

LOCAL RULES

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Federal courts have been making their own rules—“local rules”—since the First Judiciary Act. These rules, which operate alongside the Federal Rules, govern all aspects of the litigation process, from the initial filing and case assignment in the district court to the type of disposition of an appeal at the court of appeals. Yet despite their long history, their wide scope, and their deep importance, local rules have not been the subject of scholarly attention for years.

This Article offers the most comprehensive study of local rules to date. It provides an overview of the thousands of rules of the ninety-four district courts and the thirteen courts of appeals, and a report of more than fifty interviews with judges, attorneys, court staff, and academics involved in federal and local rulemaking. It also provides a typology of those rules and a deep dive into their purposes, which include accounting for local needs, providing laboratories of experimentation for federal rules, and offering ways to attract (and even repel) litigation.

Normatively, this Article connects the proliferation of local rules to larger questions within our federal court system. This Article suggests that at least some local variation is inevitable, and so local rules should be understood as one way to express that variation—though not the only way. Local variation can be subjected to a regularized and public process that produces transparent local rules, or it can be pushed down

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to less systematic standing orders, individual judge practices, and unwritten norms that may favor the local bar. But this is not to say that local rules are all to the good: local rules create problems when they contradict or duplicate federal rules, when they place an unnecessary tax on practitioners, and when they create opportunities for forum shopping and forum selling. Local rules may be inevitable, but they are not infallible—this Article seeks to understand and improve them.

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INTRODUCTION

The Federal Rules of Civil Procedure are 121 pages.¹ The Federal Rules of Appellate Procedure are 65 pages.² These rules answer many questions about procedure in federal court, but no one who has even a passing acquaintance with federal practice believes they answer every such question. The rules themselves admit as much. Civil Rule 83 and Appellate Rule 47, building on acts of Congress, expressly authorize federal courts to adopt local rules.³ And in dozens of places, the Federal Rules explicitly or implicitly invite lower courts to develop local rules to supplement, elaborate upon, or depart from the Federal Rules.⁴

Over the years, the United States district and circuit courts have issued thousands of local rules, including rules on many topics left wholly unaddressed by the Federal Rules. Some might think that local rules cover only small details—the “housekeeping”⁵ of the federal courts. And it is true that some can feel rather trifling. To take one example, the U.S. Court of Appeals for the Second Circuit’s Local Rule 31.1 states that “[i]n all cases, a party must submit 6 paper copies of each brief”—full stop.⁶ To take another, Local Civil Rule 1.2 of the U.S. District Courts for the Southern and Eastern Districts of New York specifies that a “night depository with an automatic date stamp [shall] be maintained by the clerk of the Southern District in the Pearl Street Courthouse and by the clerk of the Eastern District in the Brooklyn and Central Islip Courthouses.”⁷

But, as it turns out, local rules also cover significant topics in myriad ways. Historically, debates over civil juries have at times sounded in local

¹ We rely here on the version of the Federal Rules of Civil Procedure posted on the United States Courts website, <https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure> [<https://perma.cc/76DE-SCGG>] (last visited May 30, 2025).

² Federal Rules of Appellate Procedure, Admin. Off. of the U.S. Cts., <https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-appellate-procedure> [<https://perma.cc/Y3J9-BMWP>] (last visited May 30, 2025).

³ Fed. R. Civ. P. 83; Fed. R. App. P. 47; see also *infra* Part I (describing the origin of local rulemaking).

⁴ See *infra* Part II.

⁵ Judith Resnik, *Housekeeping: The Nature and Allocation of Work in Federal Trial Courts*, 24 Ga. L. Rev. 909, 913–15 (1990).

⁶ 2d Cir. R. 31.1.

⁷ S.D. & E.D.N.Y. Loc. Civ. R. 1.2. One more example because we know that lawyers love fonts: a local rule from the Southern District of West Virginia requires motions and memoranda to be “clearly legible” and provides that “[t]he following fonts are presumed legible: Times New Roman, Courier New, Arial, Century Gothic, Garamond, Georgia, and Century Schoolbook.” S.D. W. Va. LR Civ P 7.1(a)(4).

rulemaking.⁸ Today, fights about case assignment invoke questions about local rules. Judge-shopping, such as the State of Texas's preternatural ability to end up in front of Judge Matthew Kacsmaryk in recent years, is a practice permitted in many district courts because of local rules on case assignments.⁹ Rules to channel "related cases" to certain district judges, potentially manipulated in the stop-and-frisk litigation, are creatures of local rules, too.¹⁰ And there's more. The Eastern District of Virginia gets its reputation as the "rocket docket" in part because of its highly aggressive local rules.¹¹ For those interested in access to justice, there are roughly five hundred local rules related to *pro se* litigants in district courts, including ten districts with separate sections of their local rules addressing unrepresented litigants.¹² Consequential rules about class actions, summary judgment, and corporate disclosures are found in local rules as well.¹³ Meanwhile, in the courts of appeals, practices related to the use of "unpublished" (or non-precedential) opinions¹⁴—a sensitive subject over the years—are mostly left unregulated by the Federal Rules of Appellate Procedure.¹⁵ Instead, it is within many of the local rules that one can find details about when the appellate courts think an opinion should be "published" or not, and who can be part of that decision-making process.¹⁶ The same is true of other key moments in appellate litigation, including when briefs should be filed, when there should be oral argument, and when courts should rehear cases en banc.¹⁷

⁸ See, e.g., *Colgrove v. Battin*, 413 U.S. 149, 150 n.1 (1973) (discussing Montana Local Rule 13(d)(1), which the Court observed was similar in substance to the local rules of fifty-four other federal district courts).

⁹ See Michael Hiltzik, *Courts Finally Move to End Right-Wing Judge Shopping, But the Damage May Already Be Done*, L.A. Times (Mar. 18, 2024, 2:11 PM), <https://www.latimes.com/business/story/2024-03-18/federal-courts-finally-put-the-kibosh-on-right-wing-judge-shopping-but-the-damage-is-already-done>; Alex Botoman, Note, *Divisional Judge-Shopping*, 49 Colum. Hum. Rts. L. Rev. 297, 308–21 (2018); Katherine A. Macfarlane, *Constitutional Case Assignment*, 102 N.C. L. Rev. 977, 981–82, 1005–11 (2024).

¹⁰ See Marcel Kahan & Troy A. McKenzie, *Judge Shopping*, 13 J. Legal Analysis 341, 346, 358 n.29 (2021) (finding forty-six federal district courts with local related-case rules).

¹¹ See *infra* Subsection II.A.1.

¹² Andrew Hammond, *The Federal Rules of Pro Se Procedure*, 90 Fordham L. Rev. 2689, 2691–92, 2705 (2022).

¹³ See *infra* Section II.A; *infra* Subsection III.B.4.

¹⁴ See, e.g., Merritt E. McAlister, "Downright Indifference": Examining Unpublished Decisions in the Federal Courts of Appeals, 118 Mich. L. Rev. 533, 535–36, 535 n.8 (2020).

¹⁵ See Fed. R. App. P. 32.1(a) (simply permitting citation to unpublished opinions).

¹⁶ See *infra* Subsection II.A.2.

¹⁷ See *infra* Subsection II.A.2.

Despite their importance, there has not been sustained scholarly attention on local rules.¹⁸ Much like local rules themselves, then, this Article seeks to fill gaps in, elaborate upon, and address previously unaddressed topics in the literature. We show in this Article that national and local rulemaking, like other systems of federalism, must accommodate national and local interests. And they typically do so, not by allowing one side to completely run over the other, but instead in a more grounded process that ebbs and flows over time. As in federalism, we can observe conflict and cooperation, though perhaps the most common outcome is somewhere in between. And this observation informs our normative judgments about local rules serving important functions in the middle layer between federal rules and individual judge practices.

To better understand local rules, Part I begins with a brief review of their history, starting at the beginning of the federal courts themselves and taking us to the present day. Part II then aims to provide an overview of what the thousands of local rules contain. Having surveyed these rules ourselves, we provide a descriptive account of the topics included in the local rules for the district and appellate courts. Many local rules exist within the federal rules—that is, they address topics also addressed at the national level, such as discovery, case management, and briefing. Others, though, are “outside” the federal rules. We identified and cataloged 1,089 civil district rules and 70 appellate rules of this type, addressing issues such as the regulation of the bar and the administration of the court. We then conclude Part II with a different way of understanding the content of local rules, by providing a taxonomy of local rules as they relate to federal rules. One distinction just mentioned is between rules inside and outside the federal rules. But there is further variation among local rules inside the federal rules: local rules can elaborate or build upon federal rules, and they can respond to federal rules that invite opt-outs or that create a floor or ceiling. Perhaps most surprisingly of all, local rules can contradict or duplicate federal rules.

Part III then considers the purposes of local rules. This work is informed not only by our review of thousands of local rules, but also by dozens of interviews with people involved in federal and local rulemaking. Specifically, we have conducted over fifty semi-structured interviews with judges, attorneys, law professors, and court personnel—making this the largest qualitative study on local rules to date. Our

¹⁸ See *infra* note 20 (collecting sources, the most recent of which was published in 2015).

subjects include chairs, reporters, and members of the federal rulemaking committees, as well as chairs and members of local rules committees. These interviews helped us identify and distill several functions behind local rules, including a way to account for local needs and culture, a way to unify and codify judges' practices, an opportunity to have laboratories of experimentation, and a means to attract and repel certain kinds of litigation.

Part IV then analyzes the findings of our study. We offer some observations about how well the purposes of local rules align with reality, and we suggest ways that local and federal rulemakers can do better. We argue that many of the key tensions within a federal system are alive and well within rulemaking, and it is a fool's errand to try to formulate hard and fast rules about where there should be uniformity and where variation should be permitted. That said, we must acknowledge that the inter-court variation that comes from local rules is a tax on practitioners—and it is a tax that is not offset by conformity to state practice, which was uniformly rejected as a goal by the rulemakers we interviewed. But we also suggest that local rules must be viewed against a backdrop of local (and even judge-specific) procedures that will produce dis-uniformity whether a district adopts formal local rules or not. If local variation is inevitable, then local rules are perhaps the best way to make that variation transparent and open to outsiders. We also echo longstanding concerns about inconsistency and duplication, and we problematize claims of local needs and experimentation.¹⁹

In sum, this Article aims to shed light on the rules that are playing an important role in governing litigation in the federal system and on the tradeoffs being made between uniformity and “local interests” that have brought us here.

I. THE HISTORY OF LOCAL RULES

The history of local federal rules is as long as the history of the federal courts.²⁰ The First Judiciary Act provided that “all the said courts of the

¹⁹ We reserve for future work equally important questions about the process of making local rules, including a comprehensive study of the rulemaking apparatus of every district and circuit court as well as a mapping of the information flows among local and federal rulemakers. See generally Zachary D. Clopton & Marin K. Levy, *Local Rulemaking*, 75 *Duke L.J.* (forthcoming Feb. 2026).

²⁰ For further treatments of the history and purposes of local rules, see generally Katherine A. Macfarlane, *A New Approach to Local Rules*, 11 *Stan. J. C.R. & C.L.* 121 (2015); Jodi S.

United States shall have power . . . to make and establish all necessary rules for the orderly conducting business in the said courts, provided such rules are not repugnant to the laws of the United States.”²¹ As the Supreme Court remarked in 1825, “The Courts, for example, may make rules, directing the returning of writs and processes, the filing of declarations and other pleadings, and other things of the same description.”²² When Congress established the Circuit Courts of Appeals in 1891, it provided that each court “shall have power to establish all rules and regulations for the conduct of the business of the court within its jurisdiction as conferred by law.”²³ Indeed, the Supreme Court in 1915 remarked that local rulemaking authority was “[i]n the very nature of things.”²⁴

Inevitably, local rules were implicated by the major procedural reform initiated by the Rules Enabling Act of 1934.²⁵ The Rules Enabling Act

Balsam, *The New Second Circuit Local Rules: Anatomy and Commentary*, 19 J.L. & Pol’y 469 (2011); David Marcus, *The Past, Present, and Future of Trans-Substantivity in Federal Civil Procedure*, 59 DePaul L. Rev. 371 (2010); Carl Tobias, *Local Federal Civil Procedure for the Twenty-First Century*, 77 Notre Dame L. Rev. 533 (2002); Gregory C. Sisk, *The Balkanization of Appellate Justice: The Proliferation of Local Rules in the Federal Circuits*, 68 U. Colo. L. Rev. 1 (1997); Carl Tobias, *Suggestions for Circuit Court Review of Local Procedures*, 52 Wash. & Lee L. Rev. 359 (1995) [hereinafter Tobias, *Suggestions for Circuit Court Review*]; Erwin Chemerinsky & Barry Friedman, *The Fragmentation of Federal Rules*, 46 Mercer L. Rev. 757 (1995); Lauren Robel, *Fractured Procedure: The Civil Justice Reform Act of 1990*, 46 Stan. L. Rev. 1447 (1994); Linda S. Mullenix, *The Counter-Reformation in Procedural Justice*, 77 Minn. L. Rev. 375 (1992); Carl Tobias, *Civil Justice Reform and the Balkanization of Federal Civil Procedure*, 24 Ariz. St. L.J. 1393 (1992); Stephen N. Subrin, *Federal Rules, Local Rules, and State Rules: Uniformity, Divergence, and Emerging Procedural Patterns*, 137 U. Pa. L. Rev. 1999 (1989); Daniel R. Coquillette, Mary P. Squiers & Stephen N. Subrin, *The Role of Local Rules*, 75 A.B.A. J. 62 (1989); Note, *Rule 83 and the Local Federal Rules*, 67 Colum. L. Rev. 1251 (1967).

²¹ Judiciary Act of 1789, ch. 20, § 17, 1 Stat. 73, 83.

²² *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 43 (1825); see also *Evans v. Hettick*, 8 F. Cas. 861, 864 (C.C.E.D. Pa. 1818) (No. 4,562) (discussing local admiralty rules). Even after Congress sought to bring federal procedure in line with state procedure in the Conformity Act of 1872—which presumably limited the ability of federal courts to develop local rules—local rules remained, according to a leading commentator, “an important part of the procedural landscape.” Subrin, *supra* note 20, at 2012; see *Shepard v. Adams*, 168 U.S. 618, 626 (1898) (favoring a local rule over the Conformity Act).

²³ Judiciary Act of 1891, ch. 517, § 2, 26 Stat. 826, 827; see also Balsam, *supra* note 20, at 476 n.14 (quoting the same). For example, the Second Circuit promulgated local rules in 1892, which stayed in place without major overhaul for more than one hundred years. *Id.* at 472.

²⁴ *McDonald v. Pless*, 238 U.S. 264, 266 (1915) (“In the very nature of things the courts of each jurisdiction must each be in a position to adopt and enforce their own self-preserving rules.” (citations omitted)).

²⁵ 28 U.S.C. §§ 2071–2077. See generally Stephen B. Burbank, *The Rules Enabling Act of 1934*, 130 U. Pa. L. Rev. 1015 (1982) (offering a comprehensive historical treatment of the

authorized the Supreme Court to promulgate rules of practice and procedure for the federal courts—which ultimately became the Federal Rules of Civil Procedure, later the Federal Rules of Appellate Procedure, and sister rules. As Professor Stephen Subrin has explained, the drafters of the original federal rules expected local rules to continue, and, together with the federal rules, to cover most areas of procedure.²⁶

The drafters elected to include a federal rule on local rules, which became Federal Rule of Civil Procedure 83.²⁷ Reporter Charles E. Clark initially suggested that the advisory committee consider whether local rules should be permitted to supersede federal rules.²⁸ The committee opted for a different approach, providing in Rule 83 that district courts by majority vote could adopt local rules not inconsistent with the federal rules.²⁹ Rule 83 as adopted did not include any oversight of the district courts' local rulemaking, as the committee did not adopt early proposals that provided for the review of local rules by the Supreme Court or the circuit courts.³⁰

Despite the committee's decision to leave local rules unsupervised, concerns were raised almost immediately about the quantity and reach of

Act). One year earlier, in 1933, the Supreme Court heard a case about the application of a local rule of the Southern District of New York to a Second Circuit judge sitting by designation. See *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 483–87 (1933).

²⁶ See Subrin, *supra* note 20, at 2014.

²⁷ Similar provisions exist for other bodies of federal rules, such as Federal Rule of Appellate Procedure 47.

²⁸ See Subrin, *supra* note 20, at 2013.

