's home jurisdiction. Local-rule knowledge gives a junior associate an opportunity to participate in the case and become a critical team member. And if case participation and partner recognition weren't enough to inspire young lawyers to review the rules, in any event, knowledge of the local rules is often a tacit expectation of junior associates. We owe it to our students to help them avoid becoming another cautionary tale of a young attorney who failed to inform a partner about a pesky meet-and-confer or page-limit requirement.<sup>10</sup>

Third, at the end of the day, noncompliance with local rules can have dramatic consequences, and courts across the country have denied motions for failure to heed their requirements. Forgetting to file a proposed order with a motion,<sup>11</sup> failing to certify that a meet and confer occurred before a filing,<sup>12</sup> and even certifying a meet and confer took place but failing to specify the date, time, location, and participants—as required by the rule—have all resulted in lost motions.<sup>13</sup> Courts are quick to point out that local rules “are not empty formalities,”<sup>14</sup> and circuit courts “have consistently upheld the district court's discretion to require strict compliance with those rules.”<sup>15</sup>

“Although almost any practicing lawyer will agree on the need to comply with local rules, students may need a bit of persuading, ...”

<sup>6</sup> Ben Hodges, *Local Patent Rules: A Survey of District Courts*, ABA Intellectual Property Litig. Comm., Oct. 31, 2013.

<sup>7</sup> For an example of repercussions from both poor writing and a lack of local-rule compliance, see *Murray v. Carlson*, No. 4:11-cv-42-SEB-TAB, 2013 WL 5874740 (S.D. Ind. Oct. 30, 2013), dismissing a case with prejudice for a lawyer's indecipherable filings and repeated failure to follow federal and local rules of procedure, and noting that “a member of the bar of this Court ... is subject to higher standards and expectations.”

<sup>8</sup> See *Belli v. Hedden Enters., Inc.*, No. 8:12-cv-1001-T-23MAP, 2012 WL 3255086 (M.D. Fla. Aug. 7, 2012) (denying motion to exceed page limit because “a modicum of informed editorial revision,” demonstrated by the court's revision of a paragraph of the proposed brief, would have “easily reduce[d]” the page count without affecting the brief's substance).

<sup>9</sup> Advice to young lawyers to know and follow the Rules abounds. See, e.g., *How to Become an (Almost) Indispensable Junior Associate (Part 4)*, Above the Law, Mar. 29, 2011, <http://abovethelaw.com/2011/03/how-to-become-an-almost-indispensable-junior-associate-part-4/>.

<sup>10</sup> See Ryan J. Works, *Tips from the Trenches: Anecdotes for Young Practitioners*, Nevada Lawyer, March 2011, at 48, available at <http://nvbar.org/articles/content/young-lawyers-column-tips-trenches-anecdotes-young-practitioners>.

<sup>11</sup> *Pickering, Inc. v. Johnson*, No. 03-2913-DV, 2004 WL 2905386 (W.D. Tenn. May 19, 2004).

<sup>12</sup> *Id.*

<sup>13</sup> *Autotech Techs. v. Automationdirect.com, Inc.*, No. 05C5488, 2007 WL 2736681 (N.D. Ill. Sept. 10, 2007).

<sup>14</sup> *Lore v. City of Syracuse*, No. 5:00-cv-1833, 2007 WL 655628 (N.D.N.Y. Feb. 26, 2007) (denying motion for summary judgment for failure to follow local rules regarding affidavits, tables of contents, parallel citations, and statements of material fact).

<sup>15</sup> *FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d 627, 633 (7th Cir. 2005) (affirming summary judgment based on district court's enforcement of local rule regarding statements of material fact).

### Teaching Strategies

In view of the importance of local rule practice, I've developed a handful of strategies to teach my students about the local rules and to get my students in the habit of following them, using the rules of the Eastern District of Michigan where I teach. Most of my students will not end up practicing law in our district, but having them read and apply the rules to their motion papers increases their comfort with rule adherence and helps them begin to develop a professional approach to their work that they will then carry into their careers. Although the strategies I outline below are specific to my district, each jurisdiction is likely to have several local rules that can be similarly adopted into the legal writing classroom.

For the first day of class, I require my legal writing students to read the local rules, paying particular attention to those governing the filing of papers (LR 5.1), motion practice (LR 7.1), and sanctions for noncompliance (LR 11.1). As a class, we then review example motions and memoranda of law that I pull from the docket and identify how the papers comply with the requirements, or neglect to do so. I save these and many more examples to our course website, so that the students can continue to refer back to the filings as they draft their own motions and briefs.

