

The Honorable Thomas S. Zilly

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

NEIGHBORHOOD HOUSE; and  
MARIIA MATSAI,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; and ROBERT F.  
KENNEDY, JR., in his official capacity as  
Secretary of Health and Human Services,

Defendants.

NO. 2:26-cv-03006-TSZ

INTERVENOR-PLAINTIFF  
STATE OF WASHINGTON'S  
MOTION TO INTERVENE

NOTE ON MOTION CALENDAR:  
NOVEMBER 6, 2026

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## I. INTRODUCTION

The State of Washington seeks to intervene in this lawsuit challenging the United States Department of Health and Human Services' Centers for Medicare and Medicaid Services' guidance on the implementation of Section 71109 of Public Law No. 119-21, also known as "H.R. 1." This guidance purported to interpret H.R. 1 as terminating federal Medicaid funding to aged, blind, or disabled Supplemental Security Income recipients based on their immigration status. Defendants' erroneous interpretation of H.R. 1 violates the Administrative Procedure Act and harms the State of Washington's economic interests, as well as its legally protectable interest in following federal law. While the current Plaintiffs and the State of Washington seek common relief through the same APA claims, the current Plaintiffs cannot adequately represent the State of Washington's unique economic and compliance interests. Thus, the State of Washington seeks to intervene in this matter.

The State meets all criteria to intervene as a matter of right under Federal Rule of Civil Procedure 24(a). Its motion timely; it has a significant protectable interest; that interest may as a practical matter be impaired by the outcome of this litigation; and its interests will not necessarily be protected by the current parties to the matter. Accordingly, the Court should grant Washington's motion and allow it to intervene as a matter of right.

Alternatively, the Court should permit Washington to intervene permissively. It seeks to file a complaint that shares significant questions of law and fact with the Plaintiffs' complaint; the motion is brought before any response to the Plaintiffs' complaint has been filed; and the State's proposed complaint does not raise any new claims. The State therefore meets all criteria necessary for permissive intervention.

The Court should grant the State's motion to intervene.

## II. BACKGROUND

### A. The State of Washington's Medicaid Participation

Medicaid is a joint state and federal medical assistance program for the poor, disabled, and others in need. 42 U.S.C. § 1396 *et seq.* While participation in Medicaid is not mandatory, states that choose to participate and receive federal financial participation (FFP) must comply with minimum requirements set forth in the Medicaid Act. *Univ. of Wash. Med. Ctr. v. Sebelius*, 634 F.3d 1029, 1031 (9th Cir. 2011). One such requirement is that states provide comparable Medicaid services to all Medicaid recipients. 42 U.S.C. § 1396a(a)(10)(B); 42 C.F.R. § 440.240; *see Ariz. All. for Cmty. Health Ctrs. v. Ariz. Health Care Cost Containment Sys.*, 47 F.4th 992, 1002 n.3 (9th Cir. 2022) (“the ‘comparability’ rule is only violated if some ‘recipients’ are denied or given ‘services that are less in amount, duration, or scope than the medical assistance made available to’ other recipients for an improper reason” (quoting *Arc of Cal. v. Douglas*, 757 F.3d 975, 985 (9th Cir. 2014))).

The State of Washington participates in the Medicaid program, and its approved plan is administered by the Health Care Authority. Dkt. # 8 ¶ 5. Washington receives federal Medicaid funding, which covers an average of sixty-seven percent of expenditures for eligible enrollees. *Id.* at ¶ 9.<sup>1</sup> Roughly 14,000 of the current Medicaid beneficiaries in Washington are noncitizens who are not LPRs, Cuban or Haitian entrants, or residing in the United States pursuant to a Compact of Free Association (COFA). *See id.* at ¶ 20. The Health Care Authority estimates that over one thousand noncitizens receive SSI benefits and several hundred receive long-term care services funded through the Medicaid program. *Id.* at ¶ 22.

To meet the federal government's comparability requirement, the State of Washington must treat all noncitizens who receive Medicaid the same. *See* 42 U.S.C. § 1396a(10)(A); *Lynch v. Rank*, 747 F.2d 528, 535–36 (9th Cir. 1984).

