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# ASSESSING THE REVISED ARIZONA LOCAL RULES OF FEDERAL PROCEDURE

Carl Tobias<sup>†</sup>

The United States District Court for the District of Arizona has generally not contributed to a significant difficulty with modern federal court practice: local procedural proliferation. Each of the remaining ninety-three federal district courts has prescribed and applied numerous local strictures that govern admiralty, bankruptcy, civil, criminal and evidentiary practice, while mounting numbers of these local provisos conflict with or repeat analogous federal rules or statutes. In contrast, the United States District Court for the District of Arizona has promulgated and enforced relatively few local measures, and only a tiny percentage of them are redundant or inconsistent with corresponding federal rules or Acts of Congress. Indeed, the district court has understandably prescribed no admiralty requirements and none that it has explicitly denominated rules of evidence. Moreover, the strictures which this district has implemented for bankruptcy, civil, and criminal practice are somewhat limited in number and comparatively restricted in scope. Virtually all of these mechanisms comport with applicable federal rules and United States Code provisions but do not replicate them. Perhaps the finest example of the court's efforts to minimize local procedural proliferation and to maximize uniformity was district acceptance of the 1993 revisions in the Federal Rules of Civil Procedure that cover discovery.<sup>1</sup> For instance, the district court subscribed to the federal discovery requirements in the 1993 amendment to civil procedure rule twenty-six (26), even though that revision expressly authorized district rejection or modification of the discovery provisos, which the 1993 amendment included, and most other courts did forgo or alter these federal strictures.

The Arizona District Court has also been receptive to several major endeavors that the United States Congress and the United States Supreme Court implemented for remedying or ameliorating the complications that local procedural proliferation imposes. For example, both the lawmakers and the Supreme Court asked the Circuit Judicial Councils, the federal

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1. See *infra* note 8 and accompanying text.

appellate courts' governing bodies, to scrutinize local commands that districts within their geographic purview employed as well as to abrogate or change any mandates that the Judicial Councils found inconsistent or repetitive. When the Ninth Circuit Judicial Council performed a thorough review of the Arizona District's local provisions and suggested modifications, the district court undertook a good faith attempt to consider and institute the recommendations.

Another important Supreme Court initiative requested that the ninety-four federal districts conform the numbering of their local measures to a uniform system devised by the Judicial Conference of the United States, the policymaking arm for the federal courts. The Arizona District aligned the enumeration of its local provisions that cover bankruptcy with the analogous federal bankruptcy rules and the bankruptcy code and developed valuable guidance in the form of a topical alphabetical listing. However, the court did not implement a consistent numerical scheme for the local requirements that govern civil and criminal practice until quite recently and, therefore, may have frustrated efforts to attain a more uniform and simple federal procedure. When the district undertook the renumbering project, it concomitantly abolished or modified numerous inconsistent and redundant local provisions, while clarifying some unclear rules. Lawyers who represent clients and parties that litigate in the federal district court must also familiarize themselves with the renumbering system and the rule changes, which should facilitate their participation in cases.

All of these propositions mean that local federal procedure in the United States District Court for the District of Arizona merits assessment, which this essay undertakes. Part I reviews the origins and development of local procedural proliferation nationally and in the Arizona District. It also reviews the efforts that the United States Congress, the Supreme Court, and the Judicial Conference have instituted to address multiplying local commands, numbers of which violate or duplicate concomitant federal rules or statutory mandates. Part II analyzes initiatives the Supreme Court and the Judicial Conference have implemented that encourage all ninety-four federal district courts to adopt uniform numbering systems for local requirements. This portion ascertains that the vast majority of districts have conformed their local provisions, although some courts have yet to comply. The Arizona District only recently finished this task while abrogating and modifying numerous inconsistent and redundant strictures and elucidating unclear ones. Part III affords recommendations for the future, which are mainly addressed to counsel who practice and parties that litigate in the federal district court. Finally, Part IV will include a brief concluding paragraph.