²⁹ Fed. R. Civ. P. 83 (1938), <https://legal1.cit.cornell.edu/kevin/statsupps/articles/origrules.pdf> [<https://perma.cc/M4RR-5W6P>] (“Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.”); see also Subrin, *supra* note 20, at 2012–14 (discussing various iterations and citing sources).

³⁰ See Subrin, *supra* note 20, at 2014–15. Subrin quotes Clark's first draft:

Each district court, by action of a majority of the judges thereof, may establish further rules of practice and procedure governing civil actions in its district, supplementary to these rules, for the purpose of effectuating a simple and efficient procedure, provided, however, that such rules must be approved before becoming effective by the Supreme Court of the United States, upon recommendation of its Advisory Committee on Civil Procedure.

Id. (citation omitted). The second draft invoked various options, including approval by a majority of the circuit judges of the relevant circuit. *Id.* at 2015.

local rules.³¹ Upon the entry into force of the rules, the Judicial Conference of Senior Circuit Judges (the precursor to the Judicial Conference) appointed the so-called Knox Committee, named for its chair, District Judge John C. Knox of the Southern District of New York.³² This committee of district judges was tasked “to examine the various rules of the district courts and to make recommendations so that the greatest practicable degree of uniformity throughout the country should be secured.”³³ The Knox Committee issued a report that on the one hand acknowledged a place for local rules, but on the other hand surfaced concerns about their proliferation and about inconsistency between federal and local rules.³⁴ The report observed that “[u]nless experience demonstrates a pressing need for additional local rules, none should be promulgated.”³⁵ Yet the report also included recommendations for local rules,³⁶ and it acknowledged that local rules might be necessary to account for differences among districts, such as rural versus urban or large versus small numbers of judges.³⁷

Things were mostly quiet in the realm of local rules until the 1980s.³⁸ The 1980s were a period of upheaval in federal rulemaking, with pressure from Congress and the academy for transparency³⁹ combined with at least the perception of pressure from increasing caseloads.⁴⁰ While Congress

³¹ William Mitchell, the original Chair of the Advisory Committee on the Civil Rules, for example, worried that local rules would undermine the simplicity and uniformity of the new federal rules. Rule 83 and the Local Federal Rules, *supra* note 20, at 1256.

³² See Subrin, *supra* note 20, at 2016–17.

³³ Comm. on Loc. Dist. Ct. Rules, Report of the Judicial Conference of the Committee on Local District Rules 11 (1940), <https://www.uscourts.gov/file/1561/download> [<https://perma.cc/9NWY-R5AR>].

³⁴ *Id.* at 11–12; see also Subrin, *supra* note 20, at 2016–17 (quoting the report).

³⁵ Admin. Office of the U.S. Cts., Report to the Judicial Conference of the Committee on Local District Court Rules 3 (1940) [hereinafter Knox Report]; see also Subrin, *supra* note 20, at 2016–17 (quoting the report).

³⁶ See Knox Report, *supra* note 35, at 2.

³⁷ See Subrin, *supra* note 20, at 2016–17.

³⁸ See Burbank, *supra* note 25, at 1018–19. During this quiet period, the Supreme Court in 1968 promulgated the Federal Rules of Appellate Procedure, which included an equivalent to Federal Rule of Civil Procedure 83. See Fed. R. App. P. 47 (1968) (current version at Fed. R. App. P. 47).

³⁹ See Paul D. Carrington, Politics and Civil Procedure Rulemaking: Reflections on Experience, 60 Duke L.J. 597, 615–17 (2010); Burbank, *supra* note 25, at 1019–20.

⁴⁰ Judith Resnik, The Domain of Courts, 137 U. Pa. L. Rev. 2219, 2220 (1989); see also Marc Galanter, Reading the Landscape of Disputes: What We Know and Don’t Know (and Think We Know) About Our Allegedly Contentious and Litigious Society, 31 UCLA L. Rev. 4, 5–6 (1983) (describing the widespread belief that high litigation volume renders the

was debating amendments to the Rules Enabling Act, the Supreme Court adopted changes to the Federal Rules, including to Rule 83.⁴¹ Specifically, the 1985 amendments required that local rules be subject to “public notice and an opportunity for comment,”⁴² though the drafters assiduously avoided specifying the form of notice and comment.⁴³ To reduce conflicts with federal rules,⁴⁴ the Advisory Committee also announced its “expectation . . . that the judicial council [of each circuit] will examine all local rules . . . with an eye toward determining whether they are valid and consistent with the Federal Rules, promote inter-district uniformity and efficiency, and do not undermine the basic objectives of the Federal Rules.”⁴⁵ Finally, the rulemakers responded to concerns about judge-specific rules—that is, rules (often in the form of standing orders) issued by individual judges applicable only in their courtrooms⁴⁶—by adding to the rule a requirement that individual judge rules must be consistent with the federal and local rules.⁴⁷ Notably, the rulemakers declined to endorse

judiciary “incapable of giving timely, inexpensive and effective relief”). See generally Marin K. Levy, *Judging the Flood of Litigation*, 80 U. Chi. L. Rev. 1007 (2013) (asserting that when the Court has considered or invoked concerns about opening “the floodgates of litigation” in the federal courts, one important motivation has been forestalling a perceived “excessive workload”).

⁴¹ See Fed. R. Civ. P. 83 advisory committee’s note to 1985 amendment (discussing changes to Rule 83).

⁴² Fed. R. Civ. P. 83(a)(1).

⁴³ See Fed. R. Civ. P. 83 advisory committee’s note to 1985 amendment (“The amended Rule does not detail the procedure for giving notice and an opportunity to be heard since conditions vary from district to district.”). The Supreme Court enforced the notice-and-comment requirement to stay the broadcast of the trial in *Hollingsworth v. Perry* because the district court issued the local rule allowing for the broadcast without notice and comment. 558 U.S. 183, 184–85 (2010) (per curiam); see also Order, *Perry v. Brown*, No. 10-cv-16696, 2011 WL 2419868, at *7 (9th Cir. Apr. 27, 2011) (noting that, contrary to official guidance, the district court had failed to subject the local rule to a notice period prior to implementation). Four Justices dissented. *Hollingsworth*, 558 U.S. at 199 (Breyer, J., dissenting, joined by Stevens, Ginsburg & Sotomayor, JJ.).

⁴⁴ See, e.g., Balsam, *supra* note 20, at 480–81 (“Congress had been complaining about the proliferation and inconsistency of local court rules since 1983 . . .”).

⁴⁵ Fed. R. Civ. P. 83 advisory committee’s note to 1985 amendment.

⁴⁶ See, e.g., Timothy S. Black, *Standing Order Governing Civil Motions for Summary Judgment* (2010), <https://www.ohsd.uscourts.gov/sites/ohsd/files/forms/standing%20order%20governing%20civil%20motions%20for%20summary%20judgment.pdf> [<https://perma.cc/59DX-P2XR>].

⁴⁷ Fed. R. Civ. P. 83(b); *id.* advisory committee’s note to 1985 amendment.

a proposal to expressly authorize experimentation via local rule, which was in earlier drafts of the proposed amendments.⁴⁸

Three years after the rule amendments, Congress adopted the Judicial Improvements and Access to Justice Act of 1988.⁴⁹ Among other things, the Act required each district court to appoint a local rules committee⁵⁰ and to subject local rules to public notice and comment (already required by the federal rules).⁵¹ As Professor Carl Tobias explained, “Congress intended to address the problem of local proliferation partly by regularizing local procedural amendment processes and opening them to public participation.”⁵² The Act also required each circuit’s judicial council to review local rules of the district courts and allowed them to “modify or abrogate any such [local] rule found inconsistent in the course of such a review.”⁵³ (The Judicial Conference was given the same power

⁴⁸ See Advisory Comm. on Civ. Rules, Possible Amendments to the Federal Rules of Civil Procedure: Initial Draft for Consideration 31 (1992) [hereinafter Possible Amendments to the Federal Rules of Civil Procedure], https://www.uscourts.gov/sites/default/files/fr_import/CV1992-11.pdf [<https://perma.cc/NR9Q-5DWB>] (listing draft amendments, including the proposed experimentation provision, submitted to the Advisory Committee in advance of their upcoming conference); Edward H. Cooper, Advisory Comm. on Civ. Rules, November Meeting Minutes Draft 2 (1992), https://www.uscourts.gov/sites/default/files/fr_import/CV11-1992-min.pdf [<https://perma.cc/BMV9-ZSLG>] (noting that the Committee voted unanimously to defer further consideration of proposed Rule 83(d) until 1994 or 1995); Fed. R. Civ. P. 83 (showing that the proposed provision was never adopted).

⁴⁹ Pub. L. No. 100-702, 102 Stat. 4642 (codified as amended in scattered sections of 28 U.S.C.).

⁵⁰ 28 U.S.C. § 2077(b) (“Each court, except the Supreme Court, that is authorized to prescribe rules of the conduct of such court’s business under section 2071 of this title shall appoint an advisory committee for the study of the rules of practice and internal operating procedures of such court and, in the case of an advisory committee appointed by a court of appeals, of the rules of the judicial council of the circuit.”).

⁵¹ *Id.* § 2071(b); Fed. R. Civ. P. 83(a)(1).

⁵² Tobias, *Suggestions for Circuit Court Review*, *supra* note 20, at 362. The Act also required courts to submit local rules to the Administrative Office of the United States Courts. 28 U.S.C. § 2071(d). However, the courts have understood this requirement to be superseded by the E-Government Act’s requirement that local rules be posted on the court’s website. E-Government Act of 2002, Pub. L. No. 107-347, § 205(a)(2), 116 Stat. 2899, 2913 (codified at 44 U.S.C. § 3501); Interview with Subject 31 (May 6, 2024) (indicating that the Administrative Office of the Courts determined that the Act superseded the requirement that courts send the rules to them).

⁵³ 28 U.S.C. § 332(d)(4); see also *id.* § 2071(c)(1) (requiring that local rules remain in effect “unless modified or abrogated by the judicial council of the relevant circuit”). Although some courts engaged in such review, many courts failed to fulfill the requirements of the Act. See Tobias, *Suggestions for Circuit Court Review*, *supra* note 20, at 362.

For potential evasion of this review, see *Rubel v. Pfizer Inc.*, 361 F.3d 1016, 1020 (7th Cir. 2004) (“Although the Northern District of Illinois promulgated Local Rule 81.2 in 1997, it did

for other rules, including circuit rules.⁵⁴) The Standing Committee subsequently launched a “Local Rules Project” to review local rules of the district and appellate courts, identifying a number of inconsistencies with federal rules and pointing to other areas for reform.⁵⁵ Copies of the Local Rules Project reports were sent to the chief judges,⁵⁶ and occasionally, federal rulemakers sent letters to chief judges to alert them to inconsistencies in hopes they would be remedied.⁵⁷ Around the same time, in *Frazier v. Heebe*, the Supreme Court explained that it maintained “supervisory authority” over local rules.⁵⁸

Local rulemaking got a boost from Congress in 1990 with the Civil Justice Reform Act (“CJRA”), which sought to stem the alleged overuse of the litigation system in large part by encouraging local rulemaking on related issues.⁵⁹ Although the CJRA was important for local rules, it was not alone in this regard. Writing during this period, Professor Subrin observed that the call for local rules went well beyond the CJRA:

not then comply with § 2071(d) by presenting the new rule to the Council for review. It did include Local Rule 81.2 in a package of rules submitted to the Council in September 1999. Although the Circuit Executive asked the Northern District for further information on May 15, 2000, that court never responded, so the validity of this rule has yet to be evaluated by the Judicial Council.”).

The judicial councils also have authority to review district court jury plans. 28 U.S.C. § 1863(a); see *In re Jury Plan*, 27 F.3d 9, 10–11 (2d Cir. Jud. Council 1994) (discussing judicial council review of jury plans).

⁵⁴ 28 U.S.C. § 2071(c)(2). Our understanding is that this authority has never been exercised.

⁵⁵ See, e.g., Balsam, *supra* note 20, at 480–81.

⁵⁶ See Comm. on Rules of Prac. & Proc. of the Jud. Conf. of the U.S., *History and Methodology of the Local Rules Project* 3, 12–13 (2002) [hereinafter *History and Methodology of the Local Rules Project*], <https://www.uscourts.gov/file/15316/download> [https://perma.cc/D8SG-H2YR].

⁵⁷ See, e.g., Interview with Subject 33 (Apr. 17, 2024).

⁵⁸ 482 U.S. 641, 645 (1987). But see *Barnard v. Thorstenn*, 489 U.S. 546, 551 (1989) (declining to exercise supervisory powers). Though not exercising this power, Justice Sotomayor issued a statement respecting the denial of certiorari in an Eleventh Circuit case to comment on circuit rules on habeas petitions. See *St. Hubert v. United States*, 140 S. Ct. 1727, 1729 (2020) (Sotomayor, J., statement respecting the denial of certiorari) (“[T]he Eleventh Circuit is significantly out of step with other courts in how it approaches applications seeking authorization to file second or successive habeas petitions.”).

⁵⁹ Civil Justice Reform Act of 1990, Pub. L. No. 101-650, §§ 101–106, 104 Stat. 5089, 5089–98 (codified as amended at 28 U.S.C. §§ 471–482); see also Robel, *supra* note 20, at 1450 (highlighting the Act’s requirement that each federal district court develop a plan to “ensure just, speedy, and inexpensive resolutions of civil disputes” (citation omitted)); Chemerinsky & Friedman, *supra* note 20, at 758 (noting the Act’s individualized, district-by-district approach to achieving the intended broad reform in civil case management).

At least thirty-nine provisions of Titles 12, 18, 22, 26, 28, 42, 46, and 50 direct, authorize, or result in local rulemaking. During the past twenty years, the Judicial Conference has made resolutions or recommendations directing or suggesting local rulemaking on at least forty occasions. Federal Judicial Center publications, Judicial Council recommendations, and the Office of Audit and Review of the Administrative Office of the United States Courts have all, on occasion, suggested local rules to all or selected federal trial courts.⁶⁰

And in 1993, the Supreme Court adopted various amendments to the Federal Rules, many of which expressly or impliedly called for local rulemaking, including with respect to the hotly contested issue of initial disclosures.⁶¹

The Supreme Court returned to the general regulation of local rules in 1995, amending the Federal Rules to make clear that local rules could not contradict acts of Congress and to require courts to conform to a uniform numbering system for local rules.⁶² The amendments also limited the enforcement of some local rules, providing that “[a] local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.”⁶³ Meanwhile, in the background, the Local Rules Project continued its work, issuing new reports in the early 2000s.⁶⁴ But those efforts petered out in the first

⁶⁰ Subrin, *supra* note 20, at 2019 (footnotes omitted) (writing in 1989).

⁶¹ Fed. R. Civ. P. 26 advisory committee’s note to 1993 amendment; see also Chemerinsky & Friedman, *supra* note 20, at 758 (discussing the 1993 discovery amendments). For a discussion of how district courts responded to these interventions, see David Rauma & Donna Stienstra, Fed. Jud. Ctr., *The Civil Justice Reform Act Expense and Delay Reduction Plans: A Sourcebook* 105–30 tbl.5 (1995).

⁶² Fed. R. Civ. P. 83(a)(1); *id.* advisory committee’s note to 1995 amendment; Fed. R. App. P. 47(a)(1); *id.* advisory committee’s note to 1995 amendment. See generally Memorandum from Leonidas Ralph Mecham, Dir., Admin. Off. of the U.S. Cts., to C.Js. & Clerks of the U.S. Dist. & Bankr. Cts. (Apr. 29, 1996) (announcing the new uniform numbering system).

⁶³ Fed. R. Civ. P. 83(a)(2); see also *id.* advisory committee’s note to 1995 amendment (amending the rule); Fed. R. App. P. 47(a)(2); *id.* advisory committee’s note to 1995 amendment (making similar changes).

⁶⁴ History and Methodology of the Local Rules Project, *supra* note 56; Standing Comm. on Rules of Prac. & Proc. of the Jud. Conf. of the U.S., Report on Local Rules (2004), https://www.uscourts.gov/sites/default/files/report_on_local_rules_project_february_1_2004.pdf [<https://perma.cc/92PM-6TH8>]. There also was, during this period, a project on the use of standing orders. Comm. on Rules of Prac. & Proc. of the Jud. Conf. of the U.S., Report and Recommended Guidelines on Standing Orders in District and Bankruptcy Courts (2009), https://www.uscourts.gov/sites/default/files/standing_orders_dec_2009_0.pdf [<https://perma.cc/3ZH7-SSPX>].

few years of the millennium, with no sustained attention on the general phenomenon of local rules since then.⁶⁵

II. THE CONTENT OF LOCAL RULES

Every federal court has a set of local rules addressing a range of topics, from the technical to the substantive. To provide a meaningful analysis of those rules, one needs to undertake a significant review of them—what they cover, how they differ from each other, and what role they are meant to play vis-à-vis the national rules.

