

# Informing Judicial Recusal Decisions: Party Disclosure of Financial Interests Information

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*Report to the Committee on Rules of Practice and Procedure  
of the Judicial Conference of the United States*

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FEDERAL JUDICIAL CENTER  
1999

This report was undertaken in furtherance of the Center's statutory missions to conduct and stimulate research on the operation of the federal courts and to assist the committees of the Judicial Conference of the United States. This report has been reviewed within the Center to ensure that its analysis is responsible and objective. The views expressed are those of the authors and not necessarily those of the Federal Judicial Center.



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## **Executive Summary**

Federal Rule of Appellate Procedure 26.1 is intended to assist appellate judges in identifying financial conflicts of interest for recusal purposes. This rule requires non-governmental corporate parties to file a statement identifying parent corporations and companies owning 10 percent or more of the party's stock.

No corresponding national rule governs the proceedings in the federal district and bankruptcy courts. In the absence of a national rule, a number of district and bankruptcy courts have enacted local rules on financial disclosure. Most local rules go beyond the disclosure requirements of FRAP 26.1—either by expanding the range of parties required to file information, or by requiring additional information from parties, or both. More than half of the courts of appeals have likewise expanded on the disclosure requirements of FRAP 26.1, by enacting supplemental local rules.

The local rules vary widely, and we detect no consensus approach. Drafters of any proposed disclosure rule may find it useful, though, to address the following questions raised by local rule variations:

- What parties should be subject to the disclosure requirements?
  - Should specific party types be exempt (e.g., amici curiae, intervenors)?
  - Should parties to specific categories of actions or proceedings (such as habeas corpus petitions) be exempt?
- What types of cases should be covered by disclosure requirements?
  - Should disclosure requirements cover civil cases only?
  - If criminal and/or bankruptcy cases are covered by disclosure, is the relevant “interests” information different from what is required in a civil case?
- What information should parties file?
  - Should disclosure be limited to identification of parent corporations and companies owning 10 percent or more of a party's stock?
  - Should disclosure include identification of subsidiaries? Affiliates? Will the rule define “affiliate”? If so, how?
  - Should disclosure extend to other specified legal entities? What are they?
  - Should disclosure extend to entities with a “general” interest in the outcome of litigation?
  - Should parties identify attorneys and law firms representing them?
- When must information be filed?
- How many copies of the disclosure statement must be filed?
- Should a negative report be required from parties with nothing to disclose?
- Should the parties have an affirmative obligation to update disclosure?
- Should sanctions for the failure to file disclosure be stated?
  - What sanctions will the court impose?
  - When will the party be delinquent in filing?
  - How will notice be handled?
- Should the format of the disclosure statement be specified in the rule?

## **Introduction**

Federal Rule of Appellate Procedure 26.1 provides for disclosure of financial information from corporate parties in the courts of appeals. The purpose of the rule is to assist appellate judges in identifying if they have financial conflicts of interest for recusal purposes. There is no corresponding national rule governing civil, criminal, and bankruptcy proceedings in the district and bankruptcy courts.

The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States is evaluating whether a national rule requiring financial interests disclosure in district and bankruptcy courts is necessary, and if so, how the rule should be structured. To inform its work, the Committee asked the Federal Judicial Center to study the practices and variations in methods used in appellate, district, and bankruptcy courts where financial information from parties is currently being filed. The study includes the courts of appeals, because many of them have local rules on disclosure that supplement the requirements set forth in FRAP 26.1.

We searched published and electronic database collections, and surveyed the clerk of court in each of the courts of appeals, district courts, and bankruptcy courts to compile local rules and other court-fashioned financial disclosure procedures. We analyzed key dimensions of the rules and procedures, and we organized the information into summary tables. The bulk of the report is made up of these tables.

In addition to the tables, the report contains information from district court personnel on the usefulness of disclosure rules in effect. To learn whether local filing requirements meet the needs of the individual district courts, and to learn about the efficacy of FRAP 26.1 filing requirements, we wrote to chief judges in district courts where financial disclosure is routine. In district courts where filing requirements are more extensive than those of FRAP 26.1, we asked whether judges found the additional information useful in detecting conflicts of interest and whether the judges were aware of instances in which limiting disclosure to FRAP 26.1 requirements would have failed to signal a conflict of interest. In district courts with filing requirements equivalent to FRAP 26.1, we asked whether the judges found the local rule sufficient to identify conflicts of interest and whether the information provided under the local rule had ever failed to signal a conflict of interest. We also conducted a brief case study of a court that adopted and then repealed a local rule on financial disclosure, after it found that the rule created more problems than it addressed. This report summarizes our findings.<sup>1</sup>

The report has five parts. Part I reproduces FRAP 26.1 for reference. Part II analyzes local rules on the disclosure of financial information in the courts of appeals and summarizes rule provisions in comparative tables. Part III offers corresponding information on local rules and other mandates in the district courts. Part III additionally describes district court views on the utility of the local rules in effect and provides a synopsis of one court's unsatisfactory experience with its local rule on disclosure. Part IV covers local rules found in the bankruptcy courts and rules applicable to bankruptcy appellate panels. Part V offers conclusions and a recapitulation of the main findings of the study.

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<sup>1</sup> Much of the material included in the report was provided in preliminary form to members of the Advisory Committees on Appellate, Bankruptcy, Civil and Criminal Rules for their respective Fall 1999 meetings. The preliminary materials were supplemented and reorganized for this report.

## **Part I. Federal Rule of Appellate Procedure 26.1**

FRAP 26.1 requires non-governmental corporate parties to identify their parents and major stockholders. The rule reads as follows:

### **Rule 26.1 Corporate Disclosure Statement**

(a) Who must file. Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement identifying all its parent corporations and listing any publicly held company that owns 10 percent or more of the party's stock.

(b) Time for Filing. A party must file the statement with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents.

(c) Number of copies. If the statement is filed before the principal brief, the party must file an original and 3 copies unless the court requires a different number by local rule or by order in a particular case.

FRAP 26.1 was added to the federal rules in 1989 to assist judges in making a determination of whether they have any interests in any of a party's related corporate entities that would disqualify the judges from hearing the appeal. Until recently, FRAP 26.1 required corporate parties to identify, in addition to parent corporations, all subsidiaries and affiliates of the party with shares issued to the public. Amendments that took effect in December 1998 deleted the requirement for identifying subsidiaries and affiliates, and added the requirement that corporate parties list publicly held companies owning 10 percent or more of the party's stock.<sup>2</sup> FRAP 29(c) indicates that a brief filed by a corporate amicus curiae must include a disclosure statement conforming to these requirements.

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<sup>2</sup> The portion of the Advisory Committee Note accompanying the 1998 amendments to FRAP 26.1 that explains substantive changes is reproduced below:

"Subdivision (a). The amendment deletes the requirement that a corporate party identify subsidiaries and affiliates that have issued shares to the public. Although several circuit rules require identification of such entities, the Committee believes that such disclosure is unnecessary.

"A disclosure statement assists a judge in ascertaining whether or not the judge has an interest that should cause the judge to recuse himself or herself from the case. Given that purpose, disclosure of entities that would not be adversely affected by a decision in the case is unnecessary.

"Disclosure of a party's parent corporation is necessary because a judgment against a subsidiary can negatively impact the parent. A judge who owns stock in the parent corporation, therefore, has an interest in litigation involving the subsidiary. The rule requires disclosure of all of a party's parent corporations, meaning grandparent and great-grandparent corporations as well. For example, if a party is a closely held corporation, the majority shareholder of which is a corporation formed by a publicly traded corporation for the purpose of acquiring and holding the shares of the party, the publicly traded grandparent corporation should be disclosed. Conversely, disclosure of a party's subsidiaries or affiliated corporations is ordinarily unnecessary. For example, if a party is a part owner of a corporation in which a judge owns stock the possibility is quite remote that the judge might be biased by the fact that the judge and the litigant are co-owners of a corporation.

The amendment, however, adds a requirement that the party lists all its stockholders that are publicly held companies owning 10 percent or more of the stock of the party. A judgement against a corporate party can adversely affect the value of the company's stock and, therefore, persons owning stock in the party have an interest in the outcome of the litigation. A judge owning stock in a corporate party ordinarily recuses himself or herself. The new requirement takes the analysis one step further and assumes that if a judge owns stock in a publicly held corporation which in turn owns 10 percent or more of the stock in the

## **Part II. Analysis of Financial Disclosure Filing Requirements in the Courts of Appeals**

FRAP 26.1 represents minimum disclosure requirements. When the rule was added to the Federal Rules of Practice and Procedure in 1989, the accompanying Advisory Committee Note stated “If a Court of Appeals wishes to require additional information, a court is free to do so by local rule.” Ten of the thirteen courts of appeals currently require additional information, and the mechanism for doing so is through local rule provisions.<sup>3</sup> Table 1 identifies the ten courts of appeals and their respective local rules below.

Table 1. U.S. Circuit Courts of Appeals Expanding the Requirements of FRAP 26.1

Court	Local Rule	Rule Title
Third Circuit	LR 26.1.1	Disclosure of Corporate Affiliations and Financial Interest
Fourth Circuit	LR 26.1	Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation
Fifth Circuit	LR 28.2.1	Certificate of Interested Parties
Sixth Circuit	LR 26.1	Corporate Disclosure Statement
Seventh Circuit	LR 26.1	Disclosure Statement
Ninth Circuit	LR 21-3	Certificate of Interested Persons
Tenth Circuit	LR 46.1(c)	Certification of Interested Parties
Eleventh Circuit	LR 26.1-1, 2, 3	Certificate of Interested Persons and Corporate Disclosure Statement
D.C. Circuit	LR 26.1	Disclosure Statement
Federal Circuit	LR 26.1; LR 47.4	Corporate Disclosure Statement, Certificate of Interest

### ***Analysis of the Rules***

The local rules in the courts of appeals differ from one another and from the national rule on several dimensions, the most significant being: (1) who must file the information and (2) what type of information is required. These dimensions determine the scope of the additional information sought.

#### **Who must file**

FRAP 26.1 requires only non-governmental corporate parties to file financial information. Each of the courts listed in Table 1 has extended the range of parties required to file.

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party, the judge may have sufficient interest in the litigation to require recusal. The 10 percent threshold ensures that the corporation in which the judge may own stock is itself sufficiently invested in the party that a judgment adverse to the party could have an adverse impact upon the investing corporation in which the judge may own stock. This requirement is modeled on the Seventh Circuit’s disclosure requirement.

<sup>3</sup> Three courts of appeals do not require additional information. The First and Second circuits have no relevant local rule. The Eighth Circuit has a local rule titled L.R.26.1.A., Corporate Disclosure Statement, which modifies the timing of the filing of the disclosure statement, but does not require additional information from parties.

The Ninth Circuit and District of Columbia Circuit have the least expanded range. The former requires petitioners for writs of mandamus, prohibition, and other extraordinary writs to adhere to FRAP 26.1; the latter requires filings from every party that is “a corporation, association, joint venture, partnership, syndicate, or other similar entity appearing as a party or amicus in any proceeding.” Several courts with otherwise expansive rules exempt governmental parties from filing (Fourth, Fifth, Sixth, Seventh, and Federal circuits).<sup>4</sup> Two courts limit disclosure in criminal cases to corporate defendants only (Fourth and Sixth circuits).

The Tenth and Eleventh circuits impose disclosure on the widest range of litigants. The Tenth Circuit requires information from all parties. The Eleventh Circuit requires information from all “appellants, appellees, intervenors and amicus curiae, including governmental parties.”

The Third Circuit has a two-tiered set of filing requirements. The court requires all parties to determine whether public corporations with a financial interest in the outcome of litigation exist, and if so, to identify the corporations. For corporate parties and parties to an appeal in a bankruptcy case, there are then additional disclosure requirements specific to case type.

### Type of Information

FRAP 26.1 requires corporate parties to identify parent corporations and publicly held companies owning 10 percent or more of the party’s stock. The Seventh, Ninth, and Federal circuits have expanded filing requirements by imposing disclosure on parties that FRAP 26.1 does not reach, but these courts do not otherwise require additional information.<sup>5</sup>

The other seven courts vary as to the additional information parties must disclose. The scope of departure from FRAP 26.1 information requirements is quite broad in some courts of appeals. The differences from court to court are also considerable.

The District of Columbia Circuit represents a comparatively modest departure from FRAP 26.1. This court requires parties (which are corporations, associations, joint ventures, partnerships, syndicates or similar entities) to disclose their general nature and, if they are unincorporated entities with no ownership interests, to disclose the names of any members that have issued shares or debt securities to the public.

Broader disclosure is in effect in other courts. The additional information essentially involves having a party identify one or both of the following:

- (1) publicly owned entities with a specific *financial connection* to the party;
- (2) entities with a more general *financial interest* in the outcome of the litigation.

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<sup>4</sup> In the Federal Circuit, the exemption is limited to the US government. The Fourth Circuit exempts the US government, but state and local governments are exempt only when the opposing party is proceeding without counsel. The Seventh Circuit requires disclosure if a governmental party is represented by a private attorney.

<sup>5</sup> The Seventh Circuit procedure does, however, demand a listing of law firms appearing for the party or amicus in the case on appeal, or involved in proceedings in the district court or before an administrative agency.