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<sup>1</sup> The State of Washington intends to provide updated figures as part of its motion for summary judgment.

1 The State of Washington has also entered into an agreement with the Social Security  
 2 Administration (SSA) under Section 1634 of the Social Security Act (1634 Agreement), which  
 3 provides that the SSA will determine “eligibility for medical assistance in the case of aged, blind,  
 4 or disabled individuals under [the] State’s [Medicaid] plan.” 42 U.S.C. § 1383c(a).

5 **B. CMS Issued Guidance That Purports to Strip Medicaid Benefits from Certain**  
 6 **Qualified Noncitizen SSI Recipients, Plaintiffs Filed Suit, and This Court Grants**  
 7 **Preliminary Relief**

8 In April 2026, the Centers for Medicare and Medicaid Services (CMS) issued a letter to  
 9 state health officials stating that, pursuant to H.R. 1, FFP is no longer available for full Medicaid  
 10 benefits provided to qualified noncitizens unless they are also lawful permanent residents, Cuban  
 11 or Haitian entrants, or COFA migrants. Dkt. # 1 at pp. 24–58 (SHO Letter).

12 On July 31, 2026, CMS issued additional guidance in the form of the “State  
 13 Implementation Tool: Section 71109 of the Working Families Tax Cut (WFTC) Legislation.”  
 14 Dkt. # 1 at pp. 59–67, (State Implementation Tool). The tool purports “to aid states in their  
 15 implementation of the statutory changes made by section 71109.” *Id.*

16 On August 25, 2026, Plaintiffs, an organization providing case management for  
 17 individuals who receive Medicaid and an individual SSI recipient, brought this action  
 18 challenging the Department of Health and Human Service’s decision to stop fulfilling its  
 19 statutory obligation to provide FFP to the State of Washington for Medicaid benefits provided  
 20 to noncitizen SSI recipients without one of the listed immigration statuses. Dkt. # 1. Plaintiffs  
 21 moved for a preliminary injunction three days later, on August 28, 2026. Dkt. # 4. The State of  
 22 Washington provided a declaration in support of the Plaintiffs’ motion and subsequently filed an  
 23 amicus brief supporting the motion. Dkt. ## 8, 18-1. Defendants opposed the preliminary  
 24 injunction and responded to the State’s amicus brief. Dkt. ## 21, 22. On September 29, 2026,  
 25 the Court held a hearing on Plaintiffs’ motion, in which it requested the State of Washington  
 26 participate. Dkt. # 27. The next day, the Court granted Plaintiffs’ preliminary injunction motion

1 on a statewide basis, recognizing the need for statewide relief in part because of the State's  
 2 compliance interests. *See Neighborhood House v. U.S. Dep't of Health & Hum. Serv.*,  
 3 No. 2:26-cv-03006-TSZ, 2026 WL 2935933, at \*9 (W.D. Wash. Sept. 30, 2026) (Dkt. # 28 at  
 4 pp. 22–23).

5 The State of Washington now moves to intervene as a plaintiff, two weeks after the Court  
 6 granted the motion for preliminary injunction. Defendants' answer to Plaintiffs' complaint is not  
 7 due until later this month. *See* Fed. R. Civ. P. 12(a)(2). There are no other deadlines pending in  
 8 this litigation, as the Court has not yet scheduled a Rule 26(f) conference or issued a scheduling  
 9 order pursuant to Rule 16(b). *See* Fed. R. Civ. P. 16(b), 26(f).