## I. ORIGINS AND DEVELOPMENT OF LOCAL PROCEDURAL PROLIFERATION

The origins and growth of proliferating local federal procedures warrant relatively limited treatment in this essay, as these historical developments have received comparatively thorough assessment elsewhere.<sup>2</sup> Nonetheless, considerable exploration is appropriate, because that analysis can inform understanding of local procedural proliferation as a general matter and of circumstances in the United States District Court for the District of Arizona specifically. The paper also emphasizes local strictures which implicate civil practice because there are more of them; civil procedures are representative of the local measures that cover admiralty, appellate, bankruptcy, criminal and evidentiary practice; and federal appellate rules have little relevance for district courts.

### A. National Development

The Federal Rules of Civil Procedure, which the Supreme Court promulgated in 1938, were meant to implement a national procedure code that was uniform and simple and that would facilitate the expeditious, inexpensive and fair resolution of cases on the merits.<sup>3</sup> Most significant for local procedural proliferation was the inclusion of Federal Rule of Civil Procedure 83, which empowered all ninety-four federal district courts to prescribe local requirements.<sup>4</sup> Federal Rule 83's authorization for local mandates had the potential for undermining the national, consistent procedural regime the Supreme Court instituted, even though the individuals who wrote Rule 83 contemplated that judges would apply it to unusual situations in their districts and the rule explicitly proscribed local commands that were not consistent with the federal rules or United States Code sections.<sup>5</sup>

Notwithstanding the drafters' intent and the clear language of Federal Rule 83, numerous districts promulgated many local requirements, especially ones that conflicted with federal rules or statutes, thus breaching

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2. E.g., Walter W. Heiser, *A Critical Review of the Local Rules of the United States District Court for the Southern District of California*, 33 SAN DIEGO L. REV. 555, 557-64 (1996); Stephen N. Subrin, *Federal Rules, Local Rules, and State Rules: Uniformity, Divergence, and Emerging Procedural Patterns*, 137 U. PA. L. REV. 1999, 2011-26 (1989).

3. See Judith Resnik, *Failing Faith: Adjudicatory Procedure in Decline*, 53 U. CHI. L. REV. 494, 502-15 (1986); Carl Tobias, *Public Law Litigation and the Federal Rules of Civil Procedure*, 74 CORNELL L. REV. 270, 272-77 (1989).

4. FED. R. CIV. P. 83, 308 U.S. 765 (1938); see also Subrin, *supra* note 2, at 2011-16.

5. See FED. R. CIV. P. 83; FED. R. CIV. P. 83 advisory committee's note; see also Subrin, *supra* note 2, at 2011-16. See generally Carl Tobias, *Civil Justice Reform and the Balkanization of Federal Civil Procedure*, 24 ARIZ. ST. L.J. 1393, 1397-99 (1992).

Rule 83's specific prohibition.<sup>6</sup> These phenomena were manifested relatively soon after the Supreme Court prescribed the Federal Rules of Civil Procedure in 1938,<sup>7</sup> while district courts subsequently adopted expanding numbers of inconsistent local procedures to treat perceived difficulties, such as the "litigation explosion" and abuse of the pretrial process, most importantly in discovery.<sup>8</sup> By the early-1980s, the proliferation of local measures became sufficiently troubling to warrant action by the United States Judicial Conference, Congress and Supreme Court.<sup>9</sup> For example, the Judicial Conference commissioned a Local Rules Project to study proliferation, and this entity's 1989 report ascertained that the ninety-four federal district courts and individual judges had prescribed burgeoning local procedural strictures that mainly governed civil, but also admiralty, appellate, bankruptcy, criminal, and evidentiary practice, some of which conflicted with or duplicated analogous federal rules and legislation.<sup>10</sup>

The proliferating local provisos have significantly increased the complexity as well as the expense of modern federal court practice. Proliferation requires that lawyers and parties, especially those whose cases proceed in multiple districts, learn about, master and comply with numerous local mechanisms, growing numbers of which are inconsistent or repetitive. These developments have undermined the national, uniform code of procedure that Congress and the Supreme Court ostensibly meant to implement through the 1938 federal civil rules' adoption.

Congress and the Court instituted several efforts to remedy, or temper, the difficulties imposed by local procedural proliferation. Perhaps most significant were passage of the Judicial Improvements and Access to Justice Act of 1988 ("JIA") and Supreme Court promulgation of amendments to various federal rules in 1985 and 1995.<sup>11</sup> The 1988 statute and the federal

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6. Subrin, *supra* note 2, at 2016–18; *see also* FED. R. CIV. P. 83.