In practice, the distinction between *connection* and *interest* is often blurred. The blurring results from requirements for *financial interest* information that depend on an awareness of the *financial connections* between entities.

The Third, Fourth, and Sixth circuits require *financial connections* information. Corporate parties in the Third and Sixth circuits respond to disclosure demands by listing publicly owned corporate affiliates. Parties in the Fourth Circuit respond by listing publicly held corporations with direct financial interests in the outcome of the litigation by reason of a franchise, lease, other profit sharing agreement, insurance or indemnity agreement. Where disclosure applies to public corporations, parties in the Fourth Circuit must list similarly situated master limited partnerships, real estate investment trusts, and other legal entities whose shares are publicly held or traded. Trade associations in the Fourth Circuit must identify all members of the association, their parent corporations, and any publicly held companies that own 10 percent or more of a member's stock. The Fourth Circuit's requirement for financial connections information is conditioned on the disclosed entities' financial interests in the outcome of litigation.

The Third, Fourth, and Sixth circuits require *financial interests* information in addition to *financial connections* information. The Fifth, Tenth, and Eleventh circuits likewise require *financial interests* information. The Third Circuit requires parties to identify "every publicly owned corporation...that has a financial interest in the outcome of the litigation and the nature of that interest." The Fifth, Tenth, and Eleventh circuits require parties to identify persons, associations (or associations of persons), firms, partnerships, and corporations with an interest in the outcome of litigation. The list of entities further includes guarantors, insurers, affiliates and other financially interested legal entities in the Fifth and Tenth circuits, and subsidiaries, conglomerates, trial judges, and attorneys interested in the outcome in the Eleventh Circuit. The Sixth Circuit requires parties to list publicly held corporations and affiliates which have a substantial interest in the outcome of the litigation that is aligned with the interests of the party by reason of insurance, a franchise agreement, or an indemnity agreement.

The Fourth Circuit, as earlier noted, requires parties to identify entities with a direct *financial interest* in the outcome of litigation by reason of specific *financial connection* to the party. The rule in this circuit demonstrates how intertwined can be entities' financial interests and connections to the parties.

Additional disclosure provisions appear in some local rules. The Third, Fourth, and Sixth circuits require parties to specify the "nature of the interest" of entities with an interest in the outcome of the litigation. The Fifth, Seventh and Federal circuits require parties to identify past and/or present attorneys and law firms representing a party to a proceeding. The Eleventh Circuit requires government disclosure of victims in criminal appeals and disclosure of specific information related to bankruptcy appeals (the name of the debtor, the members of the creditor's committee, any entity which is an active participant in the proceedings, and other entities whose stock or equity value may be substantially affected by the outcome of the proceedings).

### ***Financial Disclosure Requirements in the Courts of Appeals***

To frame the variations in financial disclosure rules used in circuit courts of appeals, we analyzed key dimensions of the rules and organized the information into summary tables.

The tables permit analysis of individual rule departures from FRAP 26.1, and also permit intercourt comparison of local rules. The following dimensions are listed:

- (1) the types of parties required to file financial interests information, beyond the requirement for non-governmental corporate parties to file (Extension of the FRAP 26.1 Requirements on Who must file);
- (2) the type of information required, beyond the requirements for identifying corporate party parents and listing publicly held companies owning 10 percent or more of the corporate party's stock (Extension of the FRAP 26.1 Requirements for Disclosure of Financial Interest Information);
- (3) the time for filing the information (Time of initial filing);
- (4) the existence of any requirement for parties with nothing to disclose to submit a negative report so stating (Negative report);
- (5) the form of the disclosure (Disclosure form);
- (6) the number of copies required to be filed (Number of copies);
- (7) the applicability of the rule to various case types and proceedings (Scope of applicability);
- (8) the existence of a stated duty for parties to update disclosed information (Obligation to update); and
- (9) additional relevant information (Note).

Notes on table entries:

- (a) Where a local rule refers to "counsel for the parties" or uses a similar phrase to identify who must file disclosure, we have substituted "parties" for the sake of brevity (see Extension of the FRAP 26.1 Requirements on Who must file).
- (b) We use the phrase "identification of (e.g., parent companies, subsidiaries, and affiliates)" to summarize the type of information required of parties (see Extension of the FRAP 26.1 Requirements for Disclosure of Financial Interest Information). Local rules may use more precise phrasing; counsel may be required, for example, to "certify" a list of the names of interested parties.
- (c) Some courts require identification of law firms, partners, etc., which currently or previously represented the party in the issue before the court. These requirements are noted in the tables even though they are not directly related to the report (see entries titled Extension of the FRAP 26.1 Requirements for Disclosure of Financial Interest Information and Note).

## **U.S. Court of Appeals for the Third Circuit**

### **Local Rule 26.1.1, Disclosure of Corporate Affiliations and Financial Interest**

#### *Extension of the FRAP 26.1 requirements on who must file*

Every party to an appeal, unless the party has nothing to report

#### *Extension of the FRAP 26.1 requirements for disclosure of financial interest information*

From all parties (unless the party has nothing to report): identification of every publicly owned corporation not a party to the appeal that has a financial interest in the outcome of the litigation and the nature of that interest (financial interests information);

If the party is a corporation: identification of every publicly owned corporation not named in the appeal with which the party is affiliated (financial connections information);

If the appeal is from a bankruptcy case, the debtor or trustee of the bankruptcy estate or, if the debtor or trustee is not a party, the appellant, must additionally identify (1) the debtor, if not named in the caption, (2) the members of the creditors' committees or the top 20 unsecured creditors, and (3) any entity not named in the caption which is an active participant in the proceeding

#### *Time of initial filing*

Financial interests information: with the FRAP 26.1 disclosure statement

Financial connections information: promptly after the notice of appeal is filed

Bankruptcy appeals supplemental information: a list is to be provided "promptly" to the clerk

#### *Negative report*

Financial interests information: a negative report should *not* be filed

Financial connections information: a negative report is required

#### *Disclosure form*

Financial interests information: should be provided on the FRAP 26.1 disclosure statement

Financial connections information: should be filed on a form provided by the clerk; detail of the form is not prescribed by rule

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

Civil, bankruptcy, and criminal cases

#### *Obligation to update*

The local rule is silent.

#### *Note*

Local Rule 26.1.2, Notice of Possible Judicial Disqualification, requires appellant to notify the Clerk if any judge of the Court participated at any stage of the case, in the trial court or in related state court proceedings. If appellant fails to notify the Clerk, the appellee is responsible for doing so.

## **U.S. Court of Appeals for the Fourth Circuit**

### **Local Rule 26.1, Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation**

*Extension of the FRAP 26.1 requirements on who must file*

All parties to a civil or bankruptcy case, and all corporate defendants in a criminal case; the rule does not apply to the United States, or to state or local government in cases where the opposing party is proceeding without counsel, or to parties proceeding in forma pauperis

*Extension of the FRAP 26.1 requirements for disclosure of financial interest information*

Identification of any publicly held corporation, whether or not a party to the litigation, that has a direct financial interest in the outcome of the litigation by reason of a franchise, lease, other profit sharing agreement, insurance, or indemnity agreement (Rule 26.1(b)(2)); identification of similarly situated master limited partnerships, real estate investment trusts, or other legal entities that have issued public shares (Rule 26.1(b)(3)); identification by a trade association of association members, their parent corporations, and any publicly held companies that own 10 percent or more of a member's stock (Rule 26.1(b)(1))

*Time of initial filing*

Within 10 days of receiving the notice of docketing and the disclosure form; if earlier pleadings are submitted to the Court, the disclosure shall be filed at that time

*Negative report*

Required

*Disclosure form*

Form A. Disclosure of Corporate Affiliations and Other Entities With a Direct Financial Interest in Litigation

*Number of copies*

One (see directions to Form A)

*Scope of applicability*

Civil, bankruptcy, and criminal cases

*Obligation to update*

Stated

*Note*

Form A provides for the disclosure of information prescribed in the local rule, *and additionally*, instructs parties to state the nature of each named entity's financial interests

## **U.S. Court of Appeals for the Fifth Circuit**

### **Local Rule 28.2.1, Certificate of Interested Persons**

*Extension of the FRAP 26.1 requirements on who must file*

All non-governmental parties, including unrepresented parties.

*Extension of the FRAP 26.1 requirements for disclosure of financial interest information*

Identification of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent corporations, or other legal entities financially interested in the outcome of the litigation; if a large group of persons or firms can be specified by a generic description, individual listing is not required; identification of the opposing law firms and/or counsel in the case; counsel is obliged to disclose known information on all sides of the case, not merely for the represented party.

*Time of initial filing*

The local rule is silent.

*Negative report*

The local rule is silent.

*Disclosure form*

Certificate of Interested Persons; the form is prescribed in the local rule.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Not explicitly specified, although the rule is intended to be broad in scope.

*Obligation to update*

The local rule is silent.

## **U.S. Court of Appeals for the Sixth Circuit**

### **Local Rule 26.1, Corporate Disclosure Statement**

#### *Extension of the FRAP 26.1 requirements on who must file*

All parties and amici curiae to a civil case or bankruptcy case, agency review proceeding, or original proceeding, and all corporate defendants in a criminal case, *unless* the party is the United States or an agency thereof, or is a state government or an agency or political subdivision thereof.

#### *Extension of the FRAP 26.1 requirements for disclosure of financial interest information*

From a corporate party or corporate amicus curiae that is a subsidiary or affiliate of any publicly owned corporation not named in the appeal: identification of the publicly owned parent corporation or affiliate, and the nature of the corporate relationship (a corporation is deemed an affiliate of a publicly owned corporation for purposes of the rule if it controls, is controlled by, or is under common control with a publicly owned corporation).

From parties and amicus curiae generally: identification of any publicly owned corporation or its affiliate, not a party or an amicus to the appeal, which has a substantial financial interest in the outcome of the litigation that is aligned with the financial interest of the party or amicus by reason of insurance, a franchise agreement, or indemnity agreement, and additionally, identification of the nature of the substantial financial interest held by the corporation or its affiliate.

#### *Time of initial filing*

Whichever occurs first among possibilities that include the filing of a brief, motion, response, petition, or answer.

#### *Negative report*

Required, except of individual criminal defendants.

#### *Disclosure form*

Form 6 CA-1, Disclosure of Corporate Affiliations and Financial Interest, is provided by the clerk.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

Civil cases, bankruptcy cases, criminal cases, agency review cases, and original proceedings.

#### *Obligation to update*

The local rule is silent.

## **U.S. Court of Appeals for the Seventh Circuit**

### **Local Rule 26.1, Disclosure Statement**

*Extension of the FRAP 26.1 requirements on who must file*

All non-governmental parties or amicus curiae and every private attorney representing a governmental party.

*Extension of the FRAP 26.1 requirements for disclosure of financial interest information*

Identification of the names of all law firms whose partners or associates have appeared for the party or amicus in the case (including proceedings in the district court or before an administrative agency) or who are expected to appear.

*Time of initial filing*

With the principal brief or upon filing a motion, response, petition, or answer in the court, whichever occurs first.

*Negative report*

The Disclosure Statement form directs counsel to indicate when requested information is not applicable (but use of the form is not mandatory and the local rule is silent on whether a negative report is required).

*Disclosure form*

A form titled Disclosure Statement is available and its use is encouraged.

*Number of copies*

The local rule is silent.

*Scope of applicability*

The local rule is silent.

*Obligation to update*

The Disclosure Statement form advises that “(t)he attorney furnishing the statement must file an amended statement to reflect any material changes in the required information”; use of the form is encouraged but not required by the court.

## **U.S. Court of Appeals for the Ninth Circuit**

### **Local Rule 21-3, Certificate of Interested Persons**

The rule reads: “Petitions for writs of mandamus or prohibition, and for other extraordinary writs, shall include the corporate disclosure statement required by FRAP 26.1 and the statement of related cases required by Circuit Rule 28-2.6.”

## **U.S. Court of Appeals for the Tenth Circuit**

### **Local Rule 46.1(c), Certification of Interested Parties**

#### *Extension of the FRAP 26.1 Requirements on Who must file*

All parties.

#### *Extension of the FRAP 26.1 requirements for disclosure of financial interest information*

Identification of all persons, associations, firms, partnerships, corporations, guarantors, insurers, affiliates, and other legal entities that are financially interested in the outcome of the litigation; additionally, identification of attorneys not entering an appearance if they have appeared for any party in a proceeding where review is sought, or in related proceedings that preceded the original action pursued in the court; if a large group of persons or firms can be specified by a generic description, an individual listing is unnecessary.

#### *Time of initial filing*

Filed with each entry of appearance (entry of appearance must be filed within ten days of the filing of an appeal or other proceeding).

#### *Negative report*

Required.

#### *Disclosure form*

Appendix A, Form 2. Entry of Appearance and Certificate of Interested Parties.

#### *Number of copies*

The original and three copies (specified in the instructions for Form 2).

#### *Scope of applicability*

Not explicitly specified, but court staff indicated in private communication that the rule applies to all case types and proceedings.

#### *Obligation to update*

Stated.