### 10 III. ARGUMENT

11 The State of Washington's claims and requested relief align with those of the Plaintiffs.  
 12 But the Plaintiffs—a non-profit organization that provides long term care services to Medicaid  
 13 recipients and an individual Medicaid recipient—cannot adequately represent the unique  
 14 economic and compliance interests of the State. The State of Washington therefore moves to  
 15 intervene as of right under Federal Rule of Civil Procedure 24(a)(2) to protect its interests.  
 16 Alternatively, the Court should permit the State of Washington to intervene under Federal Rule  
 17 of Civil Procedure 24(b).<sup>2</sup>

#### 18 A. The Court Should Allow the State of Washington to Intervene as of Right

19 The State of Washington meets all the requirements to intervene as of right under Federal  
 20 Rule of Civil Procedure 24(a)(2). Rule 24(a)(2) requires a court permit intervention when the  
 21 nonparty: “(i) timely moves to intervene; (ii) has a significantly protectable interest related to  
 22

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23 <sup>2</sup> Because Washington State seeks relief that is not fundamentally different from or beyond that which the  
 24 Plaintiffs seek, the State need not establish separate Article III standing. *See Little Sisters of the Poor Saints Peter*  
 25 *& Paul Home v. Pennsylvania*, 591 U.S. 657, 674 n.6 (2020); *Cal. Dep't of Toxic Substances Control v. Jim Dobbas,*  
 26 *Inc.*, 54 F.4th 1078, 1085 (9th Cir. 2022); *Vasquez Perdomo v. Noem*, 820 F. Supp. 3d 1061, 1082 (C.D. Cal. 2026);  
*Washington v. U.S. Food & Drug Admin.*, 108 F.4th 1163, 1171-72 (9th Cir. 2024). But, as demonstrated in the  
 proposed complaint-in-intervention and in the discussion below, the State could establish separate Article III  
 standing regardless.

1 the subject of the action; (iii) may have that interest impaired by the disposition of the action;  
 2 and (iv) will not be adequately represented by existing parties.” *W. Watersheds Project v.*  
 3 *Haaland*, 22 F.4th 828, 835 (9th Cir. 2022); *see also Kalbers v. U.S. Dep’t of Just.*, 22 F.4th 816,  
 4 822 (9th Cir. 2021). Generally, courts interpret these requirements broadly in favor of  
 5 intervention and practical considerations guide their considerations of such motions.  
 6 *W. Watersheds*, 22 F.4th at 835. Because the State of Washington meets each requirement, the  
 7 Court should allow it to intervene as of right.

8 **1. The State of Washington’s motion is timely**

9 The State of Washington’s motion fits squarely within a reasonable timeframe to  
 10 intervene. For intervention to be timely, “a party must intervene when he knows or has reason  
 11 to know that his interests might be adversely affected by the outcome of litigation.”  
 12 *W. Watersheds*, 22 F.4th at 835. “To determine whether a motion for intervention as of right is  
 13 timely,” courts “consider the totality of circumstances facing the would-be intervenor, with a  
 14 focus on three primary factors: (1) the stage of the proceeding at which an applicant seeks to  
 15 intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay.” *Id.*  
 16 at 835–36 (quoting *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016)).

17 This case is in its nascent stages—the complaint was filed approximately six weeks ago,  
 18 and the federal government has not yet answered or responded to the complaint.<sup>3</sup> *See* Dkt. # 1.  
 19 Therefore, the State of Washington’s delay (if any) in seeking to intervene was “a short delay  
 20 [that] weighs in favor of timeliness.” *Kalbers*, 22 F.4th at 825. Courts routinely find intervention  
 21 motions timely under circumstances such as these. *See, e.g., Kalbers*, 22 F.4th at 826–27  
 22 (holding motion to intervene timely when case had not yet progressed substantively);  
 23 *see also Renewable Northwest v. Hegseth*, No. 3:26-cv-01092-IM, 2026 WL 2875945, at \*1  
 24 (D. Or. Aug. 20, 2026) (finding states timely filed motion to intervene where “they filed their  
 25

26 <sup>3</sup> To assist in the expeditious disposition of all claims, the State of Washington is willing to waive the DOJ’s answer to its Complaint and rely on the DOJ’s answer to Plaintiffs’ Complaint.