7. Indeed, as early as 1940, the Knox Committee found that districts had not abrogated inconsistent local rules that predated the 1938 Federal Rules' adoption and had even prescribed new ones. *See generally* Subrin, *supra* note 2, at 2016–18 (analyzing the Knox Committee Report).

8. *See* Carl Tobias, *Local Federal Civil Procedure for the Twenty-First Century*, 77 NOTRE DAME L. REV. 533, 540–42 (2002); *see also* Richard L. Marcus, *Public Law Litigation and Legal Scholarship*, 21 U. MICH. J.L. REFORM 647, 660–73 (1988); Judith Resnik, *Managerial Judges*, 96 HARV. L. REV. 374, 390–93 (1982).

9. *See* Carl Tobias, *More Modern Civil Process*, 56 U. PITT. L. REV. 801, 817 (1995). *See generally* Stephen C. Yeazell, *The Misunderstood Consequences of Modern Civil Process*, 1994 WIS. L. REV. 631.

10. *See* Daniel R. Coquillette et al., *The Role of Local Rules*, A.B.A. J., Jan. 1989, at 62, 62–65 (summarizing the efforts of the Local Rules Project); Tobias, *supra* note 8, at 542–44 (same). *See generally* COMM. ON RULES OF PRACTICE AND PROCEDURE, JUDICIAL CONFERENCE OF THE U.S., REPORT OF THE LOCAL RULES PROJECT: LOCAL RULES ON CIVIL PRACTICE (1989).

11. Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702, 102 Stat. 4642

rule revisions requested that the Circuit Judicial Councils as well as the appeals and district courts review local procedures for consistency and redundancy with applicable federal rules and legislation and eliminate or modify those found to be disuniform or repetitive.<sup>12</sup> The 1995 federal rules amendments concomitantly asked that the thirteen appellate and ninety-four district courts align the numbering of their local procedures with a uniform system prescribed by the United States Judicial Conference.<sup>13</sup> The Supreme Court imposed this requirement because it would facilitate the efforts of counsel and litigants to find, comprehend and satisfy the escalating local mandates.

Compliance with the endeavors to address local procedural proliferation has been variable. For instance, several Circuit Judicial Councils have not discharged their responsibilities to undertake review of local district procedures; however, additional councils have performed some oversight, and a few have comprehensively scrutinized these local measures.<sup>14</sup> A substantial number of federal district courts have performed limited or no monitoring of their local procedures, although some have carefully assessed local strictures for inconsistency and duplication and abrogated or changed those deemed in conflict or repetitive.<sup>15</sup>

### B. Arizona Developments

The United States District Court for the District of Arizona has contributed only minimally to some of the problems fostered by local procedural proliferation. For example, the district has adopted relatively few local mandates, a tiny number of which are inconsistent with, or repeat,

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(1988) (codified at 28 U.S.C. §§ 332(d)(4), 2071–2074 (2000)); FED. R. CIV. P. 83 advisory committee's note (showing 1985 and 1995 amendments); FED. R. CRIM. P. 57 advisory committee's note (showing 1985 and 1995 amendments); FED. R. APP. P. 47 advisory committee's note (showing 1995 amendments); FED. R. BANKR. P. 9029 advisory committee's note (showing 1995 amendments). See generally Linda S. Mullenix, *Hope over Experience: Mandatory Informal Discovery and the Politics of Rulemaking*, 69 N.C. L. REV. 795 (1991); Carl Tobias, *Improving the 1988 and 1990 Judicial Improvements Acts*, 46 STAN. L. REV. 1589 (1994).

12. See § 403, 102 Stat. at 4650–51 and accompanying text. See generally Paul D. Carrington, *A New Confederacy? Disunionism in the Federal Courts*, 45 DUKE L.J. 929 (1996); Lauren Robel, *Fractured Procedure: The Civil Justice Reform Act of 1990*, 46 STAN. L. REV. 1447 (1994).

