

A State Court Practitioner's Guide to Louisiana Federal District Courts

By Peter M. Mansfield

Federal court is scary. At least that's what some Louisiana civil litigators have confessed concerning their infrequent, and sometimes unwilling, forays outside the familiar confines of Louisiana state courts. While unfamiliar to predominantly state court litigators, it need not be scary.

Consider what follows in the same way you might read the preface of a *Fodor's* or *Lonely Planet* book about an anticipated travel destination. It is by no means comprehensive or a substitute for experiential learning, but it is a helpful summary of the highlights of the location and a forewarning of some commonly occurring pitfalls.

Louisiana's Three Federal Judicial Districts

Much like Gaul in Julius Caesar's time, all of Louisiana is divided into three parts.¹

The Eastern District of Louisiana (EDLA) covers 13 parishes, primarily in the southeastern part of the state.² The courthouse is situated at downtown New Orleans, within a short walking distance of the 5th Circuit Court of Appeals building.³

The Western District of Louisiana (WDLA) covers the largest number of parishes (42) and square mileage.⁴ The WDLA is spread across five administrative divisions with courthouses in Alexandria, Lafayette, Lake Charles, Monroe and Shreveport.⁵

The Middle District of Louisiana (MDLA) is the newest federal judicial district in Louisiana, carved out of the EDLA in 1971.⁶ The MDLA covers nine parishes with the courthouse located in downtown Baton Rouge.⁷

What's Common to All Three Judicial Districts?

Before practicing in a Louisiana federal district court, you must be admitted to that court's bar.⁸ Each federal judicial district requires, and has, a separate admission.⁹ In the EDLA, an applicant in good standing with the Louisiana State Bar must submit an application with the supporting certification of two active members of the EDLA bar.¹⁰ The WDLA application is online, requires a Certificate of Good Standing from the Louisiana Supreme Court, and only one attorney's supporting certification.¹¹ The MDLA requires a current member of its bar to move for an applicant's admission and a second character certification from a current member.¹²

The attorney admission procedures for each court include a registration for e-filing with the case management/electronic case files (CM/ECF) system. Except for sealed or in camera submissions, none of the district clerk of courts permit paper filing.¹³

Once a matter is docketed in federal court — whether as a newly filed complaint, removed state court action, or a transfer from another federal court — it will be random assigned to a district court judge and one magistrate judge. Typically, the case stays in that section and division, unless it is a collateral proceeding or a re-

filed case. That is, if the subject matter of the new matter comprises all or a material part of another criminal or civil action then, or was previously pending before the court, the new matter is usually transferred to judges assigned to the older matter to “promote judicial economy, conserve judicial resources, and avoid potential forum shopping and conflicting court rulings.”¹⁴ All counsel are obligated to alert the courts of any related cases.

Consistent with Rule 1's goal (Federal Rules of Civil Procedure) to make federal litigation “inexpensive,” parties subject to service in federal court have “a duty to avoid unnecessary expenses of serving the summons.”¹⁵ By waiving formal service of a summons, defendants in federal court have almost three times as long to file responsive pleadings.¹⁶ They also avoid a potential cost-shifting sanction for refusing to execute a waiver without a good cause.¹⁷

Each court has slightly different procedures for assigning pre-trial deadlines and a trial date in a scheduling order. What's common among all three districts, and *all* federal district courts, is the paramount importance of meeting all deadlines in the scheduling order.¹⁸ Typically, the scheduling order will provide deadlines for Rule 26(a) initial disclosures, amendments of pleadings, depositions and discovery, expert reports, dispositive motions, witness and exhibit lists, motions in limine, settlement conferences, jury voir dire, jury interrogatories, jury instructions, proposed pre-trial orders, and trial memoranda. The order may also contain dates for interim status conferences, along with the final pre-trial conference and trial.

Rule 16(b)(4) provides that scheduling-order deadlines may be modified “only for good cause” and with the court's consent. The 5th Circuit has construed this standard to require consideration of four factors: 1) the explanation for the failure to meet the court's original scheduling-order deadline; 2) the importance of the otherwise untimely evidence or filing; 3) the prejudice in allowing the evidence or filing; and 4) the availability of a continuance to cure such prejudice.¹⁹ District courts, however, have broad discretion to preserve the integrity of a scheduling order and “power to control their dockets by refusing to give ineffective litigants a second chance to develop their case.”²⁰ Further, judges within the same court vary in what they

deem good-cause, important, prejudicial, or continuance-worthy. Therefore, the best practice is to assume the judge will deny all requests for scheduling-order extensions.

Finally, take the time to thoroughly read the scheduling order. Various sections of court have judge-specific requirements you could easily miss.²¹

Unique Procedures

Each federal district court in Louisiana has its own local rules. Some areas of divergence are listed below.