1 Motion within approximately six weeks of Plaintiffs’ filing of this lawsuit and three weeks of  
 2 Plaintiffs’ filing of their First Amended Complaint”); *California v. Health & Hum. Servs.*, 330  
 3 F.R.D. 248, 253 (N.D. Cal. 2019) (state’s motion to intervene in APA action was timely when  
 4 filed less than a month after plaintiffs’ second amended complaint and preliminary injunction  
 5 motion); *Or. Nat. Desert Ass’n v. Shuford*, No. CV-06-242-AA, 2006 WL 2601073, at \*2  
 6 (D. Or. Sept. 8, 2006) (finding no prejudice where intervenors moved promptly and agreed “to  
 7 comply with the court’s discovery and pretrial scheduling order”), *aff’d sub nom*, *Or. Nat. Desert*  
 8 *Ass’n v. McDaniel*, 405 F. App’x 197 (9th Cir. 2010).

9 Given the early stage of the case and the State of Washington’s parallel claims, inclusion  
 10 of the State as a Plaintiff-Intervenor would not prejudice the other parties. *See Smith*, 830 F.3d  
 11 at 857 (“[T]he only ‘prejudice’ that is relevant under this factor is that which flows from a  
 12 prospective intervenor’s failure to intervene after he knew . . . that his interests were not being  
 13 adequately represented.”). Moreover, the parties are aware of the State of Washington’s interest  
 14 and position in the case from its participation in the preliminary injunction motion as an amicus  
 15 curiae. *See* Dkt. # 18. The State of Washington’s intervention also would not disrupt any existing  
 16 litigation deadlines.<sup>4</sup> *See* Fed. R. Civ. P. 16(b), 26(f). Inclusion of the State of Washington as  
 17 Plaintiff-Intervenor now would only formally protect the State’s interests and promote judicial  
 18 economy.

## 19 **2. The State of Washington has significant protectable interests**

20 The State of Washington’s interests in the adjudication of Medicaid obligations are clear  
 21 and numerous. “[A] proposed intervenor ‘has a significant protectable interest in an action if (1)  
 22 it asserts an interest that is protected under some law, and (2) there is a relationship between its  
 23 legally protected interest and the plaintiff’s claims.’” *Kalbers*, 22 F.4th at 827 (quoting  
 24 *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). This is “a practical, threshold inquiry,

25 <sup>4</sup> And to the extent the federal government objects to the State’s intervention because their answer to the  
 26 complaint-in-intervention would trail their answer to Plaintiffs’ complaint by a few weeks, the State is already  
 willing to waive the federal government’s answer to the complaint.

1 and no specific legal or equitable interest need be established.” *Citizens for Balanced Use v.*  
 2 *Mont. Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (quotation marks and citation  
 3 omitted).

4 The challenged SHO Letter and State Implementation Tool directly regulate and place  
 5 obligations on the State of Washington. CMS sent the SHO Letter and State Implementation  
 6 Tool to State officials, as the administrators of Medicaid within the State’s territory. Dkt. # 1.  
 7 The SHO Letter reports FFP will not be available to the State of Washington for certain  
 8 noncitizens beginning October 1, 2026. Dkt. # 1. As the regulated entity, the State of  
 9 Washington’s interest in the action is self-evident. *Cf. Lujan v. Defenders of Wildlife*, 504 U.S.  
 10 555, 561–62 (1992) (recognizing that there is “ordinarily little question” of standing where “the  
 11 plaintiff is himself an object of the action (or forgone action) at issue”).

12 The State of Washington’s economic harm from the SHO Letter and State  
 13 Implementation Tool’s unlawful withdrawal of FFP is inevitable. The SHO Letter facially cuts  
 14 off FFP that Washington would otherwise claim for medical services provided to SSI eligible  
 15 non-citizens. Dkt. # 1 at pp. 30–31; Dkt. # 8 ¶¶ 20–21. This obviously impacts Washington’s  
 16 interests in its Medicaid program. *Id.* at ¶ 23 (showing clients of Washington’s Medicaid program  
 17 have received notice that their services would be terminated due to the SHO Letter). This alone  
 18 is a powerful interest that supports the State’s intervention here.