In this Part, we share the results of our review. We begin by providing an overview of the content of local rules today, starting with the district courts and then turning to the courts of appeals. We mean to convey a sense of where local rules crop up and document some of the variation across courts on these points. We also coded the more than one thousand rules that have no direct connection to existing national rules in the first-ever attempt of this kind. In the second half of this Part, we offer a different way of cataloging local rules: by creating a typology of the jobs the rules seem to be performing—say, filling in gaps created by national rules or creating a ceiling where a national rule has laid the floor. Stepping back, we hope to provide as comprehensive as possible an overview of local rules in order to analyze and assess them further in subsequent Parts.

A. An Overview of Local Rules

In this Section, we survey the local rules of the district and circuit courts.⁶⁶ It would be impossible to say everything about local rules short of reproducing them all here, but we do our best to provide a fairly comprehensive account. To do so, we approach the rules from various vantages, including looking generally at local rules across courts and examining specifically a few individual sets of rules, which together give a panoramic view of the local rules of the federal courts.

⁶⁵ See, e.g., Interview with Subject 22 (Apr. 5, 2024).

⁶⁶ Data on file with Authors.

1. District Courts (Civil Rules)

There are thousands of local rules in the federal district courts. Thousands.⁶⁷ The Local Rules Project of the 1980s attempted to identify and catalog all of those rules—a truly Herculean feat given available technology.⁶⁸ In the words of that Project, “local rules cover literally the entire spectrum of Federal practice, from attorney admission and attorney discipline through the various stages of trial, including pleading and filing requirements, pretrial discovery procedures, and taxation of costs.”⁶⁹

We do not attempt to provide a comprehensive catalog of every single local rule in the district courts today. Instead, we offer a survey of local rules, including some empirics, to help understand the scope of local rules. We focus our review on the local civil rules,⁷⁰ though districts typically have local criminal and bankruptcy rules,⁷¹ and some have specialized rules such as rules for certain types of cases, as shown in Table 1 (cataloging topics with three or more sets of rules). We focus on civil rules because they have been at the core of the scholarly and policymaking debates around rulemaking, though we suspect that insights here may be applicable outside the civil context as well.

⁶⁷ See, e.g., Macfarlane, *supra* note 20, at 122 (“As of 2012, there were nearly 6000 local rules”); Coquillette et al., *supra* note 20, at 62 (“There are nearly 5,000 local rules in the 94 federal districts, and the number is growing.”).

⁶⁸ Comm. on Rules of Prac. & Proc. of the Jud. Conf. of the U.S., Report of the Judicial Conference Committee on Rules of Practice and Procedure 2 (1988), https://www.uscourts.gov/sites/default/files/fr_import/ST09-1988.pdf [<https://perma.cc/68YU-RJT9>].

⁶⁹ *Id.* at 3.

⁷⁰ Every district has civil rules. In fourteen districts, those are included in general rules. The remaining eighty districts have stand-alone civil rules.

⁷¹ As noted above, sometimes these additional rules are included in general rules and sometimes as stand-alone provisions. For example, eighty-two districts have stand-alone criminal rules, eleven include them in general rules, and the District of Delaware has neither, instead providing information in a document called “Time Limits and Procedures for Achieving Prompt Disposition of Criminal Cases.” See Local Rules, U.S. Dist. Ct., D. Del., <https://www.ded.uscourts.gov/local-rules> [<https://perma.cc/M4DA-D2NS>] (last visited May 30, 2025). Interestingly, the Bankruptcy Appellate Panels cannot create their own rules, but instead must rely on the circuit councils. See Jonathan Remy Nash, Courts Creating Courts: Problems of Judicial Institutional Self-Design, 73 Ala. L. Rev. 1, 37–38 (2021) (discussing Fed. R. Bankr. P. 8026(a)(1)).

Table 1: Specialized District Court Rules

Topic of Stand-Alone Rules	Number of Courts
Admiralty	28
Patent	26
Magistrate Judges	9
Attorneys	8
Alternative Dispute Resolution	5
Habeas Corpus	5

An initial way to divide the world is between local rules that address topics also addressed in the Federal Rules and local rules that address topics unaddressed by the Federal Rules. This task is made substantially easier because the federal courts have adopted a uniform numbering system for local rules.⁷² Under the uniform numbering system, local rules should be given a number corresponding to the federal rule on the same topic. So local civil rules addressing summary judgment (Federal Rule of Civil Procedure 56) should be numbered Local Rule 56.1, 56.2, etc. (or 56(a), (b), etc., or 56(A), (B), etc.). Local civil rules addressing topics outside the Federal Rules are to be assigned rule number 83, which corresponds to the federal civil rule that authorizes local rules.⁷³

A review of local civil rules reveals that the vast majority address topics also addressed in the Federal Rules. So a reader interested in the content of local rules might begin by skimming the table of contents of the Federal Rules.⁷⁴ Further, it is our impression that local rules cluster around federal rules that play important roles in trial court litigation—that is, there are

⁷² See *supra* note 62 and accompanying text.

⁷³ See Memorandum from Mary P. Squiers, Dir., Loc. Rules Project, to J. Alicemarie H. Stotler (Apr. 17, 1996), https://www.uscourts.gov/sites/default/files/uniform_numbering_system_for_local_rules_of_court_april_1996.pdf [<https://perma.cc/BQ9X-VTJA>]; Fed. R. Civ. P. 83.

⁷⁴ Charles Wright, Arthur Miller, and Richard Marcus suggest perusing the topics recommended by the Local Rules Project for local rule treatment, which overlap substantially with the Federal Rules. See 12 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure* § 3154 (3d ed. 2014).

substantial numbers of local rules related to pleadings and motions, case management and settlement, and discovery, among other topics.⁷⁵

A few examples can illustrate the kinds of local rules that exist on topics also covered by the Federal Rules and the variation from court to court. As noted above, initial disclosures under Federal Rule 26(a) were an important site for contestation about local control.⁷⁶ Today, the rule requires initial disclosure of a small set of information, including information that a party “may use to support its claims or defenses.”⁷⁷ Many local rules say more. In the District of Massachusetts, a local rule provides that a judge may order a party to disclose the name of any person who witnessed or participated in the events giving rise to the suit, even if their information would harm the disclosing party’s case.⁷⁸ In the District of New Mexico, a party whose “physical or mental medical condition” is at issue is required to disclose medical records the party may use in its defense on that issue and a signed authorization for healthcare providers to release such records.⁷⁹ The Northern District of Oklahoma has a local rule that allows parties to stipulate to the waiver of initial disclosures,⁸⁰ while the District of New Mexico lists classes of cases exempt from the initial disclosure requirements,⁸¹ though many of these cases would already be exempt under Federal Rule 26.⁸²

Federal Rule 16, which governs case management, is another important place for local rulemaking in the age of managerial judges.⁸³ Rule 16 authorizes judges to hold pretrial conferences and requires judges to issue a scheduling order in all cases except those exempted by local rule.⁸⁴ And indeed, many courts exempt certain categories of cases from the

⁷⁵ Cf. Chemerinsky & Friedman, *supra* note 20, at 761 (observing in 1995 that “local rules have become especially important in areas where there have been great pressures for change in recent years: discovery; settlement; and the use of alternative dispute resolution”).

⁷⁶ See *supra* note 61 and accompanying text.

⁷⁷ Fed. R. Civ. P. 26(a)(1)(A).

⁷⁸ See L.R., D. Mass. 26.1(b)(1)(B).

⁷⁹ D.N.M.LR-Civ. 26.3(d); see also E.D. Tex. Loc. R. CV-34(a) (providing that “[w]here a party’s physical or mental condition is at issue,” that party must turn over either the relevant medical records or a signed authorization to obtain them from healthcare providers).

⁸⁰ N.D. Okla. LCvR26-1(a).

⁸¹ D.N.M.LR-Civ. 16.3, 26.3(a)(1).

⁸² Compare Fed. R. Civ. P. 26(a)(1)(B) (exempting, for example, habeas petitions, actions brought by the federal government to recover benefit payments, and actions enforcing arbitration awards), with D.N.M.LR-Civ. 16.3 (excluding prisoner petitions, government collections actions, and arbitration awards).

⁸³ See Judith Resnik, *Managerial Judges*, 96 Harv. L. Rev. 374, 379 (1982).

⁸⁴ Fed. R. Civ. P. 16(a)–(b).

scheduling order requirement by local rule.⁸⁵ Meanwhile, some districts have tried to standardize case management under Rule 16. The Northern District of Illinois, by local rule, “adopted a standing order on pretrial procedures together with model pretrial order forms.”⁸⁶ The Southern District of Florida requires judges to assign each case to one of three defined tracks for case management—“expedited,” “standard,” or “complex”—based on the complexity and expected length of the litigation, and it adopts case management plans tailored to cases within each track.⁸⁷ The Southern District of Ohio’s local rule, meanwhile, expressly provides that “[e]ach Judge of the District shall be responsible for determining the procedure and content of preliminary pretrial conferences, scheduling orders, and pretrial conferences.”⁸⁸ In short, these local rules provide substantially different ways of approaching a significant aspect of civil litigation.

Summary judgment is another important juncture within both litigation and rulemaking. In 2010, Federal Rule 56 was amended to require parties to support assertions that a fact cannot be or is genuinely disputed.⁸⁹ (Indeed, these amendments were, as the committee note states, “synthesized from similar elements developed in the cases or found in many local rules.”⁹⁰) But how exactly should parties present the required support? The District of New Hampshire’s local rule requires support to be included in a memorandum in support of the motion;⁹¹ the District of Hawaii’s local rule requires both a “supporting memorandum” and a “separate concise statement” of undisputed facts;⁹² the joint local rules of the Southern and Eastern Districts of New York require movants to identify relevant facts “in numbered paragraphs” and opponents to respond in “correspondingly numbered paragraph[s]”;⁹³ and the Central District of California has a similar rule, except it calls for the response to use two columns, with the movant’s facts in the left-hand column and the responding party’s response to each in the right-hand column.⁹⁴ So

⁸⁵ See, e.g., D.N.M.LR-Civ. 16.3; W.D. Tex. Loc. Ct. R. CV-16(b); E.D. Pa. L. Civ. R. 16.2.

⁸⁶ N.D. Ill. LR16.1.1.

⁸⁷ S.D. Fla. L.R. 16.1(a).

⁸⁸ S.D. Ohio Civ. R. 16.1.

⁸⁹ Fed. R. Civ. P. 56(c) advisory committee’s note to 2010 amendment.

⁹⁰ *Id.*

⁹¹ D.N.H. LR 56.1(a).

⁹² D. Haw. LR56.1(a).

⁹³ S.D. & E.D.N.Y. Loc. Civ. R. 56.1(a)–(b).

⁹⁴ C.D. Cal. L.R. 56-1 to -3.

depending on the district, these key filings will look substantially different.

Local rules also vary on other aspects of summary judgment practice. The Federal Rule provides that “[u]nless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.”⁹⁵ The Middle District of North Carolina restates the thirty-day limit, though it adds the requirement of filing and serving notice of an intent to file a motion for summary judgment within fourteen days following the close of discovery.⁹⁶ The District of Connecticut requires a special notice to be given to *pro se* litigants against whom a summary judgment motion is filed.⁹⁷ Federal Rule 56 says that a court “may” search the record for additional facts,⁹⁸ but the committee note to the local rule for the Southern District of Indiana says that “[t]he Court will *not* search the record to find admissible evidence to support an asserted material fact.”⁹⁹

So far we have discussed local rules that operate inside federal rules, but as mentioned above, some local rules address topics unaddressed by the federal rules. To understand the scope of these local rules, we conducted a comprehensive review of all local rules of this type. Our method was simple: because district courts are supposed to adhere to uniform numbering that places these “unassigned” rules under Federal Rule 83, we relied on district courts’ own assessments of which rules fit this type, though we think this likely understates the total number.¹⁰⁰

An initial observation is that we found 1,089 local civil rules that operate outside of the federal rules. This finding alone is significant because it suggests that local rules are not simply the extension of the federal rules—more than one thousand times, a district concluded it needed a rule where there was no federal rule on point. Or, to say it

⁹⁵ Fed. R. Civ. P. 56(b).

⁹⁶ M.D.N.C. LR 56.1(a)–(b).

⁹⁷ D. Conn. L. Civ. R. 56(b). Professor Andrew Hammond identified close to 500 local rules in district courts related to *pro se* litigants. See Hammond, *supra* note 12, at 2692.

⁹⁸ Fed. R. Civ. P. 56(c)(3).

⁹⁹ S.D. Ind. L.R. 56-1 advisory committee’s note to 2002 amendment.

¹⁰⁰ See, e.g., S.D. & E.D.N.Y. Loc. Civ. R. 1.1–1.9 (providing several local rules, such as those concerning the maintenance of a night depository and admission to the bar, that do not correspond with Federal Rule 1). To reach our total, we did not double count joint rules. See *infra* note 103. Eight district courts do not adhere to uniform numbering, so we excluded them from this review as well. Those districts are the District of Guam, District of Maryland, District of Nebraska, District of Nevada, District of North Dakota, Northern District of Oklahoma, District of Rhode Island, and Western District of Texas.

another way, more than one thousand times, a district concluded it needed a rule where the national rulemakers may have concluded that no rule was necessary. We have more to say on this potential conflict below.

We also endeavored to categorize these “outside” rules by topic. Though our category lines are subjective, we think they are useful in giving readers a sense of what is at stake in these rules. Our results as of summer 2024 are included in Table 2, which displays topics with ten or more local rules. As you will see, the largest category of rules relates to the regulation of attorneys. These include regulations about which attorneys may appear, attorney discipline, and a range of other issues. We separately coded rules about student practice and rules about pro bono representation and assignment of counsel in civil cases, though these could be included in the “attorney regulation” category as well. Among other common topics are aspects of judicial administration: broadcasting and media, court security, money and expenses, courthouse decorum, and, our personal favorite, rules on rules.¹⁰¹ We also call attention to a number of rules on alternative dispute resolution (“ADR”) and non-attorney representation, two topics of significant interest among scholars and policymakers.

¹⁰¹ These rules might be seen as operating “inside” Federal Rule 83, but for consistency in coding, we included them here.

Table 2: District Court Local Rules 83

Attorney Regulation	487
Broadcasting, Media, etc.	72
Trial	59
Court Security	58
Bankruptcy	53
Law Student Practice	43
Money, Expenses, etc.	32
Rules Governing the Rules	30
Pro Bono, Assigned Counsel, etc.	32
Courthouse Decorum	21
Judges	21
ADR	18
Administration	17
Non-Attorneys, Self-Representation, etc.	17
Habeas	16

Another way to understand the content of local rules is to consider complete sets of them. To give a fuller sense of local rules, then, we offer here a tour of three sets of local rules: the joint local rules for the Southern and Eastern Districts of New York, the local rules for the Middle District of Georgia, and the local rules for the Eastern District of Virginia.¹⁰² These districts were frequently mentioned in our interviews or in the Local Rules Project, and as we show, they vary substantially in how they approach the local rules task.

¹⁰² To review the full local rules for each of the districts tallied in this Subsection, see U.S. Dist. Cts. for the S. & E. Dists. of N.Y., Local Rules (2025) [hereinafter Local Rules of the United States District Courts for the Southern and Eastern Districts of New York], https://www.nysd.uscourts.gov/sites/default/files/local_rules/2025-01-02%20Joint%20SDNY-EDNY%20Local%20Rules.pdf [<https://perma.cc/8DQ5-PKST>]; U.S. Dist. Ct. for the M. Dist. of Ga., Local Rules (2022), https://www.gamd.uscourts.gov/sites/gamd/files/Local_Rules-12_1_2022.pdf [<https://perma.cc/J5VQ-AR3S>]; U.S. Dist. Ct. E. Dist. of Va., Local Rules (2024), <https://www.vaed.uscourts.gov/sites/vaed/files/Local%20Rules%20EDVA%20December%201%202024.pdf> [<https://perma.cc/A5RL-G4Z2>].