## **U.S. Court of Appeals for the Eleventh Circuit**

### **Certificate of Interested Persons and Corporate Disclosure Statement Local Rule 26.1-1, Contents; Local Rule 26.1-2, Time for Filing; Local Rule 26.1-3, Format**

#### *Extension of the FRAP 26.1 requirements on who must file*

Appellants, appellees, intervenors and amicus curiae, including governmental parties.

#### *Extension of the FRAP 26.1 requirements for disclosure of financial interest information*

Identification of the trial judge(s), all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held company that owns 10 percent or more of the party's stock, and other identifiable legal entities related to a party; in criminal or criminal-related appeals, identification of the victim(s); in a bankruptcy appeal, identification of the debtor, the members of the creditor's committee, any entity which is an active participant in the proceedings, and other entities whose stock or equity value may be substantially affected by the outcome of the proceedings.

#### *Time of initial filing*

Included within the principal brief filed by any party and included within any petition, answer, motion or response filed by an party (except for unopposed motions for procedural orders described in Local Rule 27-1(c)).

#### *Negative report*

The local rule is silent.

#### *Disclosure form*

The format of the Certificate of Interested Persons and Corporate Disclosure Statement, which is an alphabetical list of persons and entities, is described with particularity in Local Rule 26.1-3.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

Criminal and bankruptcy cases (these case types receive specific mention in the rule); applicability is inferred for civil cases, agency review, and original proceedings.

#### *Obligation to update*

The local rule is silent.

#### *Note*

Local Rule 26.1-2 states: "The clerk is not authorized to submit to the court any brief (except the reply brief of an appellant or cross-appellant), petition, answer, motion or response which does not contain the certificate, but may receive and retain the papers pending supplementation of the papers with the required certificate." The court's internal operating procedures manual states that the court will not act on any papers requiring the disclosure form, including emergency filings, until the form is filed, except to prevent injustice.

## **U.S. Court of Appeals for the District of Columbia Circuit**

### **Circuit Rule 26.1, Disclosure Statement**

#### *Extension of the FRAP 26.1 requirements on who must file*

Every party that is a corporation, association, joint venture, partnership, syndicate, or other similar entity appearing as a party or amicus in any proceeding

#### *Extension of the FRAP 26.1 requirements for disclosure of financial interest information*

Identification of the general nature and purpose of the entity (party) insofar as relevant to the litigation; if the entity (party) is an unincorporated entity whose members have no ownership interests, the disclosure statement must list the names of the members of the entity that have issued shares or debt securities to the public.

No identification of members of a trade association or professional association is required.

#### *Time of initial filing*

As specified in FRAP 26.1, or within seven days of service of the docketing statement or granting of an intervention motion (if the party is a respondent, appellee, or intervenor) (Circuit Rule 12(f) and Circuit Rule 15(c)(6)), or as otherwise ordered by the court.

#### *Negative report*

The local rule is silent.

#### *Disclosure form*

The local rule is silent.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

All proceedings.

#### *Obligation to update*

The local rule is silent.

#### *Note*

The rule defines “parent companies” for FRAP 26.1 disclosure purposes as including all companies controlling the specified entity directly, or indirectly through intermediaries.

The rule defines a “trade association” as a continuing association of numerous organizations or individuals operated for the purpose of promoting the general commercial, professional, legislative, or other interests of the membership.

## **U.S. Court of Appeals for the Federal Circuit**

### **Local Rule 26.1, Corporate Disclosure Statement**

### **Local Rule 47.4, Certificate of Interest**

**Federal Circuit Rule 26.1 directs parties to provide FRAP 26.1 information in the Certificate of Interest required by Federal Circuit Rule 47.4. Federal Circuit Rule 47.4 prescribes the entries in the table below.**

#### *Extension of the FRAP 26.1 Requirements on Who must file*

All parties, intervenors, and amicus curiae other than the United States.

#### *Extension of the FRAP 26.1 Requirements for Disclosure of Financial Interest Information*

The local rule is silent.

#### *Time of initial filing*

Filed with the entry of appearance, and also filed with any motion, petition, or response, and in each principal brief and brief amicus curiae (L.R. 47.4).

#### *Negative report*

Required.

#### *Disclosure form*

Appendix of Federal Circuit Forms, Form 6. Certificate of Interest.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

Applicability is inferred for civil cases and agency review proceedings; the court has no jurisdiction over criminal or bankruptcy matters.

#### *Obligation to update*

Stated; party must file an amended certificate within seven days of the change.

#### *Note*

The requirements of FRAP 26.1 are satisfied by filing a certificate of interest under Federal Circuit Rule 47.4.

Local Rule 47.4 requires identification of law firms and partners and associates who have appeared for the party in the lower tribunal or who are expected to appear for the party in a circuit proceeding; the rule requires additional information as well, but the specifics are not relevant to this inquiry.

### Part III. Analysis of Financial Disclosure Filing Requirements in the District Courts

No national counterpart to FRAP 26.1 exists for the federal district and bankruptcy courts. Through standard legal research methods and a national survey of all district clerk's offices, we identified twenty-five federal district courts which have some type of filing requirement. Twenty district courts have a local rule on point, and in five other district courts, either the court or individual judges within the court have fashioned alternative procedures for obtaining financial interests information from parties.<sup>6</sup> We identified, in addition, two district courts with local rules in the proposal stage, and a district court that enacted, and recently repealed, a local rule on disclosure. Table 2 identifies the twenty-eight district courts with relevant rules or procedures revealed by our search; the listing is alphabetical by state.

This part of the report analyzes local rules and other directives relating to disclosure of financial information in the district courts. There are four sections. The first discusses some of the variations in local rules and practices. The second summarizes the results in comparative tables. The third reports on a limited inquiry we made into chief judge impressions of the need for expanded disclosure requirements. The fourth provides information on the experience of the District of Kansas, which implemented and then repealed a local rule on disclosure of financial interests information.

Table 2. U.S. District Courts Requiring Party Disclosure of Financial Interests Information

Court	Local Rule or Directive	Rule Title or Explanation of Directive
S.D. Ala.	LR 3.2	Disclosure Statement
E.D.Ark.	other directives	Some judges require pending acquisitions and mergers information from parties in their scheduling order. One judge directs counsel to check a list of his financial holdings placed on file with the clerk's office; counsel must alert the judge to possible financial conflicts of interest.
C.D. Cal.	LCvR 4.6	Certification as to Interested Parties
	Ch.VI Rule 2.2	Local Bankruptcy Rules, Filing the Notice of Appeal
	Ch.VI. Rule 6.1	Local Bankruptcy Rules, Withdrawal of Reference from the Bankruptcy Court
D.D.C.	LCvR 26.1	Disclosure of Corporate Affiliations and Financial Interests

<sup>6</sup> The number of courts with filing requirements may change before this report is issued, as staff in several district courts reported that their court is considering adoption of a relevant local rule. Indeed, we learned that one court adopted a local rule a few months after the clerk informed us that the court had no rule, and we located another new local rule (included in the tables) as this report went to press.

We completed our search for local rules in database collections in June 1999. We surveyed clerks of courts in all district and bankruptcy courts in July, asking them to check the search results for accuracy. Responses came to us over a period of several months. With follow-up mailings, all but seven district courts and six bankruptcy courts responded to the request for information by November.

*Informing Judicial Recusal Decisions: Party Disclosure of Financial Interests Information*

M.D.Fla.	orders	One judge requires disclosure by standing order; another requires disclosure through use of orders and case management tools.
N.D. Ga.	LCvR 3.3	Certificate of Interested Parties
S.D.Ga.	LCvR 3.2	Disqualification of Judges Local Rules for the Administration of Criminal Cases
N.D. Ill.	GenR 2.23	Notification as to Affiliates
S.D. Ill.	LR 11.1.b	Disclosure of Interested Parties/Affiliates
C.D. Ill.	GenR 11.3	Certificate of Interest
D. Kan.	<i>repealed</i> LR 3.2; orders; public access to lists of financial holdings	LR 3.2, Required Certification of Interested Parties, has been repealed. Some judges continue to collect financial interests information from parties; some judges instruct counsel to check a list of financial holdings placed on file with the clerk and notify them if there is a potential financial conflict of interest.
D.Me.	LCvR 83.7 LBankR 1002-1(b)(3)	Corporate Disclosure Statement Disclosure Statement
D.Md.	LCvR 103.3	Disclosure of Affiliations and Financial Interest
E.D.Mi.	L.R. 83.4	Disclosure of Corporate Affiliations and Financial Interest
N.D. Miss. <sup>a</sup>	<i>proposed</i> L.R. 3.1(D)	Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation
S.D.Miss. <sup>a</sup>	<i>proposed</i> L.R. 3.1(D)	Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation
E.D. Mo.	LR 2.09	Disclosure of Corporation Interests
W.D. Mo.	LCvR 3.1	Disclosure of Corporation Interests
D. Nev.	LR 10-6	Certificate as to Interested Parties
D.N.H.	LCvR 3.6(a)(4)	Appearances
E.D.N.Y. <sup>a</sup>	LCvR 1.9	Disclosure of Interested Parties
S.D.N.Y. <sup>a</sup>	LCvR 1.9	Disclosure of Interested Parties
W.D. Pa.	LR 3.2	Disclosure Statement
D.S.C.	LR 26.01; 26.03(I); 26.04; 26.06(J); 26.07	General Provisions Governing Discovery; Duty of Disclosure
S.D. Tex.	pretrial order	Individual judges mandate financial disclosure using a standing order served on parties during the initial pretrial and scheduling conference.
D. Vt.	general order	General Order No. 45, In Re: Disclosure of Corporate Interests
E.D. Wis.	LR 5.05	Certificate of Interest
W.D.Wis.	operating procedure	Private parties that are businesses, companies, or corporations are expected to disclose financial interests information on a form provided by the clerk; there is no local rule or court-wide standing order in effect to compel disclosure.

<sup>a</sup> The district courts listed from the same state operate under uniform local rules provisions.

## **Analysis of the Rules**

Most of the district courts appearing in Table 2 have broader filing requirements than the current requirements of FRAP 26.1. Not surprisingly, a number of them have disclosure provisions modeled on the precursor requirements of FRAP 26.1, which required identification of affiliates and subsidiaries that are not wholly owned (e.g., D.Me., W.D.Mo., D.N.H., D.Vt.).

The 1998 amendment eliminating the need to identify subsidiaries and affiliates is too recent to have had widespread impact as a model in the district courts. Nonetheless, the current version of FRAP 26.1 has been the model for a few recently enacted district court local rules. Two courts have filing requirements equivalent to the current FRAP 26.1 requirements (C.D.Ill. and E.D.Wis.).<sup>7</sup> One court has filing requirements incorporating elements from both the current and precursor versions of FRAP 26.1 (E.D.Mo.). Our search also revealed that one court arguably has filing requirements that are narrower than FRAP 26.1 (W.D.Pa.).<sup>8</sup>

Variations in rules and procedures are as plentiful among the district courts as they are among the circuit courts of appeals. The rules differ from each other and from FRAP 26.1 on a number of dimensions, the most significant being: (1) who must file the information; (2) the types of cases subject to the rule; and (3) what type of information is required. We highlight some of the differences on these dimensions, including in the discussion not only active, but also proposed and repealed rules.<sup>9</sup>

### **Who must file**

Among the district court local rules, there is considerable variation in who must disclose information. At one end of the range is the narrow requirement borrowed from FRAP 26.1 obliging “non-governmental corporate parties” to file disclosure statements (e.g., D. Me., E.D. Mo., W.D. Mo., D. Vt.). The requirement expands only slightly to encompass “corporate parties and corporate intervenors” in another court (D.D.C.).

The type of party required to file disclosure statements is more widely drawn in other courts. Several apply the requirement to other parties with an obvious business connection (e.g., N.D.Ill., where a party that is an affiliate of a public company is required to file information; W.D.Pa., with filing requirements for any “corporation, association, joint

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<sup>7</sup> The Central District of Illinois and Eastern District of Wisconsin local rules conform with FRAP 26.1, except that they require disclosure from *amicus curiae* in addition to corporate parties.

<sup>8</sup> FRAP 26.1 requires disclosure of any publicly held company that holds 10 percent or more of the party’s stock. The disclosure mandated by Local Rule 3.2 in the Western District of Pennsylvania is limited to a publicly held company which is an “affiliate” of the party, where “affiliate” is defined as “a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified entity.” One of the court’s judges has pointed out that unless a 10 percent ownership would be a controlling interest, disclosure would not be mandated under the local rule, making the requirements less broad than those of FRAP 26.1.

<sup>9</sup> Some courts have the same rule provisions. Citations made in this report to the rule in the Northern District of Mississippi or the Eastern District of New York incorporate by reference the complementary court with uniform local rules (S.D.Miss. and S.D.N.Y. respectively). Citation to the local rule in the Western District of Pennsylvania incorporates by reference the rule in the Southern District of Alabama, which is identical. The local rule in the Central District of Illinois is identical to the rule in the Eastern District of Wisconsin, except for minor word changes.

venture, partnership, syndicate, or other similar entity appearing as a party or amicus in any proceeding”; and D.S.C., with filing requirements for “any party (plaintiff or defendant) that is either a publicly owned entity, or is a partner, parent, subsidiary or affiliate of a publicly owned entity”). In two courts, filing is required of parties completing the pretrial phase of litigation, without regard to whether the party is a business (E.D.Ark., S.D.Tex.).