19 But more than that, the SHO Letter will have dire consequences for the State. As of the  
 20 filing of this motion, “[t]he Washington State Legislature has not appropriated funds to fully  
 21 replace the FFP” that the SHO Letter erroneously withdrew. *Id.* at ¶ 24. If the Washington State  
 22 Legislature does not allocate additional funding to support its SSI-receiving noncitizen residents  
 23 without a qualifying immigration status, those individuals will lose their Medicaid benefits and  
 24 will “likely to need emergency medical care, burdening the state’s already strained safety-net  
 25 healthcare system.” Dkt. # 8 ¶¶ 23–24. Alternatively, should the Washington State Legislature  
 26 allocate additional funds to replace the unlawfully withdrawn FFP, the State will be financially

1 harmed by that additional expenditure. Thus, regardless of how the Washington State Legislature  
 2 proceeds, the harm to State of Washington's economic interests is sufficient for intervention. *See*  
 3 *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004) (holding that concrete  
 4 economic interests related to the underlying subject matter of an action may be sufficient to  
 5 support right of intervention).

6 Additionally, the State of Washington has a unique interest in its ability to administer its  
 7 Medicaid program in compliance with federal law. *See Renewable Northwest*, 2026 WL  
 8 2875945, at \*2 (recognizing compliance interest with respect to other legal obligations  
 9 constitutes a significant protectable interest). The Medicaid Act and the Personal Responsibility  
 10 and Work Opportunity Reconciliation Act mandate Medicaid eligibility for noncitizen SSI  
 11 recipients. 8 U.S.C. § 1612(b)(2)(F); *see* 42 U.S.C. § 1396a(a)(10)(B); 42 C.F.R. § 440.240.  
 12 Furthermore, because Washington has a 1634 Agreement with the SSA, federal regulations  
 13 require “[a]utomatic enrollment” in Medicaid for individuals who receive SSI and provide that  
 14 eligibility for SSI payments automatically confers Medicaid eligibility. 42 C.F.R. § 435.909(a);  
 15 *see* 42 C.F.R. § 435.541(a)(2). Washington has a legally protectable interest in following federal  
 16 law. *See Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 581, (2012) (“Section 1396c of  
 17 the Medicaid Act provides that if a State’s Medicaid plan does not comply with the Act’s  
 18 requirements, the Secretary of Health and Human Services may declare that ‘further payments  
 19 will not be made to the State.’” (quoting 42 U.S.C. § 1396c(2))).

### 20 **3. Disposition of this case may impair the State of Washington’s interests**

21 Once a proposed intervenor has shown some protectable interest, courts generally “have  
 22 little difficulty concluding that the disposition of [a] case may, as a practical matter, affect” those  
 23 interests. *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006). The State of  
 24 Washington’s interests, outlined above, may be impaired by the Court’s disposition of this case.  
 25 The Court has already recognized the possibility of such impairment; in its order granting  
 26 Plaintiffs’ preliminary injunction motion, the Court agreed that state-wide relief was necessary,

1 in part, to avoid placing “the State of Washington in jeopardy of violating federal law.”  
 2 *Neighborhood House*, 2026 WL 2935933, at \*9.

3 **4. Plaintiffs may not adequately represent the State of Washington’s interests**

4 Finally, an applicant for intervention must show that the current plaintiff’s  
 5 “representation of [its] interests *may* be inadequate.” *Kalbers*, 22 F.4th at 828 (quoting *Legal*  
 6 *Aid Soc. of Alameda Cnty. v. Dunlop*, 618 F.2d 48, 50 (9th Cir. 1980)). “To evaluate adequacy  
 7 of representation, courts consider three factors: ‘(1) whether the interest of a present party is such  
 8 that it will undoubtedly make all of a proposed intervenor’s arguments; (2) whether the present  
 9 party is capable and willing to make such arguments; and (3) whether a proposed intervenor  
 10 would offer any necessary elements to the proceeding that other parties would neglect.’”  
 11 *W. Watersheds*, 22 F.4th at 840–41 (quoting *Citizens for Balanced Use*, 647 F.3d at 897).