Notably, the Southern and Eastern Districts of New York are among the five pairs of district courts to share rules,¹⁰³ a topic we will address at length in future work.¹⁰⁴ The joint civil rules include sixty-three separately numbered rules. Ten of those rules are denominated under Federal Rule 83 as “outside” the federal rules, addressing transfer, ADR, and more. Another nine rules are placed under Federal Rule 1, though they also seem to address issues not covered by the federal rules, such as attorney admissions and discipline. The remaining rules are associated with related federal rules. Federal Rule 26, addressing disclosures and discovery, has the most corresponding local rules (four); indeed, eleven of the local rules relate to a federal rule on discovery. Multiple rules relate to filings (motions, pleadings, etc.) and to costs and fees. The courts also have separate admiralty and maritime rules, criminal rules, and patent rules, bringing their entire “local rules” PDF to 139 pages.¹⁰⁵

A few more examples highlight the range of topics covered and styles employed. Joint Local Civil Rule 7.1(b) addresses font size, margins, and line spacing.¹⁰⁶ Federal Rule 7.1(b)(2) requires parties to “promptly file a supplemental statement” of corporate disclosures,¹⁰⁷ and Joint Local Civil Rule 7.1.1 defines “promptly” to mean within fourteen days.¹⁰⁸ Joint Local Civil Rule 26.2 provides a uniform means of asserting and challenging claims of privilege, an important topic especially in complex civil litigation.¹⁰⁹ And Joint Local Civil Rule 1.6 requires attorneys to alert judges of related cases, having been updated following a high-profile dispute over related case designations in the stop-and-frisk litigation.¹¹⁰

¹⁰³ The five pairs of districts are the Eastern and Western Districts of Arkansas, the Northern and Southern Districts of Iowa, the Eastern and Western Districts of Kentucky, the Northern and Southern Districts of Mississippi, and the Southern and Eastern Districts of New York.

¹⁰⁴ See Clopton & Levy, *supra* note 19 (manuscript at 15–16).

¹⁰⁵ Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, *supra* note 102.

¹⁰⁶ S.D. & E.D.N.Y. Loc. Civ. R. 7.1(b).

¹⁰⁷ Fed. R. Civ. P. 7.1(b)(2).

¹⁰⁸ S.D. & E.D.N.Y. Loc. Civ. R. 7.1.1 (quoting Fed. R. Civ. P. 7.1(b)(2)).

¹⁰⁹ S.D. & E.D.N.Y. Loc. Civ. R. 26.2.

¹¹⁰ S.D. & E.D.N.Y. Loc. Civ. R. 1.6. In the stop-and-frisk litigation, the Second Circuit expressed concern about the marking of related cases to game the selection of judges in the Southern District of New York. *Ligon v. City of New York*, 736 F.3d 118, 121, 124–26 (2d Cir. 2013) (*per curiam*), *vacated on other grounds per curiam*, 743 F.3d 362 (2d Cir. 2014); see Kahan & McKenzie, *supra* note 10, at 358 n.29; see also Katherine Macfarlane, Analyzing the Southern District of New York’s Amended “Related Cases” Rule: The Process for Challenging Nonrandom Case Assignment Remains Inadequate, 69 N.Y.U. Ann. Surv.

Our second set of rules comes from the Middle District of Georgia. Members of the Local Rules Project frequently referred to the Middle District of Georgia because, at the time, it had only one local rule.¹¹¹ (For the same reason, we were tempted to include the Western District of Wisconsin, which has only five rules across two pages.¹¹²) The Middle District of Georgia today has twenty-five local civil rules, many with multiple subparts. The rules address, among other topics, case assignment to divisions, filings, pretrial conferences, discovery (six separate rules), juries, fees, and costs. Interestingly, the discovery rules include presumptive limits on discovery devices, some of which restate the corresponding federal rule (e.g., depositions of one day of seven hours; twenty-five interrogatories),¹¹³ whereas others provide limits where there is no corresponding federal limit (e.g., ten requests for production; fifteen requests for admission).¹¹⁴ The rules “outside” the federal rules cover attorneys, judicial misconduct and disability, and law student practice.

Third is the Eastern District of Virginia, well known to lawyers and law students as the “rocket docket.” The Eastern District of Virginia has twenty-nine local civil rules, including six outside of the federal rules. Inside rules cover core topics including discovery, case management, and summary judgment. The outside rules regulate attorneys, ADR, and other topics. These rules also demonstrate the court’s commitment to the rocket docket, though much of that work is handled through individual judge

Am. L. 699, 717 (2014) (quoting remarks made by the Southern District’s then-Chief Judge Loretta Preska, explaining the amendment).

¹¹¹ See, e.g., Coquillet et al., *supra* note 20, at 62. The one local rule dealt with the Federal Rules’ requirement of “[m]otion day[s]” but allowed an exception when “local conditions make it impracticable.” *Brown v. Crawford County*, 960 F.2d 1002, 1007 n.5 (11th Cir. 1992) (citing Fed. R. Civ. P. 78 (1987)). The single local rule said, “There shall be no motion day.” *Id.* We have more to say about this case and this court in Section IV.A below.

¹¹² U.S. Dist. Ct. for the W. Dist. of Wis., Local Rules (2018), https://www.wiwd.uscourts.gov/sites/default/files/Local_Rules.pdf [<https://perma.cc/AU32-GVA2>].

¹¹³ Compare, e.g., M.D. Ga. Loc. R. 30.2 (limiting the duration of depositions to one day of seven hours), and M.D. Ga. Loc. R. 33.1 (limiting the number of interrogatories to twenty-five), with Fed. R. Civ. P. 30(d)(1) (same for depositions), and Fed. R. Civ. P. 33(a)(1) (same for interrogatories).

¹¹⁴ Compare, e.g., M.D. Ga. Loc. R. 34 (limiting parties to ten requests for production), and M.D. Ga. Loc. R. 36 (limiting parties to fifteen requests for admission), with Fed. R. Civ. P. 34 (indicating no limit on the number of requests for production), and Fed. R. Civ. P. 36 (indicating no limit on the number of requests for admission). Note that Federal Rule 26 permits, indeed requires, district courts to “limit the frequency or extent of discovery otherwise allowed by these rules or by local rule” under certain conditions, such as if “the party seeking discovery has had ample opportunity to obtain the information by discovery in the action.” Fed. R. Civ. P. 26(b)(2)(C).

orders and practices. Specifically, Local Civil Rule 7(F)(1) sets a default—and tight—briefing schedule,¹¹⁵ and Local Civil Rule 26(C) does the same for discovery objections.¹¹⁶ Local Civil Rule 7 also limits the availability of continuances¹¹⁷ and instructs counsel that “requests for an extension of time relating to motions must be in writing and, in general, will be looked upon with disfavor.”¹¹⁸

2. Courts of Appeals

We can tell a similar story about appellate procedure, although the story is different in two key respects. The first is simply that there are far fewer circuits than districts—thirteen compared to ninety-four—meaning fewer points of variation (although there are still considerable differences across circuit rules). The second concerns the differences between the two sets of national rules. The Federal Rules of Civil Procedure are lengthier than the Federal Rules of Appellate Procedure by nearly a factor of two—eighty-seven numbered rules to forty-eight. We chalk this difference up to the fact that there is more to say and regulate at the trial level—again, pleadings, conferences, discovery, summary judgment, and so forth. The appellate process is more straightforward, with the main points along the way being briefing, argument (or not), and a disposition of some kind. Not surprisingly, then, circuit rules tend to be leaner than their district counterparts, as there is generally less ground to cover.

Leaner though they are, circuit rules run the gamut and cover such topics as certificates of appealability,¹¹⁹ *in forma pauperis* status,¹²⁰

¹¹⁵ See E.D. Va. Loc. Civ. R. 7(F)(1) (requiring submission of a written brief with all motions, with some exceptions; giving the opposing party fourteen calendar days to file a response brief; and giving the moving party six calendar days after service of the response brief to file a reply brief).

¹¹⁶ E.D. Va. Loc. Civ. R. 26(C) (requiring discovery objections to be served within fifteen days after service of the discovery request).

¹¹⁷ E.D. Va. Loc. Civ. R. 7(G) (“Motions for continuances of a trial or hearing date shall not be granted by the mere agreement of counsel. No continuance will be granted other than for good cause and upon such terms as the Court may impose.”).

¹¹⁸ E.D. Va. Loc. Civ. R. 7(I). Local Civil Rule 37(F) also limits the availability and effect of discovery extensions. E.D. Va. Loc. Civ. R. 37(F) (“Any agreement between counsel relating to any extension of time is of no force or effect; only the Court, after appropriate motion directed thereto, may grant leave for any extension of time. Unless otherwise specifically provided, such extension will be upon the specific condition that, regardless of what may be divulged by such discovery, it will not in any manner alter the schedule of dates and procedure previously adopted by the Court in the particular case.”).

¹¹⁹ See, e.g., 1st Cir. R. 22.0.

¹²⁰ See, e.g., 2d Cir. R. 24.1.

mediation programs,¹²¹ motions of various sorts,¹²² briefing,¹²³ oral argument,¹²⁴ certification of questions of state law,¹²⁵ dispositions,¹²⁶ panel reconsideration,¹²⁷ en banc procedures,¹²⁸ dismissal,¹²⁹ duties of the clerks of court,¹³⁰ and attorney discipline¹³¹ (to name a few). As with local rules, circuit rules tend to crop up around “key moments” in the life of a case—again, this includes briefing, argument, and disposition. What follows is an overview of the different kinds of rules the circuits have on these subjects, and their relationship to the federal rules.

At the appellate level, we see that a number of circuit rules center around briefs, beginning with their content requirements. The rule at the national level—Federal Rule of Appellate Procedure 28—is fairly detailed, noting that briefs must contain, *inter alia*, a table of contents, a table of authorities, a statement of the issues presented for review, a summary of the argument, and then the argument itself.¹³² Several of the circuits have particular rules that add to these requirements. For example, in the U.S. Court of Appeals for the First Circuit, an appellant’s brief must also include the text of the decision below.¹³³ The Second Circuit’s local rules require that a brief “be concise, logically arranged with proper headings, and free of irrelevant matter.”¹³⁴ (The local rules further state that “[t]he court may disregard a brief that does not comply with this rule.”¹³⁵) The Fourth Circuit’s local rules provide that the statement of the case “must include a narrative statement of all of the facts necessary for the Court to reach the conclusion which the brief desires with references to the specific pages in the appendix that support each of the facts stated.”¹³⁶ In the Fifth Circuit, counsel for the appellant “must include in

¹²¹ See, e.g., 3d Cir. R. 33.0.

¹²² See, e.g., 4th Cir. R. 27(a)–(f).

¹²³ See, e.g., 5th Cir. R. 28.

¹²⁴ See, e.g., 6th Cir. R. 34.

¹²⁵ See, e.g., 7th Cir. R. 52.

¹²⁶ See, e.g., 8th Cir. R. 32.1A (“Unpublished opinions are decisions a court designates for unpublished status. They are not precedent.”).

¹²⁷ See, e.g., 9th Cir. R. 40-1.

¹²⁸ See, e.g., 10th Cir. R. 40.

¹²⁹ See, e.g., 11th Cir. R. 42-1.

¹³⁰ See, e.g., D.C. Cir. R. 45.

¹³¹ See, e.g., Fed. Cir. R. 46(f).

¹³² Fed. R. App. P. 28.

¹³³ 1st Cir. R. 28.0(a)(1).

¹³⁴ 2d Cir. R. 28.1(a).

¹³⁵ *Id.*

¹³⁶ 4th Cir. R. 28(f).

a preamble to appellant's principal brief a short statement why oral argument would be helpful, or a statement that appellant waives oral argument."¹³⁷ And the Ninth Circuit notes that appellants proceeding *pro se* may file "informal form briefs" (provided by the Clerk of Court) in lieu of the briefs described in Federal Rule of Appellate Procedure 28, and need not otherwise comply with the technical requirements of the Federal Rules of Appellate Procedure.¹³⁸

In addition to what briefs must contain, the Federal Rules of Appellate Procedure and the circuit rules have requirements about when they must be filed. Specifically, Federal Rule of Appellate Procedure 31(a) states that the appellant must file their brief within forty days after the record is filed, the appellee must file their brief within thirty days after the appellant's brief is served, and the appellant may file a reply brief within twenty-one days after the appellee's brief is served (but at least seven days before oral argument, unless the court allows a later filing).¹³⁹ Some circuits simply reinforce this timing in their local rules. For example, First Circuit Local Rule 31.0(a)(1) states that "[b]riefing schedules will be set in accordance with Fed. R. App. P. 31(a) once the record is complete, including any necessary transcripts."¹⁴⁰ But other circuits have variations from the national briefing time limits.

The Second Circuit, through local rule, varies the most significantly of all the circuits from the time limits established by Federal Rule of Appellate Procedure 31. Rather than set direct limits itself, the court permits counsel for each side to select a briefing deadline—within ninety-one-day intervals.¹⁴¹ In particular, within fourteen days after the appellant receives the last transcript (or files a certificate that no transcript will be ordered, or the filing of the record in agency decisions), the appellant must notify the clerk of the deadline they request for the appellant's brief, within a ninety-one-day window.¹⁴² Then, within fourteen days after the appellant's brief is filed, the appellee must notify the clerk of the deadline

¹³⁷ 5th Cir. R. 28.2.3.

¹³⁸ 9th Cir. R. 28-1(c).

¹³⁹ Fed. R. App. P. 31(a)(1).

¹⁴⁰ 1st Cir. R. 31.0(a)(1).

¹⁴¹ 2d Cir. R. 31.2(a)(1).

¹⁴² 2d Cir. R. 31.2(a)(1)(A). If the appellant fails to submit a scheduling request, the deadline for their brief is forty days after the "ready date" (the later of the appellant's receipt of the last transcript, the appellant's filing of the certificate that no transcript will be ordered, or the date the record is filed in Federal Rule of Appellate Procedure 15 proceedings). *Id.*

that they request for their brief—within a new ninety-one-day window.¹⁴³ As has been noted elsewhere, the Second Circuit’s time limit provisions arguably exceed the court’s authority, given that they can effectively double the timing contemplated by the national rule.¹⁴⁴ Federal Rule of Appellate Procedure 31(a)(2) provides that a court of appeals that “routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case”—but does not provide that the courts may *lengthen* that time.¹⁴⁵

Other circuits have more modest variations from the federal briefing time limits. For example, the Fourth Circuit has a shortened schedule for filing briefs in criminal cases: the appellant’s brief is due within thirty-five days after the court files a briefing order, the appellee’s brief is then due within twenty-one days after service of the appellant’s brief, and the appellant’s reply brief is due within ten days after service of the appellee’s brief.¹⁴⁶ The Ninth Circuit has a special, shorter schedule for appeals involving preliminary injunctions.¹⁴⁷ Finally, the Federal Circuit allows

¹⁴³ 2d Cir. R. 31.2(a)(1)(B). If the appellee fails to submit a scheduling request, the deadline for their brief is thirty days after the filing of the last appellant’s brief. *Id.* As with Federal Rule of Appellate Procedure 31, the reply brief must be filed within twenty-one days after the filing of the appellee’s brief. Fed. R. App. P. 31(a)(1); 2d Cir. R. 31.2(a)(2).

¹⁴⁴ See Jon O. Newman & Marin K. Levy, *Written and Unwritten: The Rules, Internal Procedures, and Customs of the United States Courts of Appeals* 52 (2024).

¹⁴⁵ Fed. R. App. P. 31(a)(2). In fact, the Advisory Committee’s notes emphasize this point:

The time prescribed by Rule 31(a) for preparing briefs—40 days to the appellant, 30 days to the appellee—is well within the time that must ordinarily elapse in most circuits before an appeal can be reached for consideration. In those circuits, the time prescribed by the Rule should not be disturbed. But if a court of appeals maintains a current calendar, that is, if an appeal can be heard as soon as the briefs have been filed, or if the practice of the court permits the submission of appeals for preliminary consideration as soon as the briefs have been filed, the court should be free to prescribe shorter periods in the interest of expediting decision.

Fed. R. App. P. 31 advisory committee’s note to 1970 amendment. That said, Federal Rule of Appellate Procedure 26(b) provides that the time prescribed by the national rules to perform any act (except filing a notice of appeal) may be extended for good cause. Fed. R. App. P. 26(b). And as noted elsewhere, “the judges of the Second Circuit apparently believed that reducing the need for motions to extend brief deadlines, which consumed clerk’s office time to docket and were routinely granted, was sufficient good cause.” Newman & Levy, *supra* note 144, at 52.

¹⁴⁶ 4th Cir. R. 31(a).