The broadest filing requirements compel early disclosure in civil cases from “all parties” (e.g., C.D.Cal., D.Kan., N.D.Miss.), “all non-governmental parties and amicus curiae unless the party is a pro se litigant” (C.D. Ill.), and “all private non-governmental parties” (e.g., N.D. Ga., S.D. Ill., E.D.N.Y.). Broad filing requirements are more common than narrow filing requirements.

In a few instances, courts have specified particular exemptions or inclusions in the party types expected to disclose information. Three courts exempt individuals filing habeas corpus (D.Nev., D.S.C., S.D.Tex.). Two courts exempt pro se litigants (C.D.Ill., D.S.C.). Other courts exempt parties in bankruptcy proceedings (D.S.C.) or parties filing bankruptcy appeals (S.D.Tex.). The District of South Carolina and the Southern District of Texas list additional parties exempt from filing.

Amicus curiae parties are specifically noted as *inclusions* in a few of the courts’ requirements to file (S.D.Ala., C.D.Ill., W.D.Pa., E.D.Wis.).

## Types of Cases

Some district courts limit the disclosure to civil litigants only. Some require disclosure in criminal cases, from either corporate defendants or the government. Bankruptcy proceedings are explicitly covered by the disclosure requirement in some of the district courts. Applicability of disclosure requirements to bankruptcy proceedings in other district courts is ambiguous. The local rules in a few of the district courts note applicability to special case categories involving agency review and maritime proceedings.

## Types of Information

The scope of information that parties are required to disclose varies greatly among the district courts. Essentially, however, each court requires parties to identify one or both of the following: (1) entities having specific *financial connections* with the party and (2) entities with a *financial interest* in the outcome of the litigation (and, additionally, the nature of the interest). These categories are not mutually exclusive and, as we noted in the discussion of the appellate court local rules, the distinction is blurred in practice.

Information on financial connections typically involves a listing of parent corporations, subsidiaries not wholly owned, and affiliates that are publicly held (e.g., D.Me., E.D.Mi., W.D.Mo., D.N.H., D.Vt.). A few courts specify what is meant by the term “affiliate” (e.g., N.D.Ill., E.D.Mi., W.D.Pa.). Typically, a corporation is considered an affiliate of a publicly owned corporation if it controls, is controlled by, or is under common control with the publicly owned corporation. Other financial connections information can include identification of entities such as similarly situated master limited partnerships, real estate investment trusts, joint ventures, and syndicates (N.D.Miss.).

Information on financial interests involves either listing entities with “a substantial financial interest”, or simply “an interest” in the outcome of the litigation. Many courts il-

lustrate the kind of entities that may have financial interests in the case. These lists include subgroups of entities such as associations of persons, firms, partnerships and corporations, unincorporated associations, and officers, directors, or trustees of parties. Some local rules also provide for the identification of insurers (e.g., C.D.Cal., D.Kan., D.Md., E.D.Mi.).

One local rule simply requires parties to identify all public corporations with a financial interest in the outcome of the case (S.D.Ill.). Another shows the crossover of *financial connections* and *financial interests* information by requiring a list of persons, associations of persons, firms, partnerships, or corporations having a financial or other interest which could be substantially affected by the outcome of the case, specifically to include all subsidiaries, conglomerates, affiliates, and parent corporations, and any other identifiable legal entity related to a party (N.D.Ga.).

In addition to requiring information on financial connections and interests, local rules in the Northern District of Georgia and the Eastern District of Wisconsin require parties to identify attorneys and law firms representing them in the proceeding. The Eastern District of Missouri has incorporated elements from both the current and precursor versions of FRAP 26.1 by requiring corporate parties to report both publicly held companies owning 10 percent or more of the party's stock and subsidiaries not wholly owned.

The two judges in the Middle District of Florida who use individual forms for collecting disclosure information require parties in criminal matter to identify victims of the conduct alleged in the indictment, if the victims might be entitled to restitution. A similar provision appears in the local rule for the Eleventh Circuit Court of Appeals.

### ***Financial Disclosure Requirements in the District Courts***

We have organized the district court local rules and other procedures into tables in alphabetical order by state. The tables summarize the following information:

- (1) the types of parties required to file (Who must file);
- (2) the type of information required (Required information);
- (3) the time for filing the information (Time of initial filing);
- (4) the existence of a requirement that parties with nothing to disclose submit a negative report (Negative report);
- (5) the form of the disclosure (Disclosure form);
- (6) the number of copies required to be filed (Number of copies);
- (7) the applicability of the rule to various case types and proceedings (Scope of applicability);
- (8) the existence of a stated duty for parties to update disclosed information (Obligation to update); and
- (9) additional relevant information (Note).

Notes on table entries:

- (a) Where a local rule refers to “counsel for the parties” or uses a similar phrase to identify who must file disclosure, we have substituted “parties” for the sake of brevity (see Who must file).
- (b) We use the phrase “identification of [e.g., parent companies, subsidiaries, and affiliates]” to summarize the type of information required of parties (see Required

- information). Local rules may use more precise phrasing; counsel may be required, for example, to “certify” a list of the names of interested parties.
- (c) Some courts require identification of law firms, partners, etc., that currently or previously represented the party in the issue before the court. These requirements are noted in the tables even though they are not directly related to the report (see Required information).

## **U.S. District Court for the Southern District of Alabama**

### **Local Rule 3.2, Disclosure Statement**

#### *Who must file*

A corporation, association, joint venture, partnership, syndicate, or other similar entity appearing as a party or amicus in any proceeding.

#### *Required information*

Identification of all parent companies, subsidiaries, and affiliates that have issued shares or debt securities to the public, where: (1) “affiliate” means a person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified entity, (2) “parent” means an affiliate controlling such entity directly, or indirectly through intermediaries, and (3) “subsidiary” means an affiliate controlled by such entity directly or indirectly through one or more intermediaries.

Identification of the represented entity’s general nature and purpose; if the entity is unincorporated, identification of any members of the entity that have issued shares or debt securities to the public.

No listing is required, however, of the names of members of a trade association or professional association, where “trade association” is defined as a continuing association of numerous organizations or individuals operated for the purpose of promoting the general commercial, professional, legislative, or other interests of the membership.

#### *Time of initial filing*

At the time of the filing of the initial pleading or other court paper on behalf of the party, or as otherwise ordered by the court; if an emergency or other situation makes filing the disclosure statement impossible or impracticable, the statement shall be filed within seven days of the date of the original filing, or such other time as the court may direct.

#### *Negative report*

Disclosure Statement, but not the local rule, indicates that a negative report should be filed.

#### *Disclosure form*

Disclosure Statement Pursuant to Local Rule 3.2, located in Appendix A of the local rules.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

All proceedings.

#### *Obligation to update*

Stated.

#### *Note*

LR 3.2 of S.D. Ala. is identical to LR 3.2 of W.D. Pa.

## **U.S. District Court for the Eastern District of Arkansas**

The court has no local rule on party disclosure of financial interests information. Several judges require publicly traded corporate parties to advise the court of pending acquisitions and actual mergers. The directive is issued with the scheduling order for trial.

One judge, however, uses the Scheduling Order to issue a different directive. This judge instructs counsel to check a list of financial holdings that he has placed on file with the clerk's office. Counsel is responsible for alerting the judge to possible financial conflicts of interest.

**U.S. District Court for the Central District of California**

**Local Civil Rule 4.6, Certification as to Interested Parties**

**Rule 2.2 of Ch.VI, Local Bankruptcy Rules, Filing the Notice of Appeal**

**Rule 6.1 of Ch.VI, Local Bankruptcy Rules, Withdrawal of Reference from the Bankruptcy Court**

**Local Civil Rule 4.6**

*Who must file*

All parties.

*Required information*

Identification of all persons, association of persons, firms, partnerships and corporations (including parent corporations) which have a direct, pecuniary interest in the outcome of the case, including any insurance carrier which may be liable in whole or in part (directly or indirectly) for a judgment that may be entered in the action or for the cost of defense.

*Time of initial filing*

Party's first appearance.

*Negative report*

The local rule is silent.

*Disclosure form*

Notice of Interested Parties; (form prescribed in the local rule).

*Number of copies*

Original and two copies.

*Scope of applicability*

All civil actions and proceedings in the district court (by Local Rule 1.1) or matters of a civil nature (by Local Rule 1.3(c)).

*Obligation to update*

The local rule is silent.

**Rule 2.2 of Chapter VI (applies to bankruptcy appeals taken to the district court)**

*Who must file*

Parties appealing to the district court from the bankruptcy court.

*Required information*

Identification of interested parties (to be provided to the bankruptcy court clerk).

*Time of initial filing*

At the time the notice of appeal is filed.

*Negative report*

The local rule is silent.

*Disclosure form*

The local rule is silent.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Bankruptcy appeals to the district court.

*Obligation to update*

The local rule is silent.

**Rule 6.1 of Chapter VI (applies to pending bankruptcy cases and proceedings where a motion has been made to withdraw reference from the bankruptcy court to the district court)**

*Who must file*

Parties moving to withdraw reference of matters pending in the bankruptcy court and parties opposing such a motion.

*Required information*

Identification of interested parties (to be provided to the district court clerk and to the presiding bankruptcy judge).

*Time of initial filing*

With the motion to withdraw or with reply papers in opposition.

*Negative report*

The local rule is silent.

*Disclosure form*

The local rule is silent.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Pending bankruptcy cases and proceedings.

*Obligation to update*

The local rule is silent.

## **U.S. District Court for the District of Columbia**

### **Local Civil Rule 26.1 Disclosure of Corporate Affiliations and Financial Interests**

*Who must file*

Corporate parties and corporate intervenors.

*Required information*

Identification of any parent, subsidiary or affiliate of the party or intervenor which has any outstanding securities in the hands of the public.

*Time of initial filing*

At the time the party's first pleading is filed.

*Negative report*

The local rule is silent.

*Disclosure form*

Form prescribed in the local rule.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Civil, agency, and criminal cases (General Rule 109); all other proceedings in the district court (General Rule 101(a)) (including, by inference, bankruptcy cases and other proceedings in the district court).

*Obligation to update*

Stated.

## **U.S. District Court for the Middle District of Florida**

One Middle District of Florida judge requires disclosure of financial interest information by standing order.

### *Who must file*

Civil: all non-government corporate parties; criminal: the government.

### *Required information*

Civil: identification of all parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates that have issued shares to the public.

Criminal: identification of victims of the conduct alleged in the Indictment who are entitled to restitution; and for any non-government corporate victims, identification of all parent companies, subsidiaries (except wholly owned subsidiaries), and affiliates that have issued shares to the public.

### *Time of initial filing*

Within eleven days of the date of the Standing Order

### *Negative report*

The order is silent.

### *Disclosure form*

The order is silent.

### *Number of copies*

The order is silent.

### *Scope of applicability*

Civil and criminal cases.

### *Obligation to update*

Stated.

A second Middle District of Florida judge obtains disclosure of financial interest information through use of several case management tools. These include a Case Management Report (civil cases), Order Requiring [the] Government to File a Certificate of Interested Parties (criminal cases) and [Order titled] Notice to Counsel or Any Pro Se Party to Review and to Certify Compliance (bankruptcy cases).

### *Who must file*

Civil: parties

Criminal: the government; bankruptcy: parties, including pro se parties.

### *Required information*

Civil: identification of all attorneys, persons, associations of persons, firms, partnerships and corporations, including subsidiaries, conglomerates, affiliates, parent corporations, and other identifiable legal entities related to a party, or as to which such party has a controlling interest, that have an interest in the outcome of the case.

Criminal: identification of all persons, associations of persons, firms, partnerships, corporations, including subsidiaries, conglomerates, affiliates, and parent corporations and other identifiable legal entities related to each Defendant, or over which Defendant exercises a controlling interest and who or which may have a financial or monetary interest in the outcome of the case or whose stock or equity value may be substantially affected by the outcome of the case proceedings; identification of known victims, including those to whom restitution may be owed.

Bankruptcy: identification of any person, associations of persons, attorneys, firms, partnerships, corporations, or entities whose stock or equity value may be substantially affected by the outcome of the proceedings, including subsidiaries, conglomerates, affiliates, parent corporations and other identifiable legal entities related to a party.

*Time of initial filing*

Criminal and bankruptcy: within thirty days of the date of the order.

*Negative report*

The judge's case management report and orders are silent on this issue.

*Disclosure form*

The judge's case management report and orders are silent on this issue.

*Number of copies*

The judge's case management report and orders are silent on this issue.

*Scope of applicability*

Civil, criminal, and bankruptcy cases.

*Obligation to update*

Stated.

## **U.S. District Court for the Northern District of Georgia**

### **Civil Local Rule 3.3, Certificate of Interested Persons**

*Who must file*

All private (non-governmental) parties.

*Required information*

Identification of persons, associations of persons, firms, partnerships, or corporations having either a financial interest in or other interest which could be substantially affected by the outcome of this particular case (the listing shall specifically include all subsidiaries, conglomerates, affiliates, and parent corporations, and any other identifiable legal entity related to a party); identification of each person serving as a lawyer in the proceedings.

*Time of initial filing*

Within fifteen days after the first pleading is filed by any defendant or defendants.

*Negative report*

The local rule is silent.