12 While the State of Washington’s claims and requested relief align with those of the  
 13 Plaintiffs, Plaintiffs will not “undoubtedly make all of” the State of Washington’s arguments.  
 14 *See id.* For example, in their preliminary injunction motion, Plaintiffs did not discuss the risks  
 15 the State of Washington faces if it fails to comply with federal and state law, or the economic  
 16 harm the State faces regardless of how it handles the unlawful withdrawal of FFP; Plaintiffs  
 17 (understandably) focus on the denial of their medical care and impacts on their organization and  
 18 individuals served by the organization. Dkt. # 4 at pp. 21–25. And the Court’s acknowledgment  
 19 of the State of Washington’s interests in granting the preliminary injunction indicates that  
 20 Plaintiffs alone may not be able to adequately protect the State’s interests.

21 The Court’s reliance on the State of Washington as an amicus curiae also shows that the  
 22 State offers “necessary elements to the proceeding that other parties would neglect.”  
 23 Dkt. ## 18-1, 28; *W. Watersheds*, 22 F.4th at 841.

24 The State of Washington thus meets all the requirements to intervene as of right and the  
 25 Court should allow it to do so pursuant to Federal Rule of Civil Procedure 24(a)(2).  
 26

**B. Alternatively, the Court Should Allow the State of Washington to Permissively Intervene**

If the Court does not find that the State of Washington can intervene as of right, it should still exercise its discretion to permit intervention. *See* Fed. R. Civ. P. 24(b). Generally, a court has discretion to permit anyone to intervene who has a claim or defense that shares a common question of law or fact with the main action. Fed. R. Civ. P. 24(b)(1)(B). An “applicant who seeks permissive intervention must prove that it meets three threshold requirements: (1) it shares a common question of law or fact with the main action; (2) its motion is timely; and (3) the court has an independent basis for jurisdiction over the applicant’s claims.” *Cooper v. Newsom*, 13 F.4th 857, 868 (9th Cir. 2021); *Donnelly*, 159 F.3d at 412. The Court “must consider whether intervention will unduly delay the main action or will unfairly prejudice the existing parties.” *Cooper*, 13 F.4th at 868; *Donnelly*, 159 F.3d at 412. The “court may also consider other factors in the exercise of its discretion, including ‘the nature and extent of the intervenors’ interest’ and ‘whether the intervenors’ interests are adequately represented by other parties.’” *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 955 (9th Cir. 2009) (citation omitted).

All these elements are met for the same reasons that the Court should allow the State of Washington to intervene as of right. As set forth above, the State of Washington’s claims and requested relief align with those of the Plaintiffs. Like the Plaintiffs, the State of Washington seeks to raise APA claims challenging the unlawful termination of Medicaid funding for noncitizens receiving SSI benefits without a qualifying immigration status.

The State of Washington’s motion is also timely, coming approximately six weeks after Plaintiffs filed their complaint and before Defendants filed an answer or motion to dismiss. *See supra* § III.A.1.

Finally, “the independent jurisdictional grounds requirement does not apply to proposed intervenors in federal-question cases when the proposed intervenor is not raising new claims.” *Washington v. U.S. Dep’t of Transp.*, No. 2:25-cv-00848-TL, 2025 WL 3023041, at \*11 (W.D.

Wash. Oct. 29, 2025) (citing *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011)); *Levin Richmond Terminal Corp. v. City of Richmond*, 482 F. Supp. 3d 944, 968 (N.D. Cal. 2020) (same, noting that when proposed intervenors do not bring new claims “the jurisdictional concern drops away”); *see supra* n.1.

Thus, even if the Court does not find that the State of Washington may intervene as of right, it should still permit the State to intervene in its discretion. *See, e.g., California*, 330 F.R.D. at 254–55 (state permitted to intervene as plaintiff in APA case); *Washington*, 2025 WL 3023041, at \*13 (permitting intervention when intervenors “bring a unique perspective and expertise to this action that will not necessarily . . . duplicate Plaintiff[s’] role”).

#### IV. CONCLUSION

The Court should allow the State of Washington to intervene as of right, or alternatively, permissively, as a plaintiff in this action.

DATED this 16th day of October 2026.

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I certify that this memorandum contains 3,675 words, in compliance with the Local Civil Rules.