¹⁴⁷ In the Ninth Circuit, the appellant’s brief is due within twenty-eight days after docketing a notice of appeal, the appellee’s brief is due within twenty-eight days after service of the appellant’s brief, and the appellant’s reply brief is due within twenty-one days after service of the appellee’s brief. 9th Cir. R. 3-3(b).

for a slightly lengthier briefing schedule: the appellant's initial brief must be filed within sixty days after docketing,¹⁴⁸ and an appellee must file their brief within forty days after the appellant's brief is served.¹⁴⁹

Another significant site of local rulemaking is oral argument. Federal Rule of Appellate Procedure 34 states that oral argument must be allowed in every case, unless the panel unanimously agrees that oral argument is unnecessary on the grounds that "(A) the appeal is frivolous; (B) the dispositive issue or issues have been authoritatively decided; or (C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument."¹⁵⁰ In addition to local rules about when and where oral argument will occur,¹⁵¹ there are a number of local rules about what happens to cases that do not receive oral argument. As an example of the latter, Fifth Circuit Local Rule 34.2 states, in part, that "[o]ral argument is governed by Fed. R. App. P. 34. Cases not set for oral argument are placed on the summary calendar for decision."¹⁵² The Eleventh Circuit states that "[t]he court maintains a two-calendar system for consideration and decision of appeals in the interest of efficient and appropriate use of judicial resources, control of the docket by the court, minimizing unnecessary expenditure of government funds, and lessening delay in decisions."¹⁵³ It then goes on to describe its "non-argument panels" that decide appeals solely on the briefs.¹⁵⁴ And the D.C. Circuit's local rules provide that whenever the court "concludes that oral argument is not needed, the court may, after causing notice of that determination to be given to the parties by the clerk, proceed to dispose of the case without oral argument."¹⁵⁵ All of these local rules affect how a case will be resolved.

A final topic of noteworthy circuit rulemaking concerns opinions. As those familiar with the federal courts know, only some dispositions are officially "published" in the federal reporter, while others (which tend to

¹⁴⁸ Fed. Cir. R. 31(a)(1)(A)–(B).

¹⁴⁹ Fed. Cir. R. 31(a)(2).

¹⁵⁰ Fed. R. App. P. 34(a)(2).

¹⁵¹ See, e.g., 1st Cir. R. 34.1(b)(1) ("Sittings will be in Boston except that there will also be sittings in Puerto Rico in November and March and at such other times and places as the court orders.").

¹⁵² 5th Cir. R. 34.2.

¹⁵³ 11th Cir. R. 34-3(a).

¹⁵⁴ 11th Cir. R. 34-3(e); see also 11th Cir. Internal Operating Proc. 34-4.

¹⁵⁵ D.C. Cir. R. 34(j)(1).

be shorter and less formal) are not. Those that are published are precedential; those that are not are not. The publication of some, but not all, dispositions at the federal courts of appeals has been the cause of some sensitivity and debate for some time.¹⁵⁶ Unlike with appeals that warrant oral argument, the Federal Rules of Appellate Procedure are silent on which opinions warrant publication. Indeed, the national rules intervene only to say that “[a] court may not prohibit or restrict the citation of federal judicial opinions . . . issued on or after January 1, 2007.”¹⁵⁷ But local rules have far more to say on the subject.

Indeed, some circuits have quite detailed criteria for determining when an opinion is published as precedential. The Fifth Circuit states that an opinion will be published if it

- (a) Establishes a new rule of law, alters, or modifies an existing rule of law, or calls attention to an existing rule of law that appears to have been generally overlooked; (b) Applies an established rule of law to facts significantly different from those in previous published opinions applying the rule; (c) Explains, criticizes, or reviews the history of existing decisional or enacted law; (d) Creates or resolves a conflict of authority either within the circuit or between this circuit and another; (e) Concerns or discusses a factual or legal issue of significant public interest; or (f) Is rendered in a case that has been reviewed previously and its merits addressed by an opinion of the United States Supreme Court.¹⁵⁸

The Ninth Circuit has similar but nevertheless distinct criteria for publication:

- [An opinion shall be published] if it: (a) Establishes, alters, modifies or clarifies a rule of federal law, or (b) Calls attention to a rule of law that

¹⁵⁶ For examples of some of the points/counterpoints in the debate over the use of unpublished decisions back when the debate was at its inflection point, see generally Richard B. Cappalli, *The Common Law’s Case Against Non-Precedential Opinions*, 76 S. Cal. L. Rev. 755 (2003); Boyce F. Martin, Jr., *In Defense of Unpublished Opinions*, 60 Ohio St. L.J. 177 (1999). For a more recent treatment of the subject, following the requirement that unpublished opinions at least be citable to the courts of appeals, see generally Merritt E. McAlister, “Downright Indifference”: Examining Unpublished Decisions in the Federal Courts of Appeals, 118 Mich. L. Rev. 533 (2020).

¹⁵⁷ Fed. R. App. P. 32.1(a).

¹⁵⁸ 5th Cir. R. 47.5.1. Additionally, an opinion may be published if it is “accompanied by a concurring or dissenting opinion; or reverses the decision below or affirms it upon different grounds.” *Id.*

appears to have been generally overlooked, or (c) Criticizes existing law, or (d) Involves a legal or factual issue of unique interest or substantial public importance, or (e) Is a disposition of a case in which there is a published opinion by a lower court or administrative agency, unless the panel determines that publication is unnecessary for clarifying the panel's disposition of the case, or (f) Is a disposition of a case following a reversal or remand by the United States Supreme Court, or (g) Is accompanied by a separate concurring or dissenting expression, and the author of such separate expression requests publication of the disposition of the Court and the separate expression.¹⁵⁹

In the D.C. Circuit, several similar criteria are provided for determining when an opinion will be published as precedential, plus whether it is “a case of first impression,” “it criticizes or questions existing law,” or it “creates a conflict with another circuit.”¹⁶⁰ In short, in the absence of guidance from the national rules, the answer to one of the most significant questions in appellate judicial administration—when an opinion should be published, and therefore precedential—has been supplied by the courts themselves via local rules.¹⁶¹

As with the district courts, in summer 2024, we surveyed all the circuit courts' rules addressing topics outside of the Federal Rules of Appellate Procedure, using the same method of looking at local rules filed under Federal Rule of Appellate Procedure 47. We found seventy such rules. The Ninth Circuit does not use uniform numbering, so it is not included in these results. The Fourth Circuit has no rules listed under Rule 47, so our results come from the remaining eleven circuit courts. Common topics include circuit staff and libraries, opinions, circuit judicial conferences,

¹⁵⁹ 9th Cir. R. 36-2.

¹⁶⁰ D.C. Cir. R. 36(c)(2)(A), (D)–(E).

¹⁶¹ It is worth noting that at least one court has addressed this question via Internal Operating Procedures (“IOP”). Sixth Circuit IOP 32.1(b)(1) states that panels should consider whether their decision

(A) Establishes a new rule of law, modifies an existing rule of law, or applies an established rule to a novel factual situation[;] (B) Creates or resolves a conflict of authority within this circuit or between this circuit and another[;] (C) Discusses a legal or factual issue of continuing public interest[;] (D) Is accompanied by a concurring or dissenting opinion[;] (E) Reverses the decision below, unless: (i) the reversal was because of an intervening change in law or fact; or (ii) the reversal is a remand to the lower court or agency—without further comment—of a case reversed or remanded by the United States Supreme Court; (F) Addresses a published lower court or agency decision; or (G) Has been reviewed by the United States Supreme Court.

attorney fees, panels, and sessions of court. There are also ten rules on special types of cases, including three rules about capital cases. Additional results are presented in Table 3 (topics with three or more rules).

Table 3: Circuit Rules 47

Circuit Staff, Library	9
Opinions	7
Special Types of Cases	7
Circuit Judicial Conferences	6
Attorney Fees	4
Panels	4
Sessions	4
Certified Questions	3
Confidentiality	3
Capital Cases	3

B. Typology of Rules

Now that we have provided an overview of what the rules cover, we want to try to organize, categorically, what the rules are trying to do in a broader sense. Our typology here seeks to explain the relationship between the local rules and the Federal Rules. It does not, therefore, distinguish between rules on the basis of their subject matter. Focusing on the federal-local interaction, we suggest some general types and offer examples, calling back to what we described earlier.

As suggested above, an initial division can be made between rules inside the Federal Rules and rules outside the Federal Rules. But saying that a rule is inside the Federal Rules tells us little about its particular relationship to the Federal Rules. So we further divide local rules inside federal rules into five subcategories. We take them up in turn.

First, as noted, a central concern from the adoption of the Federal Rules of Civil Procedure in 1938¹⁶² through the Local Rules Project¹⁶³ was with

¹⁶² See *supra* note 31 and accompanying text.

¹⁶³ Writing in the wake of the first Local Rules Project, Professor Subrin observed that “[i]n analyzing 5,032 local provisions that fit within the 103 different topics, the Project found 809

local rules that contradicted federal rules.¹⁶⁴ Indeed, the Local Rules Project attempted to catalog every conflicting rule of civil, criminal, and appellate procedure.¹⁶⁵ We agree that this category merits attention.¹⁶⁶ For example, as noted earlier, it seems plain that the Second Circuit's local rule establishing its extended briefing schedule is at least in tension with (if not a contradiction of) the Federal Rules of Appellate Procedure.¹⁶⁷ It also appears that some districts have yet to update their rules to account for major changes in the Federal Rules on Social Security cases.¹⁶⁸ These are current examples of local rules that are out of step with federal ones.

Second, another historic concern of federal rulemakers was local rules that duplicate federal rules.¹⁶⁹ Here, too, we think it is important to treat these duplicative rules as their own category. We mentioned above local rules from the Middle District of Georgia that repeated federal rules with respect to discovery limits.¹⁷⁰ The Northern District of West Virginia's rule on electronically stored information parrots the exact language of the federal rule.¹⁷¹ The federal rules declare that discovery materials shall not be filed until used in the proceeding or the court so orders,¹⁷² yet a number of district courts have rules saying the same.¹⁷³

Notably, sometimes the duplication is imperfect. Famously, Federal Rule 26(b)(1) was amended in 2015 to define the scope of discovery:

instances of possible repetition with other federal rules or federal law, and 837 instances of possible inconsistency with such law." Subrin, *supra* note 20, at 2021.

¹⁶⁴ See Wright et al., *supra* note 74, § 3153 (discussing federal-local conflict).

¹⁶⁵ See History and Methodology of the Local Rules Project, *supra* note 56.

¹⁶⁶ For a historical example that reached the Supreme Court, see *Miner v. Atlass*, 363 U.S. 641, 647 (1960) (discussing a conflict between Rule 32 of the Admiralty Rules of the Northern District of Illinois and the federal admiralty rules). And for a historical example of a conflict with a federal statute, see *Wingo v. Wedding*, 418 U.S. 461, 472 (1974) (discussing a conflict between Local Rule 16 of the Western District of Kentucky with the federal habeas statute).

¹⁶⁷ See *supra* notes 141–45 and accompanying text.

¹⁶⁸ Compare, e.g., Supplemental Rules for Social Security Actions Under 42 U.S.C. § 405(g) (creating a process for review on the record of a final decision of the Commissioner of Social Security), with D. Or. LR 4000-2 (failing to provide an equivalent process).

¹⁶⁹ Subrin, *supra* note 20, at 2021 (observing that the Local Rules Project found "809 instances of possible repetition with other federal rules or federal law").

¹⁷⁰ See *supra* note 113 and accompanying text.

¹⁷¹ Compare N.D. W. Va. LR Civ P 37.01(a) (local rule creating an obligation to preserve electronically stored information), with Fed. R. Civ. P. 37(e) (federal rule creating the same obligation using identical language).

¹⁷² Fed. R. Civ. P. 5(d)(1)(A).

¹⁷³ E.g., N.D. W. Va. LR Civ P 5.01(a); E.D. Wash. LCivR 26(h).

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.¹⁷⁴

The District of Maryland's discovery guidelines provide, "Fed R. Civ. P. 26 requires that discovery be relevant to any party's claim or defense; proportional to what is at issue in a case; and not excessively burdensome or expensive as compared to the likely benefit of obtaining the discovery being sought."¹⁷⁵ So the District of Maryland rule paraphrases the federal rule by asking the court to consider proportionality and an assessment of burden and expense, but it omits all of the other six considerations included in the federal rule. This different locution arguably changes the rule.

Third, some federal rules expressly invite local rulemaking, permitting district courts to essentially opt out of federal rules. When rulemakers proposed automatic disclosures under Federal Rule 26 in 1993, they responded to pushback by including provisions permitting lower courts to opt out.¹⁷⁶ Amended Rule 26(a)(1) thus began, "Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court,"¹⁷⁷ and the Advisory Committee note explained, "The introductory clause permits the court, by local rule, to exempt all or particular types of cases from these disclosure requirement[s] or to modify the nature of the information to be disclosed."¹⁷⁸ And, indeed, roughly half of the district courts took the opportunity to opt out of the Federal Rule at that time.¹⁷⁹

¹⁷⁴ Fed. R. Civ. P. 26(b)(1).

¹⁷⁵ U.S. Dist. Ct. for the Dist. of Md., Local Rules app. A, Guideline 1a. (2025), <https://www.mdd.uscourts.gov/sites/mdd/files/LocalRules.pdf> [<https://perma.cc/6WJ8-H79V>].

¹⁷⁶ See Chemerinsky & Friedman, *supra* note 20, at 762 (discussing this choice).

¹⁷⁷ Fed. R. Civ. P. 26(a)(1).

¹⁷⁸ Fed. R. Civ. P. 26 advisory committee's note to 1993 amendment (alteration in original). Indeed, the note goes on to say that "[a]uthorization of these local variations is, in large measure, included in order to accommodate the Civil Justice Reform Act of 1990, which implicitly directs districts to experiment during the study period with differing procedures to reduce the time and expense of civil litigation." *Id.*

¹⁷⁹ Marcia Coyle & Marianne Lavelle, Half of Districts Opt Out of New Civil Rules; Washington Brief, *Nat'l L.J.*, Feb. 28, 1994, at 18.

Today, the Federal Rules of Civil Procedure expressly refer to “local rules” in a way that suggests that individual courts may opt out of federal rules at least eleven times.¹⁸⁰ For example, the rule on the timing for motions for summary judgment invites local opt-out by providing, “*Unless a different time is set by local rule . . .*, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.”¹⁸¹ Other federal rules beyond the eleven that expressly refer to local rules countenance local departures without expressly mentioning “local rules.”¹⁸²

Similarly, using the same method, we find more than two dozen examples of the Federal Rules of Appellate Procedure expressly inviting local rulemaking in the courts of appeals.¹⁸³ (Two of these rules say that the courts of appeals “must” make local rules on certain topics.¹⁸⁴) One of the “opt out” rules received recent attention, when the Third Circuit took advantage of the flexibility in Federal Rule of Appellate Procedure 26(a)(4) to change the presumptive filing deadline from midnight to 5:00 PM.¹⁸⁵ And as noted earlier, though the Federal Rules of Appellate Procedure create default deadlines for filing briefs, the rule expressly permits courts of appeals to shorten the relevant timelines, and we have seen the Fourth and Ninth Circuits do so with certain classes of appeals.¹⁸⁶

¹⁸⁰ Fed. R. Civ. P. 5(d)(1)(B)(ii), 5(d)(3), 6(a)(4), 16(b)(1), 26(b)(2)(A), 26(f)(4), 54(d)(2)(D), 56(b), 66, 77(c)(1), 81(a)(5).

¹⁸¹ Fed. R. Civ. P. 56(b) (emphasis added).

¹⁸² See, e.g., Fed. R. Civ. P. 26(a)(1) (requiring initial disclosures “[e]xcept as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court”); Fed. R. Civ. P. 40 (“Each court must provide by rule for scheduling trials.”).

¹⁸³ Fed. R. App. P. 5(c), 10(b)(1)(A), 11(e)(1), 21(d), 25(a)(2)(B)(ii), 25(a)(4), 25(e), 26(a)(4), 26.1(d)(1), 26.1(e), 27(d)(3), 29(b)(1), 30(a)(3), 30(b)(2), 31(a)(2), 31(b), 32(e), 32(f), 34(a)(1), 39(c), 40(a), 40(d)(1), 40(d)(2), 40(d)(3), 45(a)(2), 46(a)(3).