13. For specific examples, see the 1995 amendments and advisory committee's notes to FED. R. CIV. P. 83, FED. R. CRIM. P. 57, FED. R. APP. P. 47, and FED. R. BANKR. P. 9029. See also *infra* note 22 and accompanying text.

14. Tobias, *supra* note 8, at 560–66. See generally Gregory C. Sisk, *The Balkanization of Appellate Justice: The Proliferation of Local Rules in the Federal Circuits*, 68 U. COLO. L. REV. 1 (1997).

15. See Tobias, *supra* note 8, at 565–66. See generally Heiser, *supra* note 2; Carl Tobias, *Civil Justice Reform in the Fourth Circuit*, 50 WASH. & LEE L. REV. 89, 99–105 (1993).

their federal counterparts.<sup>16</sup> Indeed, perhaps the clearest historical illustration of the court's fidelity to uniform procedure was its decision against prescribing local discovery commands that rejected or varied the 1993 federal rule revisions on discovery, even though the 1993 amendments specifically authorized local departures from the federal discovery provisos.<sup>17</sup> Moreover, when the Ninth Circuit Judicial Council undertook a thorough review of the Arizona District's local procedures and recommended alterations, the court instituted a good faith effort to evaluate and implement the suggestions proffered by the Judicial Council.<sup>18</sup>

There is, however, one significant area in which the United States District Court for the District of Arizona did not comply with the congressional and Supreme Court efforts to secure more consistent and simple federal procedure, until December 2004. This involved the request conveyed in the 1995 federal rules amendments that districts conform their enumeration of local procedural requirements to a uniform scheme prescribed by the Judicial Conference.<sup>19</sup>

## II. ASSESSMENT OF THE UNIFORM NUMBERING SYSTEM

During 1995, the Supreme Court promulgated amendments to various federal rules, which mandated that all federal district courts number their local strictures in accord with a consistent regime that the United States Judicial Conference would provide, because uniform enumeration would facilitate the efforts of an increasingly nationalized bar to discover, understand and meet local requirements.<sup>20</sup> In 1996, the Judicial Conference issued a directive that prescribed this numerical system and asked that district courts conform by April 1997.<sup>21</sup> Numerous federal district courts

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16. See generally D. ARIZ. R.

17. See General Order 98-29 at 7, Civil Justice Expense and Delay Reduction Plan (D. Ariz. Nov. 22, 1993); FED. R. CIV. P. 26 advisory committee's notes (showing 1993 amendments). See generally Paul D. Carrington, *Learning from the Rule 26 Brouhaha: Our Courts Need Real Friends*, 156 FED. RULES DECISIONS 295, 300 (1994); Lauren K. Robel, *Mandatory Disclosure and Local Abrogation: In Search of a Theory for Optional Rules*, 14 REV. LITIG. 49 (1994).

18. See generally DISTRICT LOCAL RULES REVIEW COMM., REPORT TO THE NINTH CIRCUIT JUDICIAL COUNCIL, EXECUTIVE SUMMARY (1997); ANALYSIS OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA; Tobias, *supra* note 8, at 562-63.

19. See Tobias, *supra* note 8, at 554-56.

20. See *supra* note 13 and accompanying text. See generally 14 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 83.06 (3d ed. 2006).

21. JUDICIAL CONFERENCE OF THE U.S., REPORT OF THE PROCEEDINGS 34-35 (1996); see also JUDICIAL CONFERENCE OF THE U.S., UNIFORM NUMBERING SYSTEM FOR LOCAL RULES OF COURTS AND A REPORT ON LOCAL RULES OF CRIMINAL PRACTICE (1996) [hereinafter JUDICIAL CONFERENCE OF THE U.S., UNIFORM NUMBERING SYSTEM]. See generally JAMES S. KAKALIK, IMPLEMENTATION OF THE CIVIL JUSTICE REFORM ACT IN PILOT AND COMPARISON DISTRICTS (1996).