*Disclosure form*

Certificate of Interested Persons; form of the certificate prescribed in the local rule.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Civil cases.

*Obligation to update*

Stated.

*Note*

Counsel for all cases submit joint-certification; if the government is a party, however, certification is submitted only by the private party or parties; in cases of default, the moving party shall submit the required information before seeking any court action on the case.

## **U.S. District Court for the Southern District of Georgia**

### **Civil Local Rule 3.2, Disqualification of Judges**

#### **Local Rules for the Administration of Criminal Cases**

*Who must file*

All private (non-government) parties, both plaintiffs and defendants.

*Required information*

Identification of all parties; officers, directors, or trustees of parties; and all other persons, associations of persons, firms, partnerships, corporations, or organizations which have a financial interest in, or another interest which could be substantially affected by, the outcome of the particular case.

*Time of initial filing*

With the first filing (and any subsequent filing) of a complaint and answer.

*Negative report*

The local rule is silent.

*Disclosure form*

Certificate of Interested Parties Form, located in the Appendix of Forms to the Local Rules.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Civil cases (L.R. 3.2); criminal cases (“These Local Rules . . . are to be construed consistently with the generally applicable (Civil) Local Rules, *supra*.”); bankruptcy proceedings in the district court are presumed covered.

*Obligation to update*

The local rule is silent.

## **U.S. District Court for the Northern District of Illinois**

### **General Rule 2.23, Notification as to Affiliates**

The court expects to renumber General Rule 2.23 as General Rule 3.2 soon, if it has not already done so. The provisions of the original rules are expected to remain intact. A form titled “Disclosure of Affiliates Pursuant to Local Rule 3.2” will be provided to counsel for reporting. This form includes space for counsel to furnish stock ticker symbols.

#### *Who must file*

Any party that is an affiliate of a public company.

#### *Required information*

Identification of any public company of which the party is an affiliate, where

(1) The term “public company” means a corporation any of whose securities are listed on a stock exchange or are the subject of quotations collected and reported by the National Association of Securities Dealers Automated Quotations Systems (NASDAQ).

(2) The term “affiliate of a public company” means another corporation that controls, is controlled by or is under common control with the public company. The term includes but is not limited to a corporation 10 percent or more of whose voting stock is owned by the public company.

(3) The term “control” of a corporation means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of that corporation through the ownership of voting securities or otherwise.

#### *Time of initial filing*

A plaintiff files notification with the complaint; a defendant files notification with the answer or with a motion in lieu of answer; if a party becomes a party after the filing of the complaint, the notification is filed with the first pleading filed on behalf of the party.

#### *Negative report*

The local rule is silent.

#### *Disclosure form*

The local rule is silent.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

Civil and criminal cases are presumed from the wording of the local rule, applicability to bankruptcy cases and other matters is not known.

#### *Obligation to update*

The local rule is silent.

**U.S. District Court for the Southern District of Illinois**

**Rule 11.1.b, Disclosure of Interested Parties/Affiliates**

*Who must file*

Private (non-governmental) parties.

*Required information*

Identification of any publicly owned corporation, not a party to the case, that has a financial interest in the outcome of the case.

*Time of initial filing*

At the time of the initial pleading.

*Negative report*

The local rule is silent.

*Disclosure form*

The local rule is silent.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Civil.

*Obligation to update*

The local rule is silent.

## **U.S. District Court for the Central District of Illinois**

### **General Rule 11.3, Certificate of Interest**

#### *Who must file*

All non-governmental parties and amicus curiae, unless the party is a pro se litigant (but only corporate parties and amici provide financial information).

#### *Required information*

If the party or amicus is a corporation: identification of a parent corporation, if any, and identification of corporate stockholders that are publicly held companies owning 10 percent or more of the stock of the party or amicus.

#### *Time of initial filing*

With the complaint or upon the first appearance of counsel in the case.

#### *Negative report*

The local rule is silent.

#### *Disclosure form*

Form prescribed in the local rule.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

Applicable in all proceedings in all of the courts in the district (CD-IL 1.1).

#### *Obligation to update*

The local rule is silent.

#### *Note*

Gen R 11.3 is similar to LR 5.05 of E.D.Wis. However, the pro se exception for filing parties does not exist in the E.D.Wis. rule.

## **U.S. District Court for the District of Kansas**

### **Local Rule 3.2, Required Certification of Interested Parties**

Adopted January 1999

Repealed April 1999

Local Rule 3.2 was adapted from Tenth Circuit Rule 46.1.3 entitled “Certification of Interested Parties and Rule 42.1 “Dismissal for Failure to Prosecute.” The court adopted its local rule effective January 1, 1999, and repealed it in April 1999. Repeal was based on a finding that problems with the rule’s enforcement outweighed any advantage the new procedure potentially offered over existing automated procedures for identifying conflicts of interest. See the Part III section titled “A District Court’s Decision to Repeal Its Local Rule on Financial Disclosure” for more information about the court’s decision to abandon Local Rule 3.2.

The structure of the repealed rule is summarized below.

#### *Who must file*

All parties.

#### *Required information*

Identification of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, or other legal entities who are financially interested in the outcome of the litigation (if a large group of persons or firms can be specified by a generic description, no individual listing is required); identification of all parties not named in the caption of the initial pleading or paper; for corporate parties and interested entities, identification of all parent and subsidiary corporations; identification of attorneys not entering an appearance in the court who have appeared for any party in any administrative proceedings sought to be reviewed, or in any related proceedings that preceded the action being pursued in the court.

#### *Time of initial filing*

With the initial pleading or other paper filed for a party.

#### *Negative report*

The local rule is silent.

#### *Disclosure form*

Form provided by the clerk and outlined in the local rule.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

All civil proceedings.

#### *Obligation to update*

Stated.

*Note 1*

The repealed rule established the following consequences for failure to comply: “If a party fails to comply with the provisions of this rule, the clerk shall notify the party that unless the failure of compliance is remedied within 10 days from the date of the notice the following action will be taken: (a) If the party is a plaintiff, that the action will be dismissed as to that party plaintiff for lack of prosecution; (b) if the party is other than a plaintiff, that default will be entered against that party for lack of prosecution.” No cases ever had these sanctions applied under the local rule.

*Note 2*

Excerpt from a July 2, 1999 letter from Clerk of the Court Ralph L. DeLoach to Abel Mattos of the Administrative Office of the United States Courts, describing enforcement difficulties with the repealed rule:

“[The rule] required *all* parties to attach a certificate of Interested Parties to *every* initial pleading filed in *every* civil case. An issue quickly developed regarding what constituted an ‘initial pleading.’ An example would be whether a Motion for Extension of Time (to answer a Complaint) filed by a defendant would be considered an initial pleading. The docket clerks were overwhelmed with this issue as pleadings come with many different titles. If a party failed to attach the required Certificate, a notice was sent from the Clerk’s Office to the assigned judge indicating non-compliance with the rule. The judge would then determine whether further action was necessary. When a Certificate was filed in compliance with the Rule it was then sent to the assigned judge for a determination of a possible conflict of interest.

“Needless to say, the amount of paperwork generated by this Rule was voluminous. It greatly impacted the workload of both Clerk’s Office staff and chambers staff. A great deal of time was spent following up on non-compliance with the Rule. Special codes were created to enable reports to be generated from ICMS tracking delinquent Certificates filing status. The court determined that a lot of work was being done to find the one ‘needle in a haystack.’”

## **U.S. District Court for the District of Maine**

### **Civil Rule 83.7, Corporate Disclosure Statement**

### **Local Bankruptcy Rule 1002-1(b)(3), Disclosure Statement**

#### *Who must file*

Civil cases: non-governmental corporate parties.

Bankruptcy cases: non-governmental non-individual debtors.

#### *Required information*

Civil cases: identification of all parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates that have issued shares to the public.

Bankruptcy cases: identification of “affiliates” and “insiders” as defined in 11 U.S.C. § 101(2), (31).

#### *Time of initial filing*

Civil cases: with the party’s first appearance.

Bankruptcy cases: with the petition commencing the case, or within fifteen days of filing the petition.

#### *Negative report*

The local rule is silent.

#### *Disclosure form*

The local rule is silent.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

Civil cases, bankruptcy cases.

#### *Obligation to update*

The local rule is silent.

#### *Note*

Bankruptcy cases and proceedings pending in the district court are subject to disclosure provisions under Maine Bankruptcy Rule 1001-1.

## **U.S. District Court for the District of Maryland**

### **Civil Rule 103.3, Disclosure of Affiliations and Financial Interest**

*Who must file*

Parties.

*Required information*

The identity of any parent or other affiliate, if the party is a corporation, and a description of the relationship between the party and such affiliates; the identity of any corporation, unincorporated association, partnership or other business entity, not a party to the case, which may have any financial interest whatsoever in the outcome of litigation, and the nature of the financial interest; the term “financial interest in the outcome of the litigation” includes a potential obligation of an insurance company or other person to represent or to indemnify any party to the case; information to be provided to the district court clerk.

*Time of initial filing*

When filing an initial pleading or promptly after learning of the information to be disclosed.

*Negative report*

The local rule is silent.

*Disclosure form*

The local rule is silent.

*Number of copies*

Two.

*Scope of applicability*

Civil cases.

*Obligation to update*

The local rule is silent.

## **U.S. District Court for the Eastern District of Michigan**

### **Civil Rule 103.3, Disclosure of Affiliations and Financial Interest**

#### *Who must file*

All corporate parties to a civil case and all corporate defendants in a criminal case, *unless* the party is the United States or an agency thereof, or is a state government or an agency or political subdivision thereof

#### *Required information*

From a corporate party that is a subsidiary or affiliate of any publicly owned corporation not named in the case: identification of the publicly owned parent corporation or affiliate, and the nature of the corporate relationship (a corporation is considered an affiliate of a publicly owned corporation for purposes of the rule if it controls, is controlled by, or is under common control with a publicly owned corporation).

From parties generally: identification of any publicly owned corporation or its affiliate, not a party to the case, which has a substantial financial interest in the outcome of the litigation that is aligned with the financial interest of the party by reason of insurance, a franchise agreement, or indemnity agreement, and additionally, identification of the nature of the substantial financial interest held by the corporation or its affiliate.

#### *Time of initial filing*

With the filing of the first pleading or paper, or as soon as the party becomes aware of the corporate affiliation or financial interests, or as otherwise ordered by the judge to whom the case is assigned.

#### *Negative report*

Required.

#### *Disclosure form*

Provided by the clerk.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

Civil and criminal cases.

#### *Obligation to update*

Stated.

**U.S. District Court for the Northern and Southern Districts of Mississippi**  
**(operating under uniform local rules)**

**(proposed) Local Rule 3.1(D), Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation**

*Who must file*

All parties (including amici) to a civil action, a maritime proceeding, or a bankruptcy proceeding filed in the district court, and all corporate defendants in a criminal prosecution; the rule does not apply to the United States, to state and local governments in cases in which the opposing party is proceeding without counsel, or to parties proceeding in forma pauperis.

*Required information*

A non-governmental corporate party must identify parent corporations, publicly held companies owning 10 percent or more of the party's stock, similarly situated master limited partnerships, real estate investment trusts, joint ventures, syndicates, or other legal entities whose shares are publicly held or traded.

The disclosure form, but not the proposed rule, asks that grandparent and great-grandparent corporations be identified.

The disclosure form, but not the proposed rule, asks that publicly held corporations or other publicly held entities that have a direct financial interest in the outcome of the litigation be identified, along with the nature of the interest.

*Time of initial filing*

The clerk will deliver the disclosure form to parties with the notice of a case's having been assigned to a district judge; return filing is required within ten days of receipt.

*Negative report*

Required.

*Disclosure form*

Disclosure of Corporate Affiliations and Other Entities With a Direct Financial Interest in Litigation; the form is provided by the clerk.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Civil actions, maritime proceedings, bankruptcy proceedings, and criminal cases.

*Obligation to update*

Stated.

*Note*

Proposed local rule.

**U.S. District Court for the Eastern District of Missouri**

**Local Rule 2.09, Disclosure of Corporation Interests**

*Who must file*

Non-governmental corporate parties.

*Required information*

Identification of all parent companies of the corporation, subsidiaries not wholly owned, and any publicly held company that owns 10 percent or more of the corporation's stock.

*Time of initial filing*

With the party's first pleading or entry of appearance.

*Negative report*

Required.

*Disclosure form*

The local rule is silent.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Civil and criminal cases.

*Obligation to update*

Stated; amendment to be filed within seven days of the change.

**U.S. District Court for the Western District of Missouri**

**Local Rule 3.1, Disclosure of Corporation Interests**

*Who must file*

Non-governmental corporate parties.

*Required information*

Identification of all parent companies of the corporation, subsidiaries (except wholly owned subsidiaries), and affiliates that have issued shares to the public.

*Time of initial filing*

With the party's first pleading or entry of appearance.

*Negative report*

Required.

*Disclosure form*

The local rule is silent.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Civil and criminal cases.

*Obligation to update*

Stated; amendment to be filed within seven days of the change.

## **U.S. District Court for the District of Nevada**

### **Local Rule 10-6, Certificate as to Interested Parties**

*Who must file*

All private (non-governmental) parties in cases other than habeas corpus cases.