¹⁸⁴ Fed. R. App. P. 30(b)(2) (imposing sanctions on attorneys for including unnecessary material in the appendix); Fed. R. App. P. 39(c) (fixing the maximum rate for taxing costs of producing copies of briefs).

¹⁸⁵ See 3d Cir. R. 26.1; Fed. R. App. P. 26(a)(4); see also Lydia Wheeler, Third Circuit Adopts Early Filing Deadline Despite Dissent (1), Bloomberg L.: US L. Wk. (May 2, 2023, 6:45 PM), <https://news.bloomberglaw.com/us-law-week/third-circuit-adopts-early-filing-deadline-that-attracts-dissent> (discussing the change and attorney opposition).

¹⁸⁶ See 4th Cir. R. 31(a) (shortening the schedule for filing briefs in criminal cases by requiring the appellant’s brief to be due within thirty-five days after the court files a briefing order, the appellee’s brief to be due within twenty-one days after service of the appellant’s brief, and the appellant’s reply brief to be due within ten days after service of the appellee’s brief); 9th Cir. R. 3-3(b) (shortening the schedule for filing briefs in cases where a preliminary injunction is sought by requiring the appellant’s brief to be due within twenty-eight days after docketing a notice of appeal, the appellee’s brief to be due within twenty-eight days after

A fourth subcategory of local rules includes rules that seek to elaborate, explain, or specify federal rules. Sometimes these rules “fill gaps” in federal rules. For example, as noted earlier, a number of circuits have rules that specify when it is appropriate not to author a precedential opinion on a given subject—a topic that the Federal Rules of Appellate Procedure leave open.¹⁸⁷ Or, various local rules spell out how litigants should comply with Federal Rule of Civil Procedure 56’s requirement that parties seeking summary judgment cite specific portions of the record.¹⁸⁸ Other times, local rules “rulify” a broad standard laid out in the federal rule.¹⁸⁹ Federal Rule of Civil Procedure 16 calls upon judges to issue a scheduling order early in a case but leaves wide discretion on its contents.¹⁹⁰ The Northern District of Illinois, by local rule, adopted a standing order on pretrial procedures and model pretrial order forms.¹⁹¹ Federal Rule of Civil Procedure 15 says that courts should permit amendments to pleadings “when justice so requires,”¹⁹² but a number of local rules place time limits on these amendments.¹⁹³ These rulifying rules thus may reflect differing preferences between national and local rulemakers, with the former preferring flexible standards and the latter preferring more fixed rules.¹⁹⁴ (This is not to say that all such attempts by local rulemakers succeed. The Ninth Circuit rejected a local rule rulifying the timing of class certification, holding that the Central District of California’s ninety-day limit on motions for class certification was inconsistent with the federal rule’s call for class certification “[a]t an early practicable time.”¹⁹⁵)

A fifth category involves situations where federal rules act as a floor or ceiling, but local rules go beyond the federal requirements. We think this

service of the appellant’s brief, and the appellant’s reply brief to be due within twenty-one days after service of the appellee’s brief).

¹⁸⁷ See *supra* notes 157–61 and accompanying text.

¹⁸⁸ See *supra* notes 91–94 and accompanying text.

¹⁸⁹ Cf. Michael Coenen, *Rules Against Rulification*, 124 *Yale L.J.* 644, 685 (2014) (suggesting limits to rulification).

¹⁹⁰ Fed. R. Civ. P. 16(b).

¹⁹¹ N.D. Ill. LR 16.1, 16.1.1(a).

¹⁹² Fed. R. Civ. P. 15(a)(2).

¹⁹³ E.g., E.D. & W.D. Ark. Loc. R. 5.5(e); D. Nev. LR 26-1(b)(2); S.D. Ga. LR 16.3.

¹⁹⁴ We discuss these differing preferences as potential nodes for conflict below. See *infra* Section IV.A; *infra* Subsection IV.B.1.

¹⁹⁵ *ABS Ent., Inc. v. CBS Corp.*, 908 F.3d 405, 426–27 (9th Cir. 2018) (alteration in original) (discussing the incompatibility between C.D. Cal. L.R. 23-3 and Fed. R. Civ. P. 23(c)(1)(A)).

category is meaningfully different from both the opt-out rules and the elaborative rules. Unlike with opt-out rules, courts adopting these rules also require compliance with the federal rule; unlike with the elaborative rules, courts adopting these rules are intentionally asking for more than the federal rule requires rather than simply explaining how to comply with a federal standard.

A concrete example at the courts of appeals concerns the requirements around what briefs must contain. The pertinent national rule—Federal Rule of Appellate Procedure 28—lists ten different required components for the appellant’s brief (some with multiple subparts).¹⁹⁶ But, as discussed earlier, a number of circuits have added necessary components above and beyond those listed in the national rule, including “a narrative statement of all of the facts necessary for the Court to reach the conclusion which the brief desires with references to the specific pages in the appendix that support each of the facts stated” in the Fourth Circuit and “a short statement why oral argument would be helpful, or a statement that appellant waives oral argument” in the Fifth.¹⁹⁷

To take another example in the district courts, Federal Rule of Civil Procedure 7.1 requires corporate parties to file a “[d]isclosure [s]tatement” that “identifies any parent corporation and any publicly held corporation owning 10% or more of its stock.”¹⁹⁸ Judges can use these disclosures to make recusal decisions, but there are countless financial arrangements that might create real or apparent conflicts of interest not covered by this rule. And so at least half of the federal district courts have developed local rules on disclosures.¹⁹⁹ According to the Rules Committee, these local rules

tend to follow one of three approaches: (1) broadening the definition of what corporate relationships must be disclosed through use of a broad term, such as “affiliate”; (2) a list of specific relationships entities might have with a party that must be disclosed, such as an insurer; and (3)

¹⁹⁶ Fed. R. App. P. 28(a).

¹⁹⁷ See 4th Cir. R. 28(f); 5th Cir. R. 28.2.3; see also *supra* notes 133–37 and accompanying text (discussing the same rules regarding briefs).

¹⁹⁸ Fed. R. Civ. P. 7.1(a)(1)(A).

¹⁹⁹ Advisory Comm. on Civ. Rules, Agenda Book 222–23 (2023) [hereinafter 2023 Agenda Book], https://www.uscourts.gov/sites/default/files/2023-10_civil_rules_committee_meeting_agenda_book_11-6_final_0.pdf [<https://perma.cc/N9DM-4V72>].

lowering the percentage ownership of a party’s stock that triggers disclosure, such as from 10% to 5%.²⁰⁰

A number of courts also require disclosure of third-party litigation financing.²⁰¹

Lastly, returning to the division that we made at the outset, our sixth and final category of local rules includes rules that operate outside of the federal rules. We identified 1,089 such district rules and 70 such circuit rules. These rules address a range of topics, including attorney regulation and judicial administration. They cohere not because they address similar substantive topics, but because they share a common relationship to the federal rules—that is, they are outside of them. They thus potentially reflect differing judgments by national and local rulemakers on the province of their rules.

Figure 1: Types of Local Rules

Inside the Federal Rules					Outside the Federal Rules
Conflicting	Duplicating	Opting Out	Explaining, Elaborating, etc.	Building on Floor/Ceiling	

* * *

It is quite plainly a challenging task to try to distill thousands of rules across over one hundred courts (district and circuit). This Part has attempted to provide an overview of those rules in a few different ways. First, we have done so by surveying the content of the rules—both those inside and outside of the Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure. And then second, we have done so by providing a typology—a way to categorize the rules by how they relate to the federal rules. Having provided multiple analyses of what the local

²⁰⁰ Advisory Comm. on Civ. Rules, Agenda Book 289 (2024) [hereinafter 2024 Agenda Book], https://www.uscourts.gov/sites/default/files/2024-04-09_agenda_book_for_civil_rules_meeting_final_4-9-2024.pdf [<https://perma.cc/527F-UZW5>].

²⁰¹ E.g., D.N.J. Civ. R. 7.1.1; see also Advisory Comm. on Civ. Rules, Agenda Book 209–10 (2018), <https://www.uscourts.gov/sites/default/files/2018-04-civil-rules-agenda-book.pdf> [<https://perma.cc/T7NT-4A8Z>] (reporting that six courts of appeals and twenty-four district courts, as of November 2017, have local rules that require identifying litigation funders).

rules contain, in the next Part we step back and examine the underlying purposes of these local rules.

III. THE PURPOSES OF LOCAL RULES

As the preceding Part demonstrates, there are thousands of local rules at the district and circuit level of all sorts and covering all manner of topics. Appreciating the vastness of local rules today leads to a foundational question: What is the purpose of local rules? That is, why have rules at the local level at all and not have rulemaking occur exclusively at the national level?

To begin to answer this question, we asked those with expertise in rulemaking, both at the national and local levels, what they think of as the purpose of local rules. What follows is a description of our methodology—how we identified whom to interview and how we conducted those interviews—as well as our findings about the rationale for having local rules within our federal system. We then analyze these findings in Part IV.

A. Methodology

It is not uncommon for scholars of court systems and processes to turn to qualitative methods, particularly interviews, to gather crucial data.²⁰² Indeed, both authors here have conducted interview-based projects in the past to provide insights into such topics as the office of the chief judge,²⁰³ visiting judges,²⁰⁴ the composition of appellate panels,²⁰⁵ case management practices at the courts of appeals,²⁰⁶ and the management of federal judicial data.²⁰⁷

²⁰² See, e.g., Abbe R. Gluck, *Unorthodox Civil Procedure: Modern Multidistrict Litigation's Place in the Textbook Understandings of Procedure*, 165 U. Pa. L. Rev. 1669, 1675 (2017) (“This Article relies on lengthy and confidential oral interviews of twenty judges (fifteen federal, five state), each with significant experience in MDL litigation.”).

²⁰³ Marin K. Levy & Jon O. Newman, *The Office of the Chief Circuit Judge*, 169 U. Pa. L. Rev. 2425, 2438–39 (2021).

²⁰⁴ Marin K. Levy, *Visiting Judges*, 107 Calif. L. Rev. 67, 101–04 (2019).

²⁰⁵ Marin K. Levy, *Panel Assignment in the Federal Courts of Appeals*, 103 Cornell L. Rev. 65, 79–81 (2017).

²⁰⁶ Marin K. Levy, *The Mechanics of Federal Appeals: Uniformity and Case Management in the Circuit Courts*, 61 Duke L.J. 315, 326–27 (2011).

²⁰⁷ Zachary D. Clopton & Aziz Z. Huq, *The Necessary and Proper Stewardship of Judicial Data*, 76 Stan. L. Rev. 893, 904 (2024).

To better understand the purposes of local rules, we decided to interview those with significant rulemaking experience at the national and local levels. With respect to national rulemaking, we interviewed chairs and reporters of the federal rulemaking committees. Additionally, we interviewed nearly all the judge members, along with the Clerk of Court Representative, of both the Advisory Committee on Appellate Rules and the Advisory Committee on Civil Rules, as those two committees have the clearest ties to local circuit and district rules. With respect to local rulemaking, we interviewed chairs and committee members of local rules committees of several circuits and districts, including those with particular national reputations. Finally, we relied upon snowball sampling—asking every subject whom they would recommend we interview—and from that identified over a dozen other judges, practitioners, and academics with rulemaking expertise to interview. All in all, we have interviewed over fifty individuals to date, including judges, attorneys, academics, and court staff, making this the largest academic study on local rules.

As for conducting the interviews, nearly all were held by videoconference over Zoom, with both authors present. (The remaining few were held by telephone.) The interviews tended to run approximately half an hour each, though some were as short as twenty minutes and others lasted an hour. Consistent with past work, the interviews were all semi-structured; we asked each subject a set list of questions about local rules and their relationship with federal rules, though our precise questions varied depending upon whether we were speaking with a member of a national rules committee or a local rules committee, someone who was then serving on a committee or had previously been a member, and someone with circuit-level experience or district-level experience. Each subject received their list of questions in advance, when asked if they would be willing to sit for an interview, and those were the questions we discussed—though, as is generally the case with semi-structured interviews, sometimes a subject's answer would lead to follow-up queries on our part.

To ensure that each subject was as candid as possible—and consistent with past practice—we informed each subject that their responses would be anonymized.²⁰⁸ This is why, again, consistent with past practice, we

²⁰⁸ Assurances of anonymity are not uncommon in interview-based studies about the federal judiciary. See, e.g., Mitu Gulati & Richard A. Posner, *The Management of Staff by Federal*

attribute information to “a judge” or “a practitioner” or “a scholar” identified only by their interview date.²⁰⁹

B. Findings

As described above, the federal rules explicitly or implicitly leave room for local rules.²¹⁰ Sometimes they give courts the opportunity to opt out, and other times they are written in ways that leave room for further details or gap filling. Indeed, a common refrain among those we interviewed was that at least some of the national rules are written at a broad level of generality, and so one critical purpose of local rules is to add detailed content to operationalize the national ones. As one district judge said, a lot of what his court does in local rules is to “fill in the gaps, interstices” in the national rules.²¹¹ Another said that the federal rules can be “very general” as they are meant to have general application, whereas local rules “can be more extensive, more detailed, and they seem to address the mechanics” of litigation.²¹² And a number of interview subjects suggested that the slow pace of federal rulemaking, and the focus of federal committees on major items such as multidistrict litigation, means that local rules might need to tackle an issue at least until the federal committee has the bandwidth to take it up.²¹³

These observations about the gaps in federal rules lead to more questions: Why might a court decide to respond to these conditions with a local rule, and how might a court choose among potential local rules? A core subject of our interviews, then, was the purpose of local rules. Nearly everyone we interviewed stated that they thought local rules have multiple functions, but not everyone listed the same functions, and even those who did list common functions emphasized some over others and to different

Court of Appeals Judges, 69 Vand. L. Rev. 479, 480 (2016) (“The judges interviewed for this study were promised anonymity and that no identifying information would be disclosed.”).

²⁰⁹ See Levy, *supra* note 205, at 81. To further protect the identities of our interview subjects, we use gender-neutral pronouns—also in line with past practice. See *id.* at 81 n.84 (using male-only pronouns).

²¹⁰ See *supra* Part II.

²¹¹ Interview with Subject 1 (Mar. 1, 2024).

²¹² Interview with Subject 3 (Mar. 21, 2024).

²¹³ E.g., Interview with Subject 2 (Mar. 27, 2024); Interview with Subject 16 (Mar. 29, 2024). No interview subject specifically stated that rulemaking on multidistrict litigation crowded out other topics, but that topic has been the major subject on the agenda of the Advisory Committee on Civil Rules for the past several years. See, e.g., 2024 Agenda Book, *supra* note 200, at 136–47 (proposed rule and commentary on multidistrict litigation).

degrees. On the whole, though, those functions include taking account of local needs and customs, codifying the practices of judges, providing an opportunity for experimentation, and potentially attracting (or repelling) litigation. What follows is a discussion of each of these purposes as described to us by our interview subjects.

1. Taking Account of Local Needs, Culture, and Preferences

Over and over again, subjects suggested that the purpose of local rules is to account for local variation. One local rulemaker said, paraphrasing Tip O'Neill, "All local rules are local."²¹⁴ Or as an appellate judge put it, "National rules don't cover everything. . . . There is still room—and by design, I think, there still is room for local variation. That's a feature, not a bug, of design of the Federal Rules."²¹⁵

Importantly, the form of the local variation can vary. Some of it reflects conditions over which the court does not have control—what we will call "external factors." A clear example is geography. There is, of course, significant variation across districts and circuits when it comes to geography. With respect to districts, these differences include the physical size of the district itself and whether it contains a large urban center or is primarily rural. The same considerations come into play at the circuit level and further include the number of time zones contained in the circuit. Perhaps unsurprisingly, we were told that one important function of local rules is to take account of such variation. As one subject with prior national rulemaking experience put it, "[T]here was a legitimate role for local rules . . . depending on the geography of the district."²¹⁶

One example that several rulemakers discussed of geography playing a role (in their view, properly) in circuit variation was rules regarding the deadlines for filings. We discussed above the Third Circuit's decision to change the default filing deadline from midnight to 5:00 PM.²¹⁷ The court cited other courts that had similarly rolled back their deadlines for "work/life balance and quality of life concerns" in their public announcement of the new deadline.²¹⁸ After the Third Circuit changed its

²¹⁴ Interview with Subject 30 (Apr. 11, 2024). See generally Tip O'Neill & Gary Hymel, *All Politics Is Local: And Other Rules of the Game* (1994).

²¹⁵ Interview with Subject 9 (Apr. 1, 2024).