complied with the Conference request comparatively soon after the policymaking entity published it, while an overwhelming majority of the ninety-four federal districts have now reconfigured their local strictures.<sup>22</sup> Notwithstanding this relatively widespread compliance, the Arizona District only recently aligned the numbering of its local civil and criminal provisos with the applicable federal rules.<sup>23</sup> However, the court had implemented much earlier a consistent scheme, which conformed the enumeration of its local bankruptcy procedures to corresponding federal bankruptcy rules, while the district fashioned an informative topical alphabetical compilation.<sup>24</sup>

The United States District Court for the District of Arizona rules of practice, apart from the bankruptcy procedures, consisted of four specific rules before its December 2004 renumbering. Rule 1 comprised “Rules of General Application”; Rule 2 included “Rules with Particular Application to Civil Proceedings”; Rule 3 encompassed “Rules with Particular Application in Prisoner Proceedings”; and Rule 4 constituted “Rules with Particular Application to Criminal Proceedings.”<sup>25</sup> The organizational format of these provisions and the court’s delayed implementation of the uniform numbering system could have complicated in several ways the efforts of attorneys and parties to locate, comprehend and comply with the governing requirements. It also could have complicated the endeavors of others, namely the Ninth Circuit Judicial Council, which must review the measures.

One difficulty was that provision for certain procedures appeared in multiple rules. Illustrative were the notion of consent to jurisdiction exercised by magistrate judges, included in Rules 1 and 2;<sup>26</sup> references to lawyers’ conduct, found in Rules 1, 2, and 4;<sup>27</sup> and allusions to habeas

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22. See generally FEDERAL COURT LOCAL RULES (3d ed. West 2005); JUDICIAL CONFERENCE OF THE U.S., COMM. ON RULES OF PRACTICE AND PROCEDURE, MINUTES OF THE MEETING (Jan. 9–10, 1997).

23. D. ARIZ. R. 2, 3. The Conference has apparently not canvassed, or enforced, compliance with its 1996 directive prescribing a uniform system. Tobias, *supra* note 8, at 555.

24. See D. ARIZ., LOCAL R. BANKR. P. The Ninth Circuit Judicial Council has also reviewed the fifteen districts’ local bankruptcy procedures. See Tobias, *supra* note 8, at 558; see also Mary Josephine Newborn Wiggins, *Globalism, Parochialism and Procedure: A Critical Assessment of Local Rulemaking in Bankruptcy Court*, 46 S.C. L. REV. 1245, 1245–48 (1995).

25. D. ARIZ. R. 1–4.

26. Compare D. ARIZ. R. 1.17(c) (requiring that a defendant consent in writing to allow a magistrate judge to take a plea) with D. ARIZ. R. 2.10 (requiring consent of parties to allow a magistrate judge to hear a case).

27. Compare D. ARIZ. R. 1.5–1.6 (providing rules for admission to the bar, practice, and disbarment), and D. ARIZ. R. 2.8 (prohibiting extrajudicial statements from attorneys), with D. ARIZ. R. 4.13 (promulgating rules for the media so that a defendant is assured a right to a fair trial).

corpus, appearing in Rules 1 and 3.<sup>28</sup> Another source of potential confusion was the provision in Rule 1 of procedures that regulated certain civil and criminal matters, such as case assignments, forms of papers and motions, which counsel and litigants might have anticipated finding under the respective rules (2 and 4) that address civil and criminal proceedings.<sup>29</sup> Rule 1 concomitantly afforded special procedures for particular types of civil lawsuits, namely civil RICO cases and land condemnation proceedings, which attorneys and parties would have reasonably expected to discover in Rule 2's provisions on civil proceedings.<sup>30</sup> Rule 1 also included twenty-one subrules; Rule 2 encompassed twenty-three subrules; and Rule 4 contained seventeen subrules.<sup>31</sup> This plethora of subrules indicated that there could well have been more relevant information to examine than might have appeared at first glance from the district's promulgation of only four rules. Finally, the numerous legal strictures and the relative difficulty of categorizing them may have frustrated the endeavors of lawyers and litigants who participated in civil and criminal cases. For example, attorneys and parties had to find the local commands, ascertain whether they governed specific matters, determine whether the provisos had federal analogues and, if so, compare the local and national requirements to discern the applicable mandate. The above phenomena could also have complicated the work of institutions, such as the Ninth Circuit Judicial Council and the Judicial Conference, which are charged by statute or by rule with monitoring local provisions for consistency and redundancy.<sup>32</sup>

The recent completion by the United States District Court for the District of Arizona of its effort to calibrate the tribunal's local civil and criminal procedures with the numerical regime assembled by the Judicial Conference should afford quite a few benefits. Most significant, the project's conclusion should further the district's laudable attempts to promote consistency and treat the detrimental aspects of local proliferation. Moreover, compliance with the Judicial Conference system should assist lawyers and parties who must discover, understand and satisfy local civil and criminal mandates as well as entities that are responsible for overseeing local uniformity.