*Required information*

Identification of all persons, associations of persons, firms, partnerships or corporations known to have an interest in the outcome of the case.

*Time of initial filing*

At the time counsel enter the case.

*Negative report*

Required.

*Disclosure form*

Form prescribed in the local rule.

*Number of copies*

The local rule is silent.

*Scope of applicability*

All cases except habeas corpus cases.

*Obligation to update*

The local rule is silent.

*Note*

The court finds the current rule insufficient, and has asked the Standing Committee on Local Rules to consider a proposal modifying the rule to provide that “concurrent with the filing of a complaint or a responsive pleading the party shall be required to file a list of the names of any publicly traded subsidiary and/or parent companies and/or corporation of the party” (August 6, 1999, letter from District Court Executive/Clerk of the Court Lance S. Wilson).

## **U.S. District Court for the District of New Hampshire**

### **Local Civil Rule 83.6(a)(4), Appearances**

*Who must file*

Non-governmental corporate parties and non-governmental corporate defendants.

*Required information*

Identification of all parent companies, subsidiaries (except wholly owned subsidiaries), and affiliates that have issued shares to the public.

*Time of initial filing*

At the time an appearance is filed.

*Negative report*

The local rule is silent.

*Disclosure form*

The local rule is silent.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Civil cases, bankruptcy cases, agency review proceedings, and criminal cases.

*Obligation to update*

Stated.

**U.S. District Court for the Southern and Eastern Districts of New York**

**(operating under uniform local rules)**

**Civil Rule 1.9, Disclosure of Interested Parties**

*Who must file*

Private (non-governmental) parties.

*Required information*

Identification of any corporate or other parents, subsidiaries, or affiliates of the party, securities or other interests that are publicly held.

*Time of initial filing*

Filing of the initial pleading or other court paper on behalf of the party.

*Negative report*

The local rule is silent.

*Disclosure form*

The reverse side of the civil cover sheet used in the Eastern District of New York has a section directing corporate parties to identify corporate parents, subsidiaries and affiliates

*Number of copies*

The local rule is silent.

*Scope of applicability*

Civil actions.

*Obligation to update*

The local rule is silent.

## **U.S. District Court for the Western District of Pennsylvania**

### **Local Rule 3.2, Disclosure Statement**

#### *Who must file*

A corporation, association, joint venture, partnership, syndicate, or other similar entity appearing as a party or amicus in any proceeding.

#### *Required information*

Identification of all parent companies, subsidiaries, and affiliates that have issued shares or debt securities to the public, where: (1) “affiliate” means a person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified entity, (2) “parent” means an affiliate controlling such entity directly, or indirectly through intermediaries, and (3) “subsidiary” means an affiliate controlled by such entity directly or indirectly through one or more intermediaries.

Identification of the represented entity’s general nature and purpose.

If the entity is unincorporated, identification of any members of the entity that have issued shares or debt securities to the public.

No listing is required, however, of the names of members of a trade association or professional association, where “trade association” is defined as a continuing association of numerous organizations or individuals operated for the purpose of promoting the general commercial, professional, legislative, or other interests of the membership.

#### *Time of initial filing*

At the time of the filing of the initial pleading or other court paper on behalf of the party, or as otherwise ordered by the court; if an emergency or other situation makes filing the disclosure statement impossible or impracticable, the statement shall be filed within seven days of the date of the original filing, or such other time as the court may direct.

#### *Negative report*

Disclosure Statement, but not the local rule, indicates that a negative report should be filed.

#### *Disclosure form*

Form titled Disclosure Statement, located in Appendix A of the local rules.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

All proceedings.

#### *Obligation to update*

Stated.

#### *Note*

LR 3.2 of W.D.Pa. is identical to LR 3.2 of S.D.Ala.

## **U.S. District Court for the District of South Carolina**

### **Local Rules 26.01; 26.03(I); 26.04; 26.06(J); 26.07, General Provisions Governing Discovery; Duty of Disclosure.**

#### *Who must file*

Any party (plaintiff or defendant) that is either a publicly owned entity, or is a partner, parent, subsidiary or affiliate of a publicly owned entity (except for parties in bankruptcy proceedings and other specifically exempted case types listed in Local Rule 26.01).

#### *Required information*

Identification of the publicly owned entity and its relationship to the disclosing party; identification of any publicly owned entity not a party to the case that has a significant financial interest in the outcome of litigation and the nature of the interest

#### *Time of initial filing*

A plaintiff files disclosure with the initial pleading.

A defendant files within thirty days of the later of (1) defendant's responsive pleading or (2) the date on which the person asserting a claim against the defendant serves answers to interrogatories and produces documents pursuant to the local rule.

#### *Negative report*

The local rule is silent.

#### *Disclosure form*

The local rule is silent.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

Civil cases, except for the following case types which are exempted under Local Rule 26.01: (a) habeas corpus cases; (b) all government foreclosure cases; (c) all government forfeiture cases; (d) three judge court cases; (e) petitions to quash IRS summons; (f) review of administrative rulings; (g) social security cases; (h) bankruptcy proceedings; (i) veterans administration recovery cases; (j) cases in which there is any pro se litigant; (k) all cases assigned as multi-district litigation pursuant to 28 U.S.C. 1407; (l) condemnation cases; and (m) claims for relief within the admiralty and maritime jurisdiction act set forth in Rule 9(h) of the F.R.Civ.P. and the Supplemental Rules for Certain Admiralty and Maritime Claims.

Applicability may also extend, by inference, to criminal cases (see references to defendants in Local Rules 26.06(J) and 26.07).

#### *Obligation to update*

The local rule is silent.

## **U.S. District Court for the Southern District of Texas**

### **Standing Order, Order for Conference and Disclosure of Interested Parties**

The order is served on parties during the initial pretrial conference.

#### *Who must file*

Parties appearing for an initial pretrial and scheduling conference.

#### *Required information*

Identification of all persons, associations of persons, firms, partnerships, corporations, affiliates, parent corporations, or other entities that are financially interested in the outcome of the litigation; if a group can be specified by a general description, individual listing is not necessary.

#### *Time of initial filing*

Within fifteen days of receipt of the order.

#### *Negative report*

The standing order is silent.

#### *Disclosure form*

The standing order is silent.

#### *Number of copies*

The standing order is silent.

#### *Scope of applicability*

Civil cases, including cases litigated pro se, except for the following case types which are exempted under Local Rule 8: (a) prisoner civil rights; (b) state and federal habeas corpus; (c) student and veteran loan; (d) Social Security appeals; (e) bankruptcy appeals; and (f) forfeiture of seized assets.

#### *Obligation to update*

Stated.

#### *Note*

The standing order states, "Failure to comply with this order may result in sanctions, including dismissal of the action and assessment of fees and costs."

**U.S. District Court for the District of Vermont**

**General Order No. 45, In Re: Disclosure of Corporate Interests**

The court expects to convert the standing order into a formal local rule when local rules revision is next undertaken.

*Who must file*

All non-governmental corporate parties.

*Required information*

Identification of parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates that have issued shares of ownership to the public.

*Time of initial filing*

With a party's first appearance.

*Negative report*

The order is silent.

*Disclosure form*

The order is silent.

*Number of copies*

The order is silent.

*Scope of applicability*

All proceedings.

*Obligation to update*

The order is silent.

## **U.S. District Court for the Eastern District of Wisconsin**

### **Local Rule 5.05, Certificate of Interest**

#### *Who must file*

All non-governmental parties and amicus curiae (but only corporate parties and amici provide financial information).

#### *Required information*

If the party or amicus is a corporation: identification of a parent corporation, if any, and identification of corporate stockholders which are publicly held companies owning 10 percent or more of the stock of the party or amicus.

#### *Time of initial filing*

With the appearance of the party or upon the first filing of a paper on behalf of the party, whichever occurs first.

#### *Negative report*

The local rule is silent.

#### *Disclosure form*

Form prescribed in the local rule.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

As a practical matter, the rule is applied only to civil cases, although nothing stated in LR 5.05 or other local rules of the court specifically limits the scope of disclosure to civil cases.

#### *Obligation to update*

The local rule is silent.

#### *Note*

The rule requires the following additional information: the full name of every party or amicus represented in the case and the name of all law firms whose partners or associates appear for a party or are expected to appear for the party.

The court is currently revising the local rules and expects to renumber Local Rule 5.05 and move it to a section titled “General Local Rules”; such a move would make the requirement for disclosure applicable to “all proceedings.”

LR 5.05 is very similar to GenR 11.3 of C.D. Ill.

## **U.S. District Court for the Western District of Wisconsin**

The court has no local rule, court-wide standing order, or individual standing orders on the subject of party disclosure of financial interests information. Private parties that are businesses, companies, or corporations are expected, however, to provide such information at the outset of a case on a form provided by the clerk.

### *Who must file*

Private (non-governmental) parties that are businesses, companies, or corporations.

### *Required information*

If a party is a subsidiary or affiliate of a publicly owned corporation, the party is required to identify the parent corporation or affiliate and the relationship between such and the party; the party is also to identify any publicly owned corporation not a party to the case that has a financial interest in the outcome of litigation and the nature of the financial interest.

### *Time of initial filing*

At the time of initial pleading.

### *Negative report*

No written procedure indicates whether a negative report is required.

### *Disclosure form*

A form titled Disclosure of Corporate Affiliations and Financial Interest is provided by the clerk.

### *Number of copies*

Not known.

### *Scope of applicability*

Civil cases.

### *Obligation to update*

No written procedure indicates whether parties have an obligation to update the disclosure form.

### **District Judge Views on the Utility of Financial Interests Information**

To learn whether local filing requirements meet the needs of the district courts, and to learn about the efficacy of FRAP 26.1 filing requirements, we wrote to chief judges (in some instances, individual judges) in district courts where financial disclosure is routine. In district courts with filing requirements equivalent to FRAP 26.1, we asked whether the judges found the local rule sufficient to identify conflicts of interest and whether the information provided under the local rule had ever failed to signal a conflict of interest. In district courts where filing requirements are more extensive than those of FRAP 26.1, we asked whether judges found the additional information useful in detecting conflicts of interest and whether the judges were aware of instances in which limiting disclosure to FRAP 26.1 requirements would have failed to signal a conflict of interest.

#### **Filing Requirements Equivalent to FRAP 26.1**

Two courts have financial disclosure requirements that are essentially equivalent to the limited requirements of FRAP 26.1. We asked the chief judge the following questions:

- (1) Have the judges in your district found that Local Rule [number] permits them to identify potential financial conflicts of interest?
- (2) Are you aware of circumstances in your court where Local Rule [number of the relevant local rule] failed to provide sufficient information to alert a judge to a conflict of interest requiring recusal?

Both judges responded affirmatively to the first question and negatively to the second question. The requirements have been in effect only a short time, but both courts report that limited financial disclosure requirements have been satisfactory.

#### **Filing Requirements That Go Beyond FRAP 26.1**

Courts broaden their disclosure requirements by extending the range of filing parties or the type of information to be filed, or both. We posed the following questions to chief judges (and modified questions to two M.D.Fla. judges) in courts with broadened disclosure requirements:

- (1) Have the judges in your district found collected information that goes beyond what is required by FRAP 26.1 useful in detecting potential conflicts of interest?
- (2) Are you aware of circumstances where limiting the requested information to that required by FRAP 26.1 would have failed to alert a judge to a conflict of interest requiring recusal?<sup>10</sup>

Nineteen of twenty-two judges contacted responded.<sup>11</sup> Thirteen judges responded by letter and six responded by telephone. Two of the letter responses were drafted by individuals to whom the chief judge had referred the matter (one a judge, the other the clerk of court). One of the telephone responses came from the clerk of court acting on behalf of

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<sup>10</sup> We also asked a third question, “Does the court’s collection of financial interests information that goes beyond what is required by FRAP 26.1 serve a function other than assisting judges in determining their recusal obligations?” There were no affirmative responses to this question.

<sup>11</sup> We located a new district court local rule as we finalized the report and did not solicit a response from the court’s chief judge.

the chief judge. In the discussion that follows, we do not distinguish between local court rules and other directives. We refer to them collectively as “rules.”

The responses to the questions are summarized in Table 3. One chief judge reported having polled the judges of the court; the responses of the individual judges were consistent and they are reported as a single count in the table below. A second chief judge forwarded the questions to the judges in his district and heard back from one colleague, who responded to both questions in the negative. We have eliminated the response of the second judge as well as the response offered by that court’s Vice Chair of the Advisory Committee on Local Rules in support of the need for broad disclosure. The response of the court that wrote to say its local rule requires less disclosure than FRAP 26.1 is omitted from the totals for the first question.

Table 3. District Judge Reports on the Usefulness of More Information

Question	Yes	No	Difficult to say	No response
Have the judges in your district found collected information that goes beyond what is required by FRAP 26.1 useful in detecting potential conflicts of interest?	11	1	2	4
Are you aware of circumstances where limiting the requested information to that required by FRAP 26.1 would have failed to alert a judge to a conflict of interest requiring recusal?	2	7	3	6

When asked about the utility of collecting information that goes beyond FRAP 26.1 requirements, eleven of the twelve judges who framed a response to the question said that broader information is useful. Respondents tended to support this assessment with additional comment. Two judges described their court’s rule as having “prophylactic” value. Two other judges stated that it is best to provide judges with as much information, as early as possible, to avoid later conflicts. Two more judges cited the need to be sensitive to the appearance of a conflict of interest as well as any actual conflict of interest.