Eastern District of Louisiana

Defendants can secure one 21-day extension of time to file a first responsive pleading with an ex parte motion if plaintiff has not proactively filed into the record an objection with the initial complaint.²² Next, the court's case manager will set a telephonic scheduling conference, which typically occurs about two-to-four weeks after the defendant files its first responsive pleading, whether an answer or Rule 12 motion. Trial counsel must participate in the scheduling conference with a calendar handy to pick dates for the trial, final pre-trial conference, and any status conferences with the court. From there, the case manager will calculate the remaining pre-trial deadlines and generate a written scheduling order that, as explained above, will govern the progress of the case. The parties are not required to submit a formal Rule 26(f) discovery plan to the court but are required to exchange Rule 26(a) initial disclosures if they don't both agree to waive them.²³

The EDLA's local rules automatically refer all Title VII employment-discrimination cases, among other less frequently litigated matters, to the assigned magistrate judge to exercise the full jurisdiction of the district court under 28 U.S.C. § 636(c) with the consent of the parties, though either party may withhold consent and elect to proceed before the assigned district court judge.²⁴ The parties may consent to proceed before the magistrate judge in other cases, though they are responsible for executing and submitting the consent form to the court. Certain pre-trial motions, including, most significantly, all civil discovery motions, are referred to the assigned magistrate judge.²⁵ But district

judges in the EDLA typically don't refer case-dispositive motions to magistrate judges for reports and recommendations under Fed. R. Civ. P. 72(b)(1).

Counsel filing a contested motion in the EDLA must notice it for submission at least 15 days out.²⁶ Each judge in the EDLA has motion-submission dates listed online, which typically fall on Wednesdays.²⁷ Opposition memoranda are due no later than eight days before submission,²⁸ which can create some tight turnarounds if a weighty dispositive motion is filed with the minimum 15-day notice. EDLA local rules do not set a deadline for reply memoranda, though they are typically permitted if the filer timely seeks leave of court at least two business days before the submission date. Ex parte or consent motions don't need a separate memorandum of law or notice of submission but must include a proposed order.²⁹

The default rule for contested motions is that they're submitted on the papers only without any oral argument, in-court presentation, or live hearing unless a party files a separate request for oral argument.³⁰ From there, the district court may deny the request for oral argument and take up the motion on the papers only, hold oral argument on the date and time listed in the original notice of submission, or set a new date and time to accommodate oral argument.

The 13 judges in the EDLA vary in their approaches to settlement conferences with the assigned magistrate judge. Many require settlement conferences and set a deadline for them to occur, while others just indicate that a settlement conference is available if the parties desire to schedule one. Regardless, the standard pre-trial order form used in the EDLA requires the parties to certify to the court that they at least considered the possibility of settlement.

Western District of Louisiana

The WDLA has five administrative divisions with courthouses. Thus, WDLA practitioners must first figure out where their case will land. If a case is removed from state court, venue exists in the "division embracing the place where such action [was] pending" in state court.³¹ If a case is first filed in the WDLA, plaintiff's counsel will select an

administrative division from a dropdown menu on the CM/ECF system. While the general federal venue statute does not address administrative divisions,³² division selection typically corresponds to the domicile and convenience of the plaintiff. But that's not to say that the plaintiff's initial division choice always controls; the clerk or judges of the court may order an intra-district, inter-divisional transfer.³³ Generally, cases are assigned on a geographic basis to the judges in the division to which the case is allotted. But WDLA judges share caseloads across divisions.³⁴ For instance, Judge Terry A. Doughty sits in the Monroe division but receives a percentage of new case assignments in all five administrative divisions according to the WDLA's standing order on case assignment.³⁵

After defendant answers, the court will issue an order setting a deadline for submission of a Rule 26(f) report, and a date for a Rule 16 scheduling conference about a week thereafter. The parties have an opportunity in the Rule 26(f) report to indicate consent to trial before the magistrate judge under 28 U.S.C. § 636(c). Most sections of court in the WDLA automatically set default pre-trial deadlines in the scheduling order that are backed out from the assigned trial date.

A WDLA local rule lists 10 specific motions that don't require a separate memorandum in support or hearing date and may be filed with a proposed order and certificate of consent (or an attempt to secure consent).³⁶ The WDLA frequently refers contested motions to the assigned magistrate judge for a report and recommendation under Fed. R. Civ. P. 72(b)(1). After a motion is filed in the WDLA, the clerk of court will issue an order setting the motion for submission. This order will also contain deadlines for the opposition (21 days from motion-filing under local rules)³⁷ and the reply (usually seven days after the opposition). Parties may request oral argument, but the WDLA typically resolves motions exclusively on the written submissions.³⁸

Settlement conferences in WDLA cases vary from judge to judge; specific alternative-dispute-resolution requirements may be found in each judge's scheduling order. Parties seeking a settlement conference with a magistrate judge may schedule one with chambers.