The Arizona District seemed to finish the renumbering of the local measures with relative ease, in part because there were comparatively few procedures, and also because the court may have derived valuable help from

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28. Compare D. ARIZ. R. 1.1(d) (providing requirements for where a writ must be filed), with D. ARIZ. R. 3.2 (further specifying rules regarding writs of habeas corpus).

29. Compare D. ARIZ. R. 1.2 and D. ARIZ. R. 1.9–1.10 with D. ARIZ. R. 2, 4.

30. Compare D. ARIZ. R. 1.2(i) and D. ARIZ. 1.12 with D. ARIZ. R. 2; see also *infra* note 39 and accompanying text

31. See D. ARIZ. R. 1–2, 4.

32. See *supra* notes 9–10, 18 and accompanying text.

several readily available sources. For example, informative guidance accompanied the 1996 Judicial Conference directive.<sup>33</sup> The Arizona District might also have consulted the similar endeavors that virtually all other courts have undertaken since that time.<sup>34</sup> Additional instructive resources for categorizing the local provisos were the 1997 evaluation compiled by the Ninth Circuit Judicial Council<sup>35</sup> and the earlier work of the Local Rules Project, although the Project's 18-year-old report may have become somewhat dated.<sup>36</sup> In any event, the Arizona District apparently completed this undertaking rather felicitously. Numerous federal district courts—some with greater numbers of, and more complicated, local strictures than the Arizona District—have appeared to experience little difficulty when conforming their provisions.

In sum, the United States District Court for the District of Arizona has promulgated a small number of local procedures, especially requirements that violate or duplicate the federal rules or legislation. The court has also followed the Ninth Circuit Judicial Council recommendations through the elimination or modification of local strictures that are inconsistent or redundant with their federal counterparts. Notwithstanding the Arizona District's commendable record in minimizing local proliferation and fostering national uniformity, the court only conformed its civil and criminal provisos to the Judicial Conference scheme in 2004.<sup>37</sup>

### III. SUGGESTIONS FOR THE FUTURE

Lawyers who practice and parties who litigate in the United States District Court for the District of Arizona should thoroughly review and become familiar with the entire package of amendments to the local federal rules that became effective two years ago. Attorneys and parties must study, evaluate and understand both the new numbering scheme instituted and the revisions, in particular the local federal strictures adopted.

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33. See JUDICIAL CONFERENCE OF THE U.S., UNIFORM NUMBERING SYSTEM, *supra* note 21.

34. See *supra* notes 15, 22 and accompanying text.

35. See *supra* note 18 and accompanying text.

36. See *supra* note 10 and accompanying text.

37. The district did renumber its bankruptcy mechanisms and formulate an instructive topical alphabetical enumeration considerably earlier. See D. ARIZ., LOCAL R. BANKR. P. (2004); *supra* note 24 and accompanying text.

### A. *The Renumbering System*

Counsel and litigants should learn about and comprehend the recently implemented numbering system for the local federal rules. Discharging this assignment might be comparatively easy because the district court has afforded considerable and valuable guidance for understanding the regime that took effect in December of 2004. For example, on the Arizona District's website,<sup>38</sup> the court has assembled several helpful resources. These include a complete set of all the present local rules in one file, separate compilations of the local civil and criminal procedures, a summary of the 2004 amendments, and a list of cross-referenced rules.<sup>39</sup>

An informative "Foreword/Explanatory Note" also accompanies the December 2004 changes.<sup>40</sup> The document explains that three groups of rules under the old scheme are renumbered as local civil rules, while a fourth group is renumbered as local criminal rules.<sup>41</sup> Moreover, the Note provides that the enumeration system for local rules tracks the numbers of the corresponding federal rules, except that local requirements without federal analogues are assigned to local civil rule 83 and criminal rule 57, respectively.<sup>42</sup>

Numerous lawyers and parties may simply want to consult the local civil or criminal rules, the numbering of which now conforms to their federal counterparts. Attorneys and litigants who are familiar with the preexisting enumeration system might wish to follow the same practice or to consult the district website's instructive summary and cross references, if counsel and parties deem this necessary.