²¹⁶ Interview with Subject 33 (Apr. 17, 2024).

²¹⁷ 3d Cir. R. 26.1; see *supra* note 185 and accompanying text.

²¹⁸ U.S. Ct. of Appeals for the 3d Cir., Public Notice—May 2, 2023, <https://www.ca3.uscourts.gov/sites/ca3/files/PublicNoticeRegardingDeadlineRule.pdf> [<https://perma.cc/Q5PL-W4>]

rule, we were told that it advocated that such a change be adopted nationally—that is, by amending the Federal Rules of Appellate Procedure.²¹⁹ But there was quick pushback. As one judge told us, “In the Ninth Circuit, we have five different time zones. That would be impossible.”²²⁰ Ultimately, the Third Circuit’s rule was not nationalized. And again, this episode was cited as a reason why variation through local rules can be appropriate and, indeed, necessary.²²¹

A second external factor we were told about was the number of judges on the bench. Quite plainly, there is significant variation in the size of courts across the country at both the district and appellate level.²²² District courts range from two active judgeships (in the District of Idaho, the Northern District of Iowa, the District of North Dakota, the District of Vermont, and the Western District of Wisconsin) to twenty-eight active judgeships (in the Southern District of New York).²²³ And courts of appeals range in size from six (in the First Circuit) to twenty-nine (in the Ninth Circuit).²²⁴ One purpose of local rules, we were told, is to take into account these differences across benches. To give an example at the appellate level, by statute, any circuit court with more than fifteen active judges may “perform its en banc function by such number of [judges] . . . as may be prescribed by rule of the court of appeals.”²²⁵ The Ninth Circuit’s Circuit Rule 40-3 does just that, providing for a “limited en banc court” consisting of the Chief Judge and ten additional judges randomly selected from the court’s active judges.²²⁶ No other circuit has a comparable rule as no other appellate court holds limited en bancs.

A third external factor noted in interviews that could justify variation in local rules is each court’s docket—both its size and composition. As anyone familiar with the federal courts will know, the districts and circuits vary considerably when it comes to caseload. If one considers the

AA]. These reasons, we should add, are best thought of as “internal” rather than “external.” See *infra* notes 244–60 and accompanying text.

²¹⁹ Interview with Subject 11 (Mar. 28, 2024).

²²⁰ *Id.*

²²¹ Another example involved the size of the District of Montana and a potential requirement determining the courthouse to which an indictment must be returned. Interview with Subject 20 (Apr. 1, 2024).

²²² This factor in particular also influences the local rulemaking process, a subject for future work. See generally Clopton & Levy, *supra* note 19.

²²³ See 28 U.S.C. § 133.

²²⁴ See *id.* § 44.

²²⁵ Act of Oct. 20, 1978, Pub. L. No. 95-486, § 6, 92 Stat. 1629, 1633.

²²⁶ 9th Cir. R. 40-3.

Administrative Office of the U.S. Courts’s weighted filings per judgeship at the district level, one quickly sees a range from 224 cases in the District of Alaska to 756 cases in the Western District of Texas.²²⁷ A similar story can be told at the circuit level, with 101 cases filed per judgeship in the D.C. Circuit, going up to 280 cases filed per judgeship in the Ninth Circuit.²²⁸ Beyond the difference in quantity of cases is the difference in content. At the district level, several rulemakers pointed to factors that would impact one’s docket—whether the district contains a big city, whether it contains a large port, whether it contains a prison, whether it contains an international border,²²⁹ and whether it contains a technology hub.²³⁰ At the circuit level, the differences in docket composition can include whether a circuit has a particularly large percentage of administrative agency appeals, immigration appeals, and complex commercial appeals. As one judge said when speaking of the different courts across the country, “These are different worlds. Local rules help [courts] manage what is different for them. What the caseload looks like. And what kinds of procedures are best able to manage that caseload.”²³¹ The judge then continued to say that local rules “are the way that we adapt to the specific docket and case composition issues that we face. And it’s essential to have that ability.”²³²

For example, the Northern District of California adopted local patent rules because of its substantial patent docket.²³³ One judge suggested that probably only a handful of districts had enough patent litigation to even consider doing so.²³⁴ The Second Circuit (like the Ninth Circuit) has a particularly high percentage of appeals from the Board of Immigration

²²⁷ See Judicial Emergencies, Admin. Off. of the U.S. Cts., <https://www.uscourts.gov/judgeships-judicial-vacancies/judicial-emergencies> [https://perma.cc/HR2W-28T4] (last visited May 30, 2025).

²²⁸ See 28 U.S.C. § 44 (stating the number of judgeships per circuit); Statistical Tables for the Federal Judiciary, Admin. Off. of the U.S. Cts., at tbl. B-1 (Dec. 31, 2024), <https://www.uscourts.gov/data-news/data-tables/2024/12/31/statistical-tables-federal-judiciary/b-1> [https://perma.cc/3EES-ASET]. We arrived at these figures by taking the number of cases filed per circuit and dividing by the number of judgeships per circuit (and so 1,108/11 for the D.C. Circuit and 8,108/29 for the Ninth Circuit).

²²⁹ Interview with Subject 34 (Apr. 24, 2024); Interview with Subject 19 (Apr. 22, 2024).

²³⁰ Interview with Subject 53 (May 9, 2024).

²³¹ Interview with Subject 34 (Apr. 24, 2024).

²³² *Id.*

²³³ Interview with Subject 53 (May 9, 2024).

²³⁴ See *id.*

Appeals (“BIA”).²³⁵ And so it has a local rule supplementing Federal Rule of Appellate Procedure 34 on oral argument,²³⁶ stating that the court maintains a non-argument calendar for certain classes of cases including various immigration appeals.²³⁷ Again, without taking a position on any court’s particular local rules, many of those interviewed said that one purpose of such rules is to be able to account for these key differences across dockets.

A final external factor noted in interviews is the character of the local bar. Specifically, we were told that local rules can function to address the needs and culture of the lawyers in a particular district or circuit, or at least the rulemakers’ perception of the needs and culture. As one subject put it, “We need to accommodate our huge bar . . . [including] people without means.”²³⁸ As an example, they noted that in their circuit, there was an attempt to require that hyperlinks be put in briefs, but ultimately the attempt was unsuccessful—“[W]e couldn’t manage it with the solo practitioners.”²³⁹ This same subject noted that other circuits (and districts) do not face the same constraints, since other courts may have smaller bars with a high percentage of national law firms who will more consistently follow rules.²⁴⁰ Meanwhile, we heard that the Southern and Eastern

²³⁵ According to the most recent statistics from the Administrative Office of the U.S. Courts, “[f]ifty-eight percent of BIA appeals were filed in the Ninth Circuit, and [sixteen] percent were filed in the Second Circuit” in the fiscal year ending September 30, 2024. U.S. Courts of Appeals—Judicial Business 2024, Admin. Off. of the U.S. Cts., <https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2024/us-courts-appeals-judicial-business-2024> [https://perma.cc/24TE-GGFJ] (last visited May 30, 2025).

²³⁶ Federal Rule of Appellate Procedure 34 lists, *inter alia*, the scenarios in which it is permissible to not hold oral argument on appeal.

²³⁷ Specifically, Second Circuit Local Rule 34.2 states that a non-argument calendar will be maintained for

[a]n appeal or petition for review, and any related motion, in which a party seeks review of the denial of: (A) a claim for asylum under the Immigration and Nationality Act (“INA”); (B) a claim for withholding of removal under the INA; (C) a claim for withholding or deferral of removal under the Convention Against Torture; or (D) a motion to reopen or reconsider an order involving one of the claims listed above . . . [in addition to] [a]ny other class of cases that the court identifies as appropriate [for the non-argument calendar].

For a history of the creation of the non-argument calendar and its relationship to immigration appeals, see generally Jon O. Newman, *The Second Circuit’s Expedited Adjudication of Asylum Cases: A Case Study of a Judicial Response to an Unprecedented Problem of Caseload Management*, 74 *Brook. L. Rev.* 429 (2009).

²³⁸ Interview with Subject 25 (Apr. 11, 2024).

²³⁹ *Id.*

²⁴⁰ *Id.*

Districts of New York needed joint local rules because there is essentially a single bar practicing across the courts located two miles apart.²⁴¹ A crass version of the local bar story involved local rules that create barriers to entry for outside lawyers as a way to favor local practitioners.²⁴² Even just having a large number of local rules that diverge from those of other districts could be seen to some extent as “protectionist”—as one subject with national rulemaking experience put it, arguably “[t]rying to help out local counsel.”²⁴³ But generally, the culture and composition of the bar was seen as another variation across courts, and local rules could be used to account for that variation.

In addition to “external” factors outside of the courts’ control, we also repeatedly heard about what we call “internal” factors—that is, differences in culture and preferences that emanate from within each court. As one judge said, “Local rules reflect practices, expectations, [and] culture. . . . This is the way we want things done.”²⁴⁴ As another judge put it, local rules exist “to account for local idiosyncrasies within our practice.”²⁴⁵ Many interview subjects repeated this account of local rules—that local rules reflect the way we do things around here.²⁴⁶ And such rules can be self-perpetuating—one judge observed that local rules reflect what attorneys have come to expect, suggesting that local rules might be sticky.²⁴⁷ That is, the way we do things around here is defined by the local rules that have long been on the books.

The starkest example of local preferences and culture from our interviews came from the Eastern District of Virginia (the so-called “rocket docket”). More so than any district across the country, this court has local rules that set deadlines to move cases quickly. As one judge of that court said, “We’re the Eastern District of Virginia. Our local rules are really culture defining. We think very hard about them. And for us, especially, they are what set the rocket docket deadlines.”²⁴⁸ When we

²⁴¹ Interview with Subject 1 (Mar. 1, 2024). But see Interview with Subject 28 (Apr. 15, 2024) (observing cultural differences between the court staff in the two districts that led to differences in operations).

²⁴² Interview with Subject 31 (May 6, 2024).

²⁴³ Interview with Subject 48 (June 13, 2024).

²⁴⁴ Interview with Subject 2 (Mar. 27, 2024).

²⁴⁵ Interview with Subject 4 (Mar. 21, 2024).

²⁴⁶ E.g., Interview with Subject 3 (Mar. 21, 2024) (referring to “the ways in which we practice”); Interview with Subject 17 (Mar. 28, 2024) (referring to “their own way of doing things”).

²⁴⁷ Interview with Subject 49 (June 12, 2024).

²⁴⁸ Interview with Subject 8 (Apr. 23, 2024).

asked how those rules originated, we were told that they can be traced back to the views of three earlier judges—Albert Bryan, Bob Merhige, and Walter Hoffman—who believed that the federal courts were taking too long to give answers.²⁴⁹ And so they embraced the motto (which became an informal motto of the court) that “justice delayed is justice denied.”²⁵⁰ In other words, there is nothing particular about this district’s geography or court; rather, its judges thought that litigation should be managed in a somewhat different fashion than it is across the other districts and generated rules accordingly.

The rocket docket is a clear illustration, but far from the only one. The Third Circuit’s choice to adopt the 5:00 PM cutoff might be understood as reflecting that court’s local preference. Another example to underscore this point, as raised by several subjects, concerns the length of briefs at the courts of appeals. Federal Rule of Appellate Procedure 32(a)(7)(A) states that a principal brief may not exceed 30 pages unless it complies with a provision in subsection (B), which states that the brief may contain no more than 13,000 words.²⁵¹ That said, the rule also contains a subsection allowing for local variation.²⁵² Some circuits, such as the Second and Ninth, permit principal briefs to be 14,000 words long.²⁵³ The rationale for the variation was based on a policy preference. The view, as articulated to us, was that by permitting a higher number of words in briefs, courts would receive fewer motions from lawyers to go beyond the standard word limit, thereby reducing work for the Clerk’s Office.²⁵⁴ As one interview subject said, “I view local rules as the way of interpreting the national rules for our local needs. . . . We do what works for us.”²⁵⁵

To be clear, not everyone we interviewed thought word limits should be variable from circuit to circuit or page limits from district to district (as one person with national rulemaking experience said, “I can’t see any reason why a brief should be different in District *X* versus District *Y*”²⁵⁶).

²⁴⁹ Id.

²⁵⁰ Id.

²⁵¹ Fed. R. App. P. 32(a)(7)(A)–(B)(i).

²⁵² Fed. R. App. P. 32(e).

²⁵³ See 2d Cir. R. 32.1(a)(4)(A); 9th Cir. R. 32-1(a).

²⁵⁴ See Interview with Subject 11 (Mar. 28, 2024) (noting that “our staff said we’re going to get overwhelmed with motions to grant oversized briefs”); see also Interview with Subject 40 (May 1, 2024) (indicating that word limits are among the things not “worth having agita over”).

²⁵⁵ Interview with Subject 25 (Apr. 11, 2024).

²⁵⁶ Interview with Subject 16 (Mar. 29, 2024).

More generally, rules of this type were met with mixed reviews. One judge we spoke to said courts should use “great caution” when considering the adoption of exceptional rules,²⁵⁷ while others were more sympathetic, either on the theory that courts should have substantial leeway to determine how best to run themselves²⁵⁸ or because it could generate useful ideas for the rest of the judiciary.²⁵⁹ The larger point is simply that some viewed at least one purpose of local rules as taking into account local preferences, as distinct from local needs related to external factors.²⁶⁰

We want to emphasize, though, that while interview subjects suggested that local rules reflect local practice and culture, they almost universally rejected the notion that local rules should reflect—or even account for—practice in the state courts where the federal court sits.²⁶¹ We even heard this about a joint rulemaking committee that represents both districts in a state, where one might have thought that convergence with state rules would have been a motivating factor for joint rules.²⁶² Whatever “local practice” means, it does not mean “state practice.”

2. Codifying Judge Practices

The purpose identified in the preceding Subsection focused on ways local rules can account for variation—the purpose in this Subsection focuses on ways of constraining it. Specifically, several subjects we interviewed informed us that they see local rules as, at least in part, codifying—and thereby unifying—local practices held by individual judges.

Stepping back, when faced with federal rules that leave gaps or do not address a topic, one option for a court is to decide to have no local rule.

²⁵⁷ Interview with Subject 34 (Apr. 24, 2024).

²⁵⁸ Interview with Subject 41 (May 1, 2024).

²⁵⁹ Interview with Subject 31 (May 6, 2024) (noting that the rules in their particular district are a useful experiment to see if more can be done to reduce case pendency times).

²⁶⁰ It is worth noting that some local preferences may be tied, even if indirectly, to external factors. For example, with word limits for briefs, although opting to have a higher limit in order to reduce motions may stem from an internal policy preference, it may also be tied to one’s docket. That is, courts that are particularly busy may place a higher premium on reducing the number of motions filed than courts that are less so.

²⁶¹ E.g., Interview with Subject 23 (May 2, 2024). Perhaps this inattention to state court practice reflects the long-held view of federal court superiority. See, e.g., Burt Neuborne, *The Myth of Parity*, 90 Harv. L. Rev. 1105, 1105–06 (1977).

²⁶² See, e.g., Interview with Subject 73 (July 17, 2024) (discussing joint rulemaking in Kentucky’s two federal districts).

But the choice of no local rule does not mean that there is no practice or procedure; instead, it means that those practices and procedures come from some source other than a “rule.” Many district judges have their own “individual rules of practice”²⁶³ or personal scheduling or standing orders.²⁶⁴ While such practices are often publicly available on a court website, other times they may be norms known (only) to the local bar. Individual judge practices supplement the local rules (and the federal rules), not unlike how the local rules supplement the federal rules. They can cover administrative topics, such as how to communicate with chambers and how many copies of various materials should be submitted.²⁶⁵ But they also can cover topics directly related to the process of litigation, including how to raise discovery disputes and what a summary judgment motion should contain.²⁶⁶

The choice to have a local rule, then, can be viewed as an alternative to individual judge rules and practices. As we were told by some of our interview subjects, local rules can serve the purpose of establishing a single rule, thereby creating uniformity within the district and transparency to the bar. In the words of one judge, “I think that local rules are intended to promote flexibility, consistency. Because the alternative is what they call ‘local local rules’ [or individual judge practices] . . . [s]o it promotes uniformity.”²⁶⁷ Another judge told us, “We have a number of judges who do things in a particular way,” and local rules are “intended to codify that way.”²⁶⁸ One subject with local rulemaking experience went further, suggesting that “some of what local rulemaking is about is bringing particular judges to heel. . . . [Local rules are] delicate ways to

²⁶³ See, e.g., Hon. Jed S. Rakoff, *Individual Rules of Practice* (2023), https://www.nysd.uscourts.gov/sites/default/files/practice_documents/JSR%20Rakoff%20Rules%20Update%2023-11-27.pdf [<https://perma.cc/GJ3J-EJSA>].