Middle District of Louisiana

In a recent amendment to local rules, the MDLA now requires a certificate of interested persons,³⁹ which is broader than the corporate-disclosure statement required under Fed. R. Civ. P. 7.1(a). Parties must file: "A complete list of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent or subsidiary corporations, or other legal entities that are financially interested in the outcome of the case."⁴⁰ Counsel should use a model compliance form appearing on the MDLA's website.⁴¹

Shortly after a new civil matter is filed in the MDLA, the assigned magistrate judge will issue an order setting a scheduling conference with the parties. That scheduling conference is usually calendared a few months out to afford sufficient time for service, initial disclosures under Rule 26(a), and a Rule 26(f) conference between the parties. In that Rule 26(f) conference, the parties will select deadlines for amendments, discovery, expert reports and motions. The parties submit those proposed deadlines to the court in a status report due two weeks before the scheduling conference.⁴² In that status report, the parties also indicate whether there is unanimous consent to proceed before the magistrate judge under 28 U.S.C. § 636(c). Defendants may secure a 21-day extension of time to file a responsive pleading on ex parte motion if plaintiff has not previously filed an objection.⁴³

Once the parties submit their joint status report, the magistrate judge will usually cancel the scheduling conference at the parties' request and adopt the parties' proposed deadlines in a Rule 16(b) scheduling order. If necessary, the magistrate judge may hold the scheduling conference to address and resolve any issues or disputes appearing in the parties' status report. The court's scheduling order will also include dates for the pre-trial order, pre-trial conference and trial, based on the presiding district court judge's calendar and availability.

Discovery motions are typically referred to the assigned magistrate judge for resolution, though district court judges in the MDLA typically do not refer case-dispositive motions to magistrate judges for reports and recommendation.

The MDLA's local rules count forward when setting deadlines in motion practice. That is, an opposition memorandum to a contested motion is due 21 days after the motion is filed.⁴⁴ Reply memos are presumptively allowed for Rule 12 motions to dismiss and Rule 56 motions for summary judgment⁴⁵ and are due 14 days after the opposition. Oral argument is only allowed on court order,⁴⁶ which rarely occurs in the MDLA.

As in the WDLA, there are 10 specific motions listed in MDLA Local Rule 7(e) that do not require a separate memorandum in support, though the moving party must attempt to secure the opposing party's consent, and include a proposed order.⁴⁷ Further, the moving party is required to email a copy of that proposed order to the respective judge's chambers.

Parties desiring a settlement conference in the MDLA may schedule one directly with the assigned magistrate judge. While settlement conferences aren't mandatory in the MDLA, the parties must execute and submit to the court an affidavit of their settlement efforts before proceeding to trial.⁴⁸

Conclusion

While the deadline-intensive practice in Louisiana's federal district courts may appear a bit rigid at first blush, most experienced federal-court litigators appreciate the predictability and pace of the proceedings. Indeed, most would agree that these tried-and-true procedures afford parties a fair and timely opportunity to develop, prune, and settle or try their cases. Hopefully this short overview will guide you to the same conclusion when your journey into federal court is complete.

Author's Note: In late March 2023, the EDLA publicized a proposed change to LR 7.5 on reply memos. If eventually adopted, the amended rule would presumptively allow a reply memo without leave of court if filed three business days before the noticed submission date on the contested motion.

FOOTNOTES

1. 28 U.S.C. § 98.
2. *Id.* at § 98(a).
3. *Id.* The statute also lists an EDLA court location in Houma, *id.*, but the Judicial Conference of the United States released the Houma court-

room space in 2005 as a cost-cutting measure. Judicial Conference of the United States, *Report of Proceedings* 30 (March 15, 2005), www.uscourts.gov/sites/default/files/2005-03.pdf. Since then, the EDLA hears all cases in New Orleans. EDLA, *Order* (April 7, 2005), www.laed.uscourts.gov/sites/default/files/pdfs/Houma2.pdf.

4. 28 U.S.C. § 98(c).

5. *Id.* The statute also authorizes an Opelousas court location, *id.*, though the WDLA currently has no Opelousas division. WDLA LR 77.3.

6. Pub. L. 92-208, § 3, 85 Stat. 741 (1971).

7. 28 U.S.C. § 98(b).

8. Each federal judicial district has procedures for lawyer disciplinary enforcement that include suspension from practice in the respective district.

9. EDLA LR 83.2.1; WDLA LR 83.2.1; MDLA LR 83(b)(1). The New Orleans Chapter of the Federal Bar Association annually offers the Malcolm Monroe Federal Practice CLE, which conveniently concludes with a swearing-in ceremony for all federal courts in Louisiana, including the 5th Circuit Court of Appeals.