### B. *Rules Changes*

The Arizona District abolished, modified or clarified local provisions that were inconsistent, duplicative or unclear. This paper emphasizes those local amendments that promise to have the greatest importance and affords little evaluation of revisions that are minor, technical or conform to federal mandates. Illustrative of amendments that deserve minimal treatment is the

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38. U.S. District Court, District of Arizona, <http://www.azd.uscourts.gov> (last visited Mar. 23, 2007).

39. U.S. District Court of Arizona, Local Rules 2004, <http://www.azd.uscourts.gov/azd/courtinfo.nsf/local+rules+2004> (last visited Mar. 23, 2007).

40. RULES OF PRACTICE OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF ARIZONA, FOREWORD/EXPLANATORY NOTE, at xix-xx (2004), available at [http://www.azd.uscourts.gov/azd/courtinfo.nsf/E454d350EA9051D607256F4E0078EE8F/\\$file/2004+Local+Rules.pdf](http://www.azd.uscourts.gov/azd/courtinfo.nsf/E454d350EA9051D607256F4E0078EE8F/$file/2004+Local+Rules.pdf) [hereinafter RULES OF PRACTICE].

41. See *id.* at xix.

42. See *id.* at ii, xix-xx.

elimination of former local rule 1.1(a), which designated specific hours when the Clerk's Office was open, because this will vitiate the need for later revision, should the office decide to modify its hours in the future.<sup>43</sup> Counsel and litigants who wish to secure a detailed understanding of the recent amendments can scrutinize all the changes and their explanations on the district's website.

### 1. Inconsistent or Redundant Procedures

A significant number of the revisions abrogate or modify local procedures that the Arizona District found had become inconsistent or redundant with applicable federal rules or statutes. A classic example is the abolition of former local rule 1.2(i), which imposed heightened pleading requirements in all civil RICO cases.<sup>44</sup> Because a recent Ninth Circuit opinion had questioned the legitimacy of this stricture, which can demand greater "information from plaintiffs than is required under either Rule 8(a) or 9(b) of the Federal Rules [of Civil Procedure],"<sup>45</sup> the district eliminated the local measure.<sup>46</sup> Another revision eliminates the local provisions regarding expedited and standard track presumptive limitations on the number of interrogatories and depositions allowed because subsequent federal rule amendments prompted confusion by instituting "three different sets of presumptive limits" with which attorneys and parties had to comply.<sup>47</sup> The Arizona District similarly amended former local rule 1.16(a) to conform with a federal statute by providing for defendant's consent to magistrate judge jurisdiction in Class A misdemeanors.<sup>48</sup> Moreover, the court revised several local provisions to address conflicts with federal strictures that the Local Rules Project had identified.<sup>49</sup> One involved the composition of three-judge courts,<sup>50</sup> a second implicated requirements that govern intervention under federal civil rule 24,<sup>51</sup> and a third covered

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43. See D. ARIZ. R. 1.1(a) (2004); RULES OF PRACTICE, *supra* note 40, at ii.

44. RULES OF PRACTICE, *supra* note 40, at v; see also R. 1.2.

45. *Wagh v. Metris Direct, Inc.*, 348 F.3d 1102, 1109 (9th Cir. 2003).

46. See RULES OF PRACTICE, *supra* note 40, at v.

47. See R. 2.12(b)(1)(C), (b)(4)(C); RULES OF PRACTICE, *supra* note 40, at xiv.

48. See 18 U.S.C. § 3401(b) (2000); FED. R. CRIM. P. 58.1; see also RULES OF PRACTICE, *supra* note 40, at xi; D. ARIZ. R. 1.16(a) (2004).