²⁶⁴ See, e.g., Hon. Charles R. Breyer, *General Standing Order for Civil and Criminal Cases Before Judge Charles R. Breyer* (2019), https://www.cand.uscourts.gov/wp-content/uploads/judges/breyer-crb/CRB-General-Standing-Order_Apr-2019.pdf [<https://perma.cc/4XHA-CM94>].

²⁶⁵ See, e.g., Hon. Leslie G. Foschio, U.S. Dist. Ct. W. Dist. of N.Y., <https://www.nywd.uscourts.gov/content/hon-leslie-g-foschio> [<https://perma.cc/JW75-8BUZ>] (last visited May 30, 2025) (“Adjournments and Enlargements of Time: Phone calls and letter requests accepted but must advise and report position of opposing counsel.”).

²⁶⁶ See, e.g., Hon. Michael J. Roemer, U.S. Dist. Ct. W. Dist. of N.Y., <https://www.nywd.uscourts.gov/content/hon-michael-j-roemer> [<https://perma.cc/VF4P-PK9N>] (last visited May 30, 2025) (discovery disputes); Black, *supra* note 46 (summary judgment).

²⁶⁷ Interview with Subject 51 (May 7, 2024).

²⁶⁸ Interview with Subject 4 (Mar. 21, 2024).

override the peculiarities of individual judges.”²⁶⁹ The benefit was seen as extending beyond the lawyers—one judge noted that hopefully the clerk’s office would not have to respond to, say, thirty different judges who want things done in a certain way.²⁷⁰

Multiple judges described individual judge orders that migrated to other judges and then into a local rule.²⁷¹ One judge told the story of a colleague who said that the court was spending too much time ruling on 12(b)(6) motions to dismiss for failure to state a claim when he thought, at least sometimes, the deficiency with the complaint could be cured by amendment. The colleague had a practice of saying he would not consider a 12(b)(6) motion unless and until the opposing sides had sat down, and it was clear the problem could not be cured by amendment. The judge we interviewed thought the idea was a good one and so adopted the practice himself. Over time other judges heard about it and agreed, and eventually the practice made its way into a local rule of the court.²⁷²

Beyond codifying individual judge preferences at any given moment, local rules also can be seen as “reining in” future preferences. As one judge told us, if you put something in the local rules, then you do not need to resort to judges’ individual practices or standing orders.²⁷³ This same judge noted that the judges on their court had unfortunately “gone in a million different directions” (with their individual practices), so there was a concerted effort to try to “corral that back” via local rules.²⁷⁴ Implicit in these comments is that a local rule might codify the practices of more than one judge, and indeed they might codify the practice of every judge on a court. But the key word is codify—the local rules put practices in a single source labeled “local rules.” In addition, local rules can codify non-rule sources, such as court-wide general orders, internal operating procedures, and others, thus bringing them into one place and subjecting them to one set of adoption procedures.²⁷⁵

²⁶⁹ Interview with Subject 58 (Aug. 9, 2024).

²⁷⁰ Interview with Subject 10 (Mar. 22, 2024).

²⁷¹ See Interview with Subject 17 (Mar. 28, 2024); see also Interview with Subject 1 (Mar. 1, 2024) (noting that they expect a proposed amendment to the local rules based on an individual judge practice).

²⁷² Interview with Subject 17 (Mar. 28, 2024); see D. Ariz. LRCiv 12.1(c).

²⁷³ Interview with Subject 44 (Apr. 29, 2024).

²⁷⁴ *Id.*

²⁷⁵ Interview with Subject 1 (Mar. 1, 2024); Interview with Subject 4 (Mar. 21, 2024); Interview with Subject 11 (Mar. 28, 2024).

To be sure, the interest in unifying the practices of individual judges is particular to the district court. Appellate judges simply have no occasion to craft their own individual practices. As one appellate judge told us, “[I]t wouldn’t make sense to have individual judge practices at the circuit level.”²⁷⁶ Given that all of the work is collegial, “[t]here’s no room for individual judges to say, ‘Here’s my standing order’” with regard to some topic.²⁷⁷ Moreover, this same judge noted that even if it somehow did make sense for an appellate judge to have an individual set of practices, they did not think this would happen “because the kinds of things that we’re doing don’t lend themselves to individual treatment the way that individual judges handling cases are going to deal with things.”²⁷⁸ That said, local circuit rules can still perform a codification function at the appellate level by moving what has been captured in the more ephemeral standing orders (or in court norms) into something stickier following standard adoption procedures.²⁷⁹

3. Creating Laboratories of Experimentation

A distinct purpose behind local rules, we were told, is to create “laboratories of experimentation” that other local rules committees, and certainly the national rules committees, could draw on for inspiration. This point came up repeatedly across interviews of both local and national rulemakers. For example, as one magistrate judge with national rulemaking experience put it, local rules are “a laboratory for new ideas and trying [them] out.”²⁸⁰ Similarly, an academic involved in national rulemaking told us, “Another very valuable purpose of local rules is to provide experience, real world experimentation . . . [A] real value of it is to field test ideas”²⁸¹ A chair of a local rules committee noted “experimentation” as a key purpose of local rules.²⁸² And an appellate judge with experience on the national rules committees told us, “There’s a desire to leave room for some experimentation at the margins.”²⁸³

²⁷⁶ Interview with Subject 9 (Apr. 1, 2024).

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ Interview with Subject 11 (Mar. 28, 2024).

²⁸⁰ Interview with Subject 5 (Apr. 23, 2024).

²⁸¹ Interview with Subject 29 (Apr. 12, 2024).

²⁸² Interview with Subject 1 (Mar. 1, 2024).

²⁸³ Interview with Subject 9 (Apr. 1, 2024).

Interview subjects provided us with examples of local experiments that had turned into rules at the national level. One district judge described how “lots of judges” had been requiring parties to call the court before filing a motion on a discovery issue.²⁸⁴ They found that in the vast majority of instances, they could resolve the discovery dispute with a phone call and avoid the time and expense of briefing a discovery motion.²⁸⁵ So what began as different local rules across the country then turned into a national rule.²⁸⁶ As this judge said, “So that’s a local practice that got into the national rules in that way. It’s like laboratories of experimentation.”²⁸⁷ Existing local rules routinely pop up in proposals for federal rulemaking—the agenda for the Advisory Committee on Civil Rules from October 2023 discussed local rules with respect to potential federal rulemaking on corporate disclosures,²⁸⁸ e-signatures,²⁸⁹ sealing documents,²⁹⁰ fee awards in Social Security cases,²⁹¹ and contempt.²⁹²

The experiments across districts and circuits could be viewed as helpful, even if the upshot was *not* that the rule was adopted elsewhere. A national rulemaker observed that one district’s negative experience with a local rule convinced the Advisory Committee not to recommend a version of that local rule.²⁹³ Separately, several of the judges we

²⁸⁴ Interview with Subject 17 (Mar. 28, 2024).

²⁸⁵ *Id.*

²⁸⁶ See Fed. R. Civ. P. 16(b)(3)(B)(v) (stating that the scheduling order may “direct that before moving for an order relating to discovery, the movant must request a conference with the court”).

²⁸⁷ Interview with Subject 17 (Mar. 28, 2024).

²⁸⁸ See 2023 Agenda Book, *supra* note 199, at 220–21.

²⁸⁹ *Id.* at 36 (“The advisory committee decided then that a period of experience under local rules addressing e-signatures would help inform any national rule, and it reasoned that e-signature technology would also probably develop and improve in the meantime.”).

²⁹⁰ *Id.* at 131 (“Another [submission] attaches a compilation of local rules regarding sealing from all or almost all district courts that is about 100 pages long. Some of the local rules are quite elaborate, and other districts give little or no attention to sealed court filings in their local rules. There does presently seem to be considerable variety in local rules on filing under seal. Adopting a set of nationally uniform procedures could introduce more consistency in the treatment of such issues, but also would likely conflict with the local rules of at least some courts.”).

²⁹¹ *Id.* at 415 (“Magistrate Judge Patricia Barksdale proposes that the Advisory Committee consider a rule amendment to deal with a timing problem in handling fee awards under 42 U.S.C. § 406(b). She calls attention to local rule changes being considered in the M.D. Fla. that might be a model for an amendment to Rule 54(d)(2)(B)(i) . . .”).

²⁹² *Id.* at 488 (providing a practitioner proposal on a contempt rule that observes, among other types of rules, that there are 151 local rules related to contempt).

²⁹³ Interview with Subject 29 (Apr. 12, 2024).

interviewed noted that there had been recent interest in a potential rule regarding the disclosure of third-party financing.²⁹⁴ One of these judges noted that the Northern District of California had taken the lead on this issue.²⁹⁵ They told us, “Do we need a rule on third-party financing? And a lot of times [others] would point to the rule in Northern California[, where] there needed to be disclosure to the court and the other side.”²⁹⁶ As they said, “[T]hat’s an example of where there’s an existing local rule—where we look [and ask]—do we need that or do we not want that?”²⁹⁷ The view was that having a local rule to consider was instructive, even if it led to another court or a rules committee *not* adopting it. Again, as a magistrate judge put it, “We considered a rule around disclosure for third-party financing. Much like the states are for the federal government, it’s a good laboratory.”²⁹⁸

We should add that some interview subjects, even ones who listed experimentation among the potential purposes of local rules, noted some skepticism of this endeavor.²⁹⁹ A proposed federal rule governing experimentation was not adopted,³⁰⁰ and there was no suggestion that local rules “experiments” were done or evaluated in a systematic way.³⁰¹ One judge referred to local rules as experiments, but then quickly added that they are experiments that are “unregulated” and “not peer reviewed.”³⁰²

4. Attracting, and Repelling, Litigation

Finally, we were told that local rules can be used to affect the market for litigation. Though this was not something many rulemakers noted—and it was not something that judges noted about their own courts’ local rules—a few subjects nevertheless raised this issue. One interview subject

²⁹⁴ Interview with Subject 3 (Mar. 21, 2024); Interview with Subject 5 (Apr. 23, 2024).

²⁹⁵ See Interview with Subject 2 (Mar. 27, 2024); N.D. Cal. Civ. Loc. R. 3-15; see also Standing Order for All Judges of the Northern District of California: Contents of Joint Case Management Statement 2 (2023).

²⁹⁶ Interview with Subject 2 (Mar. 27, 2024).

²⁹⁷ *Id.*

²⁹⁸ Interview with Subject 5 (Apr. 23, 2024).

²⁹⁹ Interview with Subject 22 (Apr. 5, 2024); Interview with Subject 33 (Apr. 17, 2024).

³⁰⁰ Interview with Subject 29 (Apr. 12, 2024); see also Possible Amendments to the Federal Rules of Civil Procedure, *supra* note 48, at 35 (proposed rule).

³⁰¹ E.g., Interview with Subject 18 (May 2, 2024); Interview with Subject 23 (May 2, 2024); Interview with Subject 31 (May 6, 2024).

³⁰² Interview with Subject 34 (Apr. 24, 2024).

told us that this phenomenon had occurred with bankruptcy local rules in an effort to attract big cases.³⁰³ (These dynamics have been noted in the academic literature as well.³⁰⁴) They said there was eventually national pushback against such rules.³⁰⁵

We heard a similar story with regard to local patent rules. One judge told us that particularly in the patent arena, local rules can feed into court-shopping.³⁰⁶ As another judge said of such rules, “[T]hey try to bring in business for their state.”³⁰⁷ (This phenomenon has also been noted in the academic literature, with a particular focus on the local rules of the Eastern District of Texas.³⁰⁸) But part of the patent story, as we were told, was that local rules can also make certain courts *less* attractive. As one judge said, patent litigants might think, “I don’t want to go to a court that will make me do X.”³⁰⁹

This was not the only time that we heard of local rules having the effect (if not the intention) of driving out certain kinds of cases. For a time, the Central District of California had a local rule that required plaintiffs in class action litigation to file a motion for class action certification within ninety days of service of the complaint.³¹⁰ However, one judge said that the timing requirement was incredibly difficult to comply with, and so for a time, the Northern District of California had a disproportionate number of class action cases as lawyers avoided the Central District.³¹¹ (Eventually the Ninth Circuit held that the Central District’s rule was invalid because it was inconsistent with Federal Rule of Civil Procedure

³⁰³ Interview with Subject 33 (Apr. 17, 2024).

³⁰⁴ See Adam J. Levitin, Judge Shopping in Chapter 11 Bankruptcy, 2023 U. Ill. L. Rev. 351, 351 (documenting the rise of judge-shopping in big Chapter 11 cases and showing how this “has been facilitated—sometimes deliberately—by bankruptcy courts’ local rules”).

³⁰⁵ Interview with Subject 33 (Apr. 17, 2024).

³⁰⁶ Interview with Subject 4 (Mar. 21, 2024).

³⁰⁷ Interview with Subject 49 (June 12, 2024). The same subject made a similar point about bankruptcy rules. *Id.*

³⁰⁸ See Daniel Klerman & Greg Reilly, Forum Selling, 89 S. Cal. L. Rev. 241, 243 (2016) (claiming that “judges in the United States District Court for the Eastern District of Texas, likely motivated by prestige and the desire to benefit the local economy, have sought to attract patent plaintiffs to their district and have distorted the rules and practices relating to case assignment, joinder, discovery, transfer, and summary judgment in a pro-patentee (plaintiff) direction”); Ronen Avraham & John M. Golden, “From PI to IP”: Litigation Response to Tort Reform, 20 Am. L. & Econ. Rev. 168, 169 (2018).

³⁰⁹ Interview with Subject 4 (Mar. 21, 2024).

³¹⁰ C.D. Cal. L.R. 23-3 (repealed 2018).

³¹¹ See Interview with Subject 26 (Apr. 3, 2024).

23.³¹²) In short, just as local rules can help attract cases into districts (and circuits), they can also repel them, which may be their intended effect in at least some instances.

* * *

All in all, local rules serve several distinct purposes, according to those who work most closely with rulemaking in the federal courts. They can allow for variation across courts—a story of federalism within the court system—and yet in some instances, they ensure that there is not too much federalism all the way down. They can be laboratories of experimentation, like the states for the federal government, and they can be used to bring in—and push out—certain kinds of cases. Part IV provides an assessment of some of these different purposes and how they work together.

IV. AN ANALYSIS OF LOCAL RULES

Having provided an overview of the content of local rules and the general purposes behind them, we now turn to our analysis. Section IV.A considers and ultimately rejects extreme national or local positions. Such positions are not tenable, and conditions on the ground require some balancing that is more art than science. But this thinking is worth doing because it can sharpen how federal and local rules are made. We then turn in Section IV.B to specific topics on which we think more concrete progress is possible, specifically (1) contradiction and duplication; (2) codification; (3) experimentation; and (4) attracting and repelling litigation.

A. Balancing National and Local (and Local Local) Interests

A central question in any study of local rules is how best to balance national interests (or, really, an interest in uniformity) on the one hand, and local interests on the other. Several of our interview subjects had strongly held views about the tradeoffs in rulemaking on this front and which “side” they ultimately favored. There were those who favored national rules and saw local variation as a tax on practitioners who would now be responsible for following yet another rule. And there were those who favored local control and saw the imposition of an additional national rule as a threat to judicial independence.

³¹² See *ABS Ent., Inc. v. CBS Corp.*, 908 F.3d 405, 427 (9th Cir. 2018).

Representing the pro-uniformity view, one chair of a local rules committee said, “I would love a world in which there were no local rules.”³¹³ A judge with national rulemaking experience said, “I’m a big believer in uniformity. But all the time, individual judges and courts quite frankly develop their own approaches from their culture or otherwise. . . . And they may differ from the national rules. . . . I don’t like it particularly.”³¹⁴ And another interview subject with national rulemaking experience said of variation, “There needs to be a recognition that there is a tax on national practitioners.”³¹⁵ A former rulemaker put it this way: “In every district, there were people who . . . really . . . liked the local rules. My bias is against them. I’m kind of a national person.”³¹⁶

Representing the view favoring local interests (and local rules), many of our subjects, as noted above, stressed particularities of different circuits and districts that would require particular rules—though, again, they did not suggest that conformity to state practice was a goal.³¹⁷ In addition, several subjects shared a view that there should be limited interference from the federal rules committees. One chair of a local rules committee noted