10. EDLA, *Petition for Admission to Practice*, www.laed.uscourts.gov/sites/default/files/forms/pfap-pkt.pdf (last visited July 23, 2022); EDLA LR 83.2.1-83.2.2.

11. WDLA, *Admissions Applications*, www.lawd.uscourts.gov/admission-applications (last visited July 23, 2022); WDLA LR 83.2.1-83.2.2.

12. MDLA, *Attorney Admission*, www.lamd.uscourts.gov/attorney-admission (last visited July 23, 2022); MDLA LR 83(b)(1)-(2).

13. EDLA, *Administrative Procedures for Electronic Case Filings and Unique Procedures and Practice for Electronic Filings*; WDLA, *Administrative Procedures for Filing Electronic Documents for Civil and Criminal Cases*; MDLA, *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Civil and Criminal Cases*. When a document is electronically filed in federal court, the CM/ECF system automatically generates an email to enrolled counsel that constitutes service of the filed document under Fed. R. Civ. P. 5(b)(2)(E). This is the exclusive means of service on enrolled counsel after service of the initial complaint. *See infra* notes 17-19 and corresponding text.

14. EDLA LR 3.1 & 3.1.1; WDLA LR 3.1; MDLA LR 3.

15. Fed. R. Civ. P. 4(d)(1).

16. Fed. R. Civ. P. 4(d)(2)-(3); *see also* Fed. R. Civ. P. 12(a)(1)(A)(ii).

17. Fed. R. Civ. P. 4(d)(2).

18. Fed. R. Civ. P. 16(b).

19. *Geiserman v. MacDonald*, 893 F.2d 787, 791 (5 Cir. 1990); *S&W Enters., LLC v. SouthTrust Bank of Alabama, NA*, 315 F.3d 533, 536 (5 Cir. 2003).

20. *S.W. Enters.*, 315 F.3d at 535-37 (internal citation omitted).

21. For instance, in the EDLA, one judge requires a status conference before a party files a motion for summary judgment under Rule 56. Others require submission of written status reports in advance of interim status conferences. And others have detailed instructions on the filing of deposition testimony, citations to record evidence, tables of contents/authorities, and delivery of courtesy paper copies of filings to chambers.

22. EDLA LR 7.8.

23. EDLA LR 26.1 & 26.2.

24. EDLA LR 73.2(C).

25. EDLA LR 72.1(A).

26. EDLA LR 7.2.

27. EDLA, *Motion Hearing and Oral Argument Dates*, www.laed.uscourts.gov/cases/motions/MoHear.htm (last visited July 23, 2022).

28. EDLA LR 7.5.

29. EDLA LR 7.3-7.4.

30. EDLA LR 7.2 & 78.1.

31. 28 U.S.C. § 1441(a). The WDLA's website and local rules list the various civil parishes covered by each of the five administrative divisions. *See* WDLA, *Clerk's Office*, www.lawd.uscourts.gov/clerk-office (last visited July 23, 2022); WDLA LR 77.3.

32. 28 U.S.C. § 1391.

33. *See generally* WDLA, *Guide to Practice* (March 1, 2022), www.lawd.uscourts.gov/sites/lawd/files/UPLOADS/GUIDE_TO_PRACTICE.030122.ppm.pdf ("Normally, cases are assigned to the division where the action arose or where a preponderance of the parties is located. However, assignment of cases is a matter of administration and is accomplished in accordance with the instructions of the Court.")

34. WDLA, *FAQ-How are judges assigned to cases?*, www.lawd.uscourts.gov/content/how-are-judges-assigned-cases (last visited July 23, 2022).

35. WDLA, *Standing Order – SO 1.61* (March 16, 2022), www.lawd.uscourts.gov/sites/lawd/files/UPLOADS/SO_1.61_2022March16_Signed.pdf.

36. WDLA 7.4.1.

37. WDLA LR 7.5.

38. WDLA LR 78.1.

39. MDLA LR 7.1 & 10(a)(4).

40. MDLA, *Certificate of Interested Persons*, www.lamd.uscourts.gov/sites/default/files/forms/LAMDCOIP.pdf (last visited July 23, 2022).

41. *Id.*

42. MDLA LR 26(a).

43. MDLA LR 7(a).

44. MDLA LR 7(f).

45. Reply memos for non-dispositive motions require leave of court, which is typically granted.

46. MDLA LR 78(b).

47. MDLA LR 7(e).

48. *See, e.g.*, MDLA, *Instructions for Preparing the Final Affidavit of Settlement Efforts for Civil Trials Before Judge John D. deGravelles*, www.lamd.uscourts.gov/sites/default/files/pdf/JWDInstructions.pdf (last visited July 23, 2022).

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