49. See *supra* note 10 and accompanying text.

50. See 28 U.S.C. § 2284 (2000); D. ARIZ. R. CIV. 5.3; see also RULES OF PRACTICE, *supra* note 40, at xii; D. ARIZ. R. 2.3 (2004).

51. See D. ARIZ. R. CIV. 24.1; see also RULES OF PRACTICE, *supra* note 40, at xii; D. ARIZ. R. 2.4.

arbitration.<sup>52</sup> Finally, the district amended the local temporal command for the U.S. Attorney's provision of written notice regarding written and oral confessions before trial to conform with the federal criminal rule.<sup>53</sup>

## 2. "Substantive" Amendments

The Arizona District also promulgated several revisions that are more "substantive" in nature. One amendment requires a lawyer who submits a *pro hac vice* application to include a current certificate of good standing from another federal court.<sup>54</sup> Counsel who are not admitted to practice in the Arizona District should be particularly attentive to this stricture. Moreover, even though *pro hac vice* requirements are controversial partly because they may be necessary to safeguard the district, attorneys and parties from lawyers who may not be licensed to practice, the strictures can appear protectionist.<sup>55</sup> A second change that may seem rather innocuous, but could prove important, especially if the district strictly enforces it, requires a litigant who wants oral argument on a motion to request oral argument "immediately below the title of such motion or the response to such motion."<sup>56</sup> A third revision clarifies the timing for taxation of costs in litigation by imposing a date certain when "parties can expect to have costs taxed."<sup>57</sup> The final amendment treats complex criminal litigation through the prescription of procedures for designating those cases, while the alteration specifically requires that attorneys "confer in good faith to determine" discovery's scope and identifies measures that lawyers are to follow if they disagree over discovery.<sup>58</sup>

### C. Future Rule Revision

When the Arizona District conducts future periodic reviews of its local provisos for consistency with, and duplication of, federal rules and statutes,

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52. See D. ARIZ. R. CIV. 83.10; see also RULES OF PRACTICE, *supra* note 40, at xiii; D. ARIZ. R. 2.11 (2004).

53. See D. ARIZ. R. CRIM. 16.1(a)–(b); see also RULES OF PRACTICE, *supra* note 40, at xvii; D. ARIZ. R. 4.11(a)–(b) (2004).

54. See D. ARIZ. R. CIV. 83.1(b)(3); D. ARIZ. R. CRIM. 57.12; see also RULES OF PRACTICE, *supra* note 40, at vii; D. ARIZ. R. 1.5(b)(3) (2004).

55. See generally *Frazier v. Heebe*, 482 U.S. 641, 642 (1987) (holding that a local rule requiring attorneys to have residency and an in-state office was "unnecessary and irrational").

56. D. ARIZ. R. CIV. 7.2(f); see RULES OF PRACTICE, *supra* note 40, at ix; D. ARIZ. R. 1.10(f) (2004).

57. RULES OF PRACTICE, *supra* note 40, at xv; see D. ARIZ. R. CIV. 54.1(a)–(b); see also D. ARIZ. R. 2.19(a)–(b) (2004).

58. RULES OF PRACTICE, *supra* note 40, at xviii; see D. ARIZ. R. CRIM. 16.4(b).

the court should attempt to retain uniformity and avoid redundancy. When the court amends local strictures, the district must ensure that revisions comport with, and are not duplicative of, analogous federal rules and enactments. The court may also want to track federal rule and statutory modifications as the Supreme Court and Congress adopt them, so that the district can guarantee local provisions remain consistent and non-repetitive.

#### IV. CONCLUSION

The United States District Court for the District of Arizona has prescribed and enforced relatively few local commands, a minuscule percentage of which deviate from or reiterate analogous federal rules and legislation. Moreover, the district has admirably limited proliferating inconsistent and redundant strictures. However, the court only implemented a uniform numerical regime for local civil and criminal measures in December 2004, while the Arizona District also eliminated or modified inconsistent and repetitive provisions and clarified unclear ones. The local strictures' renumbering and the new amendments should facilitate practice in the court and promote uniform national procedure, while attorneys and parties who litigate in the district must become familiar with the reconfigured numbering scheme and the amended rules.