When asked whether they were aware of circumstances in which the limited FRAP 26.1 reporting requirements would have permitted a conflict of interest to go undetected, only two of nine judges responding to the question answered affirmatively. Five respondents qualified their answers to our questions by noting that the court’s local rule had not been in effect very long.<sup>12</sup>

The reports on these two related, but distinct, questions may appear to present a contradiction. In courts where broader disclosure is routine, there is strong support for information that goes beyond what is required by FRAP 26.1. In those same courts, however, there is only limited evidence favoring the utility of the additional information. The following observation by one of the respondents explains the apparent contradiction:

Having answered your specific questions, I would like to add my personal view of the utility of our Local Rule, in contrast to that of F.R.A.P. 26.1. I believe we intended that the certificate serve a pro-

<sup>12</sup> In contrast, two respondents indicated that their rule had a long history. An additional respondent volunteered that the court’s rule had been in effect two years, but the need to act on the information disclosed occurred rarely.

phylactic function. No matter how careful a judge may be in reviewing cases for possible recusal, there will always be some possibility of an unforeseen circumstance. I think we intended our Local Rule to place the burden on the parties of informing us of any circumstance which could possibly trigger a recusal. Thus, if a judge relies on information in the certificate, but later the necessity for recusal becomes apparent, it will be clear from the public record that the parties did not adequately advise the judge of the relevant facts. While this would not insulate the judge's failure to recuse from judicial scrutiny, it would be helpful in explaining the judge's predicament to the parties and the public.

### ***A District Court's Decision to Repeal Its Local Rule on Financial Disclosure***

In the course of our research, we became aware that the District of Kansas recently adopted and then abandoned a local rule on disclosure, finding it excessively burdensome. The circumstances leading to the adoption and repeal were unusual, and we did not find a similar situation in other district courts, but we felt it was important to speak with personnel in that court to learn whether their experience might inform general considerations of whether, and how, to draft such rules. This section summarizes our understanding of the court's experience.<sup>13</sup>

Newspaper articles appearing in May 1998 reported that some federal judges in the Kansas City area had presided over suits involving companies in which the judges owned stock. Judges in the District of Kansas responded to the articles by adopting a local rule requiring counsel to disclose financial information in civil cases. The rule, which was intended to help inform judicial disqualification and recusal decisions, went into effect on January 1, 1999.<sup>14</sup>

Local Rule 3.2 required every party in every civil case to attach a Certificate of Interested Parties to the party's initial pleading. The rule stated that sanctions of dismissal or default judgment would be imposed on parties failing to comply with the rule.<sup>15</sup> Attorneys complied by identifying, as applicable:

- (1) all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, or other legal entities financially interested in the outcome of the litigation;
- (2) all parent and subsidiary corporations for corporate parties and interested entities;
- (3) all parties not named in the caption of the initial pleading or paper; and

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<sup>13</sup> Honorable John W. Lungstrum (U.S. District Court Judge), Sheryl Loesch (chief deputy clerk), Ingrid Campbell (office supervisor), and Lee Kinzer (operations manager) spoke candidly and were especially helpful in describing the court's experience. In addition to their reports, we have also relied on information in a letter written by and provided to us by the clerk of the court, Ralph De Loach. This letter described several problems encountered with the rule, and was addressed to Abel Mattos, an Administrative Office employee who staffs the Judicial Conference Committee on Court Administration and Case Management.

<sup>14</sup> The court also developed an education program to raise awareness of the issue with judges and chambers staff, and installed software in the clerk's office to automatically screen for conflicts of interest.

<sup>15</sup> Only one other district court, the Southern District of Texas, explicitly states that failure to comply with disclosure requirements may result in sanctions, including dismissal of the action and assessment of fees and costs. The timing of the disclosure statement and the parties to whom the rule applies differ substantially from the timing and parties covered by the District of Kansas rule. The Southern District of Texas requires disclosure from parties that have proceeded to the pretrial conference stage.

- (4) attorneys not entering an appearance in the court who have appeared for any party in any administrative proceedings sought to be reviewed, or in any related proceedings that preceded the action being pursued in the court.

Court sources reported that problems with the rule arose soon after it was enacted. One set of problems derived from how the rule was implemented and administered. To safeguard against early, inadvertent rulings in cases presenting a conflict of interest, the court required compliance with the rule before a case was allowed to go forward. Clerk's office staff were charged with determining initially whether parties had complied. Resolution of compliance questions required considerable staff time; special docketing codes had to be created to enable the court to track delinquent filing status on certificates; paper generated by various tracking procedures was voluminous. Clerks found aspects of the rule ambiguous and often referred decisions on compliance to chambers staff and the assigned judge for final determination. Many cases were stayed pending resolution of compliance issues and few conflicts were identified.

A few examples of the reported problems may be illustrative. Local Rule 3.2 required every party to attach a Certificate of Interested Parties to its initial pleading or paper. The absence of an attachment might signal either that parties had no information to disclose or, alternatively, might present an instance of noncompliance. Paperwork would go to chambers with a label indicating that the party was "possibly" non-compliant. The interpretation of "initial pleading or paper" as a trigger for the filing requirement was also grounds for confusion, since initial pleadings may appear under various titles, and many filings fail to conform to the traditional complaint-answer sequence. If a complaint were followed by a respondent's motion to extend time, for example, docket clerks had to seek clarification on whether to consider the motion as the initial pleading.

Another set of problems followed from differences in how vigorously the court's judges pursued compliance. Some judges were strict about compliance, and would stay proceedings until statements were filed. Other judges allowed cases to proceed, because the disclosure statements were not needed for their own recusal determinations. The latter group of judges included those with few or no assets presenting possible conflicts of interest, and those who, after publication of the newspaper articles, took the initiative of providing the clerk's office with a list of their corporate holdings. Judges who made their holdings publicly available held counsel responsible for consulting the lists and bringing potential conflicts of interest to their attention. The ambiguities complicated the work of clerk's office staff, who were responsible for seeking compliance and notifying parties that their failure to comply would result in sanctions if compliance was not forthcoming.

Counsel, we were told by court sources, often found compliance burdensome, owing to the volume and detail of information required. This was true particularly in cases where legal relationships between various entities were complex. We were told that parties found the reach of the disclosure requirement confusing, and the effort to compile and cross-check lists expensive and time-consuming. Court staff reportedly spent a lot of time advising counsel on the filing requirements.

The judges of the court repealed Rule 3.2 in April 1999, a few months after enactment. The vote to repeal was unanimous, and no alternative local rule was adopted. The court now leaves it to individual judges to decide whether disclosure is required in cases before

them. Two of the court's judges still require parties to file financial interests information. The three judges who made the names of portfolio-held companies publicly available continue to do so and provide the clerk's office with monthly updates. All judges with a potential need to recuse for financial reasons provide the Clerk's office with information compatible with the court's automated screening software.

Many of the problems experienced with Rule 3.2 were administrative in nature. The problems and inefficiencies of the newly instated procedure placed obvious burdens on court staff, but several factors make conclusions about the shortcomings of the procedure risky. First, the procedure was in effect for only a short a period of time. With increasing experience, it is reasonable to expect that staff would develop operating procedures to address questions they struggled with initially. Increasing experience and education efforts should also reduce confusion experienced by the bar. Second, minor changes to the rule's provisions might greatly reduce procedural and administrative ambiguity. Amending the rule to require (negative) disclosure statements from parties with nothing to disclose, for example, would clarify whether compliance was reached in individual cases. Third, the court appears to have operated with parallel systems in place for potential financial conflicts of interest. Some judges provided financial interests information to parties, while others collected such information from parties. The commitment to seeing parties comply with the rule would likely depend on which custom the judge favored.

Because of these circumstances, lessons that the Rules Committee or other district courts might take away from the District of Kansas experience are somewhat limited. Our interviewees advocated the practice of making judicial financial information available for party inspection in lieu of having parties file disclosure under local rule provisions. Many federal judges are likely to resist public posting of assets, however, and the events in Kansas suggest the potential for problems arising when a local rule is in tension with the practices of individual judges. On balance, the Kansas experience may be most informative as a demonstration of what can, but need not, go amiss when a court implements requirements for parties to file financial interests information.

## **Part IV. Analysis of Financial Disclosure Filing Requirements in the Bankruptcy Courts and Bankruptcy Appellate Panels**

The district court in which a bankruptcy case commences has jurisdiction over the case, and a district court judge may handle first-level bankruptcy adjudication. The district courts additionally hear appeals from final judgments, orders, and decrees of the bankruptcy court. Typically, however, a district court will refer a bankruptcy matter to the bankruptcy judges in the district’s associated bankruptcy court. Most of the bankruptcy courts have local rules governing procedural aspects of bankruptcy cases referred from the district court. Consequently, requirements for financial disclosure in bankruptcy matters may be found in both the district courts and the bankruptcy courts. Our search for bankruptcy courts with local rule requirements for financial disclosure turned up four such courts. Table 4 identifies the bankruptcy courts and their provisions.<sup>16</sup>

Table 4. U.S. Bankruptcy Courts Requiring Party Disclosure of Financial Interests Information

Court	Local Rule or Directive	Rule Title
Bankruptcy Court for the District of Columbia	LBankrR 5004-1	Disclosure of Corporate Affiliations and Financial Matters
Bankruptcy Court for the S.D. Georgia	Uniformity of Practice Statement	Local Rules for Bankruptcy Cases; Uniformity of Practice Statement
Bankruptcy Court for the C.D. Illinois	District Court General Rule 1.1	The general and civil rules of the district court apply in all of the courts in the district
Bankruptcy Court for the D. Maine	LBankrR 1002-1(b)(3)	Disclosure Statement

Each of the bankruptcy courts listed in Table 4 is in a district where the district court has a financial disclosure rule in effect. With the exception of the bankruptcy court in the District of Maine, the bankruptcy courts follow the disclosure rule of the district court. Local Rule 5004-1 of the bankruptcy court for the District of Columbia states that the applicable rule from the district court applies to adversary proceedings and contested matters in the bankruptcy court. The Uniformity of Practice Statement in the local rules of the bankruptcy court for the S.D. Georgia directs that the relevant rule of the district court applies by incorporation to bankruptcy cases and proceedings. General Rule 1.1 of the district court for the C.D. Illinois directs that the general and civil rules of the court apply in all of the courts in the district, including the bankruptcy court.

Parties appealing a final judgment from the bankruptcy court to the district court in the Central District of California are subject to filing requirements under local bankruptcy rules of the district court (see Table 2). Parties moving to withdraw reference from the bankruptcy court to the district court must meet the same filing requirements. The bankruptcy court for the Central District of California does not, however, require disclosure in cases referred from the district court.

<sup>16</sup> Standard Bankruptcy Form 7, Statement of Financial Affairs, is completed by debtors and provides the court some, albeit limited, financial information.

Pursuant to 28 U.S.C. §158(b), appeals from bankruptcy court judgments, orders, and decrees may be heard by a bankruptcy appellate panel instead of a district court. The panels consist of three sitting bankruptcy judges designated by the circuit council. Six circuit judicial councils have established such bankruptcy appellate panels.<sup>17</sup> Four of the courts of appeals in those six circuits have a local rule requiring disclosure of financial interests information. Table 5 lists the courts and their rules.

Table 5. Bankruptcy Appellate Panel Rules Requiring Party Disclosure of Financial Interests Information

Bankruptcy Appellate Panel	Local Rule	Rule Title
Second Circuit	BAP LR 8009.1(c)	Disclosure of Interested Parties
Eighth Circuit	BAP LR 8009.A(1)	Certification of Interested Parties
Ninth Circuit	BAP LR 5(c)	Certification as to Interested Parties
Tenth Circuit	BAP LR 8001-2(b)	Certificate of Interested Parties

### ***Financial Disclosure Requirements in the Bankruptcy Courts and Bankruptcy Appellate Panels***

Tables summarizing bankruptcy court local rules and provisions for handling appeals by bankruptcy appellate panels follow. The format is identical to tables summarizing the district court provisions.

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<sup>17</sup> Circuit court of appeals with BAP programs are the First, Second, Sixth, Eighth, Ninth, and Tenth circuits. The district courts within a circuit are not required to participate. Only the Ninth Circuit has full participation by all district courts within the circuit.

## **U.S. Bankruptcy Court for the District of Columbia**

### **Local Bankruptcy Rule 5004-1, Disclosure of Corporate Affiliations and Financial Matters**

Local Bankruptcy Rule 5004-1 does not yet reflect recently completed revisions to the District Court Local Rules. Local Bankruptcy Rule 5004-1 should reference Local Civil Rule 26.1 in lieu of Local District Rule 109. Local Bankruptcy Rule 5004-1 currently reads: “Local District Rule 109 applies to adversary proceedings and contested matters in the Bankruptcy Court, with the required certificate to be filed in contested matters with a party’s paper commencing the contested matter or a party’s paper opposing the relief sought in the contested matter.”

#### *Who must file*

Corporate parties and corporate intervenors to adversary proceedings and contested matters in the bankruptcy court.