Then, I explain to my students that as part of their brief-writing assignments, they are responsible for adhering to the local rules in the papers they “file,” just like practicing attorneys, and that their failure to do so may have consequences.<sup>16</sup> I require compliance with a handful of local rules specific to motion practice: filing a motion and memorandum of law (LR 7.1(d)(1)(A)), seeking concurrence before filing (LR 7.1(a)), drafting a statement of issues presented (LR 7.1(d)(2)), and providing a list of controlling authority (LR

7.1(d)(2)). As explained more fully below, requiring adherence to these four rules not only allows me to inform my students about the rules themselves, but also creates an entry point to discuss substantive legal issues and theories, enriching our course.

- As to motions and memoranda of law (LR 7.1(d)(1)(A)), I teach my students the difference between the two filings: the motion states the request, and the memorandum of law details why the movant is legally entitled to it. We also review the vocabulary of motions—parties “move” (not “motion”) for relief, and they request that motions be “granted” or “denied” (not “given,” “dismissed,” or “stopped”). In reviewing examples of these papers, I explain that some districts like ours require lawyers to draft both a motion and a memorandum, although others require lawyers to draft one document containing both.<sup>17</sup> Teaching these technical details allows us to discuss more broadly the formalistic nature of the law and whether process and jargon cloak our profession in mystique as a way to intimidate nonlawyers.
- Our district’s meet-and-confer requirement (LR 7.1(a)) also lends itself to both procedural and substantive discussions about the law. The Eastern District of Michigan requires attorneys to state in their motions either that a conference between the parties occurred, but the movant was unable to obtain concurrence, or, despite reasonable efforts specified, the movant was unable to conduct a conference in the first place. Students enjoy drafting their motions with descriptions of these pretend conferences, or explaining their failed efforts to arrange one. Teaching this rule allows us to discuss what these conferences typically look like in practice, but more than that, it invites a conversation on the theme of judicial economy, which permeates the federal and local rules. We discuss the value (or lack thereof) of meet and confers and, more generally, the proliferation of litigation and the judiciary’s attempts and tools to manage it.

<sup>16</sup> I require my students to electronically “file” their papers by our class’s filing deadline (which I make up), and to include a proper heading, case caption, and signature block for their motions and briefs, based on a template I provide. Many thanks to Professor Beth Wilensky at the University of Michigan Law School for sharing with me this template and, in general, her teaching materials. My lesson on statements of issues presented, discussed below, derives entirely from her.

<sup>17</sup> See, e.g., W.D. Wash. LR 7(b)(1) (“The argument in support of the motion shall not be made in a separate document but shall be submitted as part of the motion itself.”).

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- Requiring students to comply with the procedural requirement of issue statements (LR 7.1(d)(2)) also opens doors for substantive skill building. Although the Eastern District of Michigan is somewhat unique in requiring at the trial-court level that each brief set forth a concise statement of the issue(s) presented by the parties, teaching adherence to this rule allows us to discuss appellate practice and strategy, as the local rule is comparable to Federal Rule of Appellate Procedure 28(a)(5) and Supreme Court Rule 24(1)(a) on questions presented.<sup>18</sup> As a class, we review the components of an effective issue statement and critique the various statements presented in the merits and amicus briefs of a particular Supreme Court case. Students then draft issue statements for their own briefs, which we workshop as a class.
- Requiring compliance with the Eastern District of Michigan's rule that each brief set forth a list of "controlling or most appropriate" authority (LR 7.2(d)(2))—apart from a table of authorities—is another procedural requirement that allows for broader discussion. Through this local rule, we further practice distinguishing between cases that bind a court versus those that provide persuasive authority, and we discuss the strategy and circumstances under which it would benefit a brief to list unreported decisions and decisions outside our jurisdiction.

Lastly, and to hit home the need for local-rule compliance, I require each student to find one case sanctioning a party in some capacity for failure to follow the local rules. The students present their cases to the class, which leads to a discussion on professional identity, credibility with the court, and judicial temperament. Students never seem to tire of hearing opinions embarrassing a lawyer for local-rule neglect, and the cases legitimize the time we spend on the local rules and the attention I give to them when commenting on student briefs.

### Conclusion

The legal writing classroom offers a space for instructors not only to inform students about the practicalities of local-rule practice, but also to develop students' habits of conscientious lawyering and to discuss substantive legal issues. Weaving local rules into classroom assignments can be simple and seamless, and can reap long-lasting rewards for our students in their years of practice to come.

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<sup>18</sup> Fed. R. App. P. 28(a)(5) states: “The appellant’s brief must contain ... a statement of the issues presented for review,” and Sup. Ct. R. 24(1)(a) requires a brief to contain “[t]he questions presented for review.”