#### *Required information*

In conformance with Local District Rule 109 (now Local Civil Rule 26.1) of the District Court for the District of Columbia, a party or intervenor must identify any parent, subsidiary, or affiliate of that party or intervenor which has any outstanding securities in the hands of the public.

#### *Time of initial filing*

With a party’s paper commencing the contested matter or a party’s paper opposing the relief sought in the contested matter.

#### *Negative report*

The local rule is silent.

#### *Disclosure form*

The form prescribed is the same as for the district court.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

Bankruptcy cases.

#### *Obligation to update*

Stated in the district court local rule, so applicable in bankruptcy matters as well.

#### *Note*

Local Bankruptcy Rule 5004-1 makes parties to adversary proceedings and contested matters in the bankruptcy court subject to the same disclosure provisions required by the district court.

## **U.S. Bankruptcy Court for the Southern District of Georgia**

### **Local Rules for Bankruptcy Cases: Uniformity of Practice**

The Uniformity of Practice Statement directs that Civil Local Rule 3.2 of the U.S. District Court for the Southern District of Georgia applies by incorporation to bankruptcy cases and proceedings.

#### *Who must file*

All private (non-government) parties.

#### *Required information*

In conformance with Local Rule 3.2 of the district court, parties identify all parties; officers, directors, or trustees of parties; and all other persons, associations of persons, firms, partnerships, corporations, or organizations which have a financial interest in, or another interest which could be substantially affected by, the outcome of the particular case.

#### *Time of initial filing*

The local rule is silent.

#### *Negative report*

The local rule is silent.

#### *Disclosure form*

Certificate of Interested Parties, located in the Appendix of Forms to the Local Rules.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

Bankruptcy cases in bankruptcy court.

#### *Obligation to update*

The local rule is silent.

## **U.S. Bankruptcy Court for the Central District of Illinois**

General Rule 1.1 of the U.S. District Court for the Central District of Illinois directs that the general and civil rules of the court apply in all of the courts in the district.

## **U.S. Bankruptcy Court for the District of Maine**

### **Bankruptcy Rule 1002-1(b)(3), Disclosure Statement**

#### *Who must file*

Non-governmental, non-individual debtors.

#### *Required information*

Identification of all “affiliates” and “insiders”, as defined in 11 U.S.C. §101(2),(31).4

Under 11 U.S.C. §101(2) “affiliate” means—

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

(D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement.

Under 11 U.S.C. §101(31) an “insider” includes—

(A) if the debtor is an individual: (i) relative of the debtor or of a general partner of the debtor; (ii) partnership in which the debtor is a general partner; (iii) general partner of the debtor; or (iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation: (i) director of the debtor; (ii) officer of the debtor; (iii) person in control of the debtor; (iv) partnership in which the debtor is a general partner; (v) general partner of the debtor; or (vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership: (i) general partner of the debtor; (ii) relative of a general partner in, general partner of, or person in control of the debtor; (iii) partnership in which the debtor is a general partner; (iv) general partner of the debtor; or (v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor.

#### *Time of Filing*

With the petition or within fifteen days thereafter.

*Negative report*

The local rule is silent.

*Disclosure form*

The local rule is silent.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Bankruptcy cases and proceedings under Title 11 pending in the district court and in the bankruptcy court (Local Bankruptcy Rule 1001-1).

*Obligation to update*

The local rule is silent.

## **Bankruptcy Appellate Panels in the Second Circuit Court of Appeals**

### **BAP Local Rule 8009.1(c), Disclosure of Interested Parties**

*Who must file*

Private (non-governmental) parties.

*Required information*

Identification of persons, associations of persons, firms, partnerships and corporations which may have an interest in the outcome of the case; identification of the connection and interest in the appeal.

*Time of Filing*

With the initial brief.

*Negative report*

The local rule is silent.

*Disclosure form*

The general form of the disclosure certificate is prescribed in the BAP rule.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Bankruptcy appeals before a bankruptcy appellate panel.

*Obligation to update*

The local rule is silent.

*Note*

The information is provided on the inside cover of the initial brief.

## **Bankruptcy Appellate Panels in the Eighth Circuit Court of Appeals**

### **BAP Local Rule 8009.A(1), Certification of Interested Parties**

*Who must file*

Appellant (and appellee if the appellee exercises the option to prepare and file a separate appendix with its brief, Internal Operating Procedures Manual at IOP III.B.2).

*Required information*

Identification of parties that have an interest in the outcome of the appeal; identification of the connection and interest in the appeal.

*Time of Filing*

At the same time as a party's brief (Internal Operating Procedures Manual at IOP III.B.2).

*Negative report*

The local rule is silent.

*Disclosure form*

The general form of the disclosure certificate is prescribed in the BAP rule.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Bankruptcy appeals before a bankruptcy appellate panel.

*Obligation to update*

The local rule is silent.

*Note*

The information is provided in an appendix to the appellant's brief.

## **Bankruptcy Appellate Panels in the Ninth Circuit Court of Appeals**

### **BAP Local Rule 5(c), Certification as to Interested Parties**

*Who must file*

Parties.

*Required information*

Identification of all persons, associations of persons, firms, partnerships and corporations which have an interest in the outcome of the case.

*Time of Filing*

The local rule is silent.

*Negative report*

The local rule is silent.

*Disclosure form*

The general form of the disclosure certificate is prescribed in the BAP rule.

*Number of copies*

The local rule is silent.

*Scope of applicability*

Bankruptcy appeals before a bankruptcy appellate panel.

*Obligation to update*

The local rule is silent.

*Note*

The information is provided on the inside cover of the initial brief.

## **Bankruptcy Appellate Panels in the Tenth Circuit Court of Appeals**

### **BAP Local Rule 8001-2(b), Certificate of Interested Parties**

#### *Who must file*

Parties, including pro se parties (BAP Rule 8001-2(a)).

#### *Required information*

Identification of all parties to the litigation not revealed by the caption of the notice of appeal; identification of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, or other legal entities that are financially interested in the outcome of the litigation; for corporations, identification of all parent corporations and identification of any publicly held company that owns 10 percent or more of the corporation's stock; an individual listing is not necessary if a large group of persons or firms can be specified by a generic description; identification of attorneys not entering an appearance in the court who have appeared for any party in the bankruptcy court case or proceeding sought to be reviewed, or in related proceedings that preceded the original action being pursued in this court.

#### *Time of Filing*

With each entry of appearance; first entry of appearance should be filed within ten days after service of notice that the appeal has been docketed with the court (BAP Rule 8001-2(a)).

#### *Negative report*

Required.

#### *Disclosure form*

Form 3. Entry of Appearance, Certificate of Interested Parties, and Oral Argument Statement, located in BAP L.R. Appendix A.

#### *Number of copies*

The local rule is silent.

#### *Scope of applicability*

Bankruptcy appeals before a bankruptcy appellate panel.

#### *Obligation to update*

Stated.

## **Part V. Summary and Conclusions**

The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States is evaluating whether a national rule requiring party disclosure of financial interests information in district and bankruptcy courts is necessary, and if so, how the rule should be structured. To assist the committee with its work, the Federal Judicial Center studied practices and variations in methods that are in use in courts where financial information from parties is collected. Our study revealed the following: (1) more than half of the circuit courts of appeals require broader disclosure than the disclosure provided by FRAP 26.1; (2) a significant number of district courts have rules or procedures requiring disclosure; and (3) few bankruptcy courts require disclosure. The variations in the practices of the appellate, district, and bankruptcy courts are numerous. In a review of current practices, we found no consensus approach.

### ***Courts of Appeals***

Federal Rule of Appellate Procedure 26.1 is currently the only federal rule that requires disclosure of financial interests information. The rule obligates non-governmental corporate parties to file a statement identifying parent corporations and companies owning 10 percent or more of the party's stock. The disclosure required by FRAP 26.1 is limited, both in terms of who must file (corporate parties only) and what they must file (the identification of parent corporations and publicly held companies owning 10 percent or more stock in the party).

The First, Second, and Eighth circuits make no additional provisions for collecting disclosure information. In contrast to these courts of appeals, the Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, District of Columbia, and Federal circuits require additional information from parties by local rule.

The appellate courts expand disclosure required under FRAP 26.1 in two ways. They either broaden the range of parties subject to disclosure and/or they expand the scope of information to be filed. All ten appellate courts with local rules broaden the range of parties who must file information. All except the Seventh and Federal circuits additionally expand the scope of information to be filed.<sup>18</sup>

The additional filing requirements involve two types of information. The first is information that identifies groups of entities with a financial or business connection to the party, over and above the connection that exists by reason of being a parent corporation or company owning 10 percent or more of the party's stock. Parties are usually guided by a listing of entities considered applicable to the requirement; if such disclosure is required, the listing is specified in the local rule of the court.

The second type of information is information that identifies entities with a general financial interest in the outcome of the litigation. Again, the local rule will normally provide guidance by providing a listing of types of entities that must be disclosed.

The appellate court local rules vary substantially. The two most important differences involve who must file disclosure information and what must be filed. These differences

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<sup>18</sup> The Seventh Circuit rule requires a listing of law firms and lawyers who have appeared, or will appear, for the party, but for the purpose of this report, this information is not considered an extension of the FRAP 26.1 requirements on financial disclosure.

define the extent to which the courts collect more information than what FRAP 26.1 requires. Other dimensions defining differences among the rules include the time frame for filing disclosure, whether a statement is required if a party has nothing to report, the number of copies required for submission, the scope of applicability to different appeal types such as civil, bankruptcy, and criminal proceedings, and whether the local rule imposes a continuing obligation on parties to keep financial disclosures updated.

### **District Courts**

There is no national rule corresponding to FRAP 26.1 in the district and bankruptcy courts. Nineteen district courts currently have a similar local rule, however, and several other district courts (or individual judges within a court) have fashioned general orders or alternative procedures for collecting responsive information. In addition to the district courts with active disclosure requirements, two courts that operate under a uniform rules agreement have a proposed rule under consideration.

The local rules from two district courts—the Central District of Illinois and the Eastern District of Wisconsin—conform closely to the disclosure requirements specified in FRAP 26.1. The remaining district courts oblige parties to provide more disclosure.

Local rules in a number of these courts are modeled on the precursor to current FRAP 26.1, which required parties to disclose any subsidiaries and affiliates that issued stock to the public. The local rules in other courts require broader disclosure. Like the appellate courts, the district courts provide for the additional information in two ways. They either broaden the range of parties subject to disclosure or they expand the scope of information to be filed. Expanding the scope of information entails identifying groups of entities with various financial or business connections to the party, or identifying, more generally, entities with an interest in the outcome of the litigation. Often, the local rules are quite specific as to what types of entities must be disclosed. These entities may include not only parent corporations, subsidiaries, and affiliates, but also trade associations, partnerships, conglomerates, insurers, and others.

Variations in the district court rules and procedures are numerous. The important variations reflect differences in who must file disclosure information, the types of cases covered by the local rule (some courts limit the application to civil litigants only, others apply the rule more widely), and the type of information that must be filed. Other dimensions that produce differences among the rules include the time frame for filing disclosure, whether a statement is required if a party has nothing to report, the number of copies required for submission, and whether the local rule imposes a continuing obligation on parties to keep financial disclosures updated.

To assess the effectiveness of the disclosure requirements in the district courts, we wrote to chief judges (or in some instances, individual judges) in courts with local rules or procedures for collecting broad financial information. We asked whether the judges in the district found their local rule's requirement for "additional" information useful in detecting conflicts of interest. Eleven of the twelve judges who answered the question indicated that the information was useful. We went on to ask whether the judge was aware of circumstances where limiting the disclosure to FRAP 26.1 requirements would have failed to alert a judicial officer to a conflict of interest. Only two of the seven judges answering the question answered affirmatively. Judges in courts with broader disclosure

requirements than FRAP 26.1 favor those broader requirements, even though empirical support for their effectiveness cannot be demonstrated.

We also solicited views from the chief judges of two courts requiring limited disclosure. Both indicated that the local rule in their court, modeled after the current version of FRAP 26.1, permitted judges to identify potential financial conflicts of interest. Neither was aware of circumstances in their courts where the local rule had failed to provide sufficient information to detect a conflict of interest.

In the course of our research, we learned that judges in the District of Kansas recently enacted, and then repealed, a local rule requiring parties to disclose substantial amounts of financial interest information. Unlike other district court rules, Rule 3.2 of the District of Kansas anticipated that dismissal or default sanctions would be imposed on parties failing to comply with its provisions. Court sources told us that problems with the rule arose soon after the rule was enacted, and that these problems threatened to overwhelm staff in the clerk's office. The problems described to us involved drafting, administration, and enforcement issues. The court abandoned the procedure after finding that the burden of enforcing the rule outweighed the value of the information collected.

### ***Bankruptcy Courts and Bankruptcy Appellate Panels***

Our research indicated that only four bankruptcy courts, those in the District of Columbia, Southern District of Georgia, Central District of Illinois, and the District of Maine, have rules or procedures for collecting financial disclosure information. With the exception of the bankruptcy court in the District of Maine, the bankruptcy courts follow the disclosure rule in effect in the district court. The bankruptcy court in the District of Maine has a local rule tailored to bankruptcy practice.

Appeals taken to bankruptcy appellate panels are covered by disclosure requirements in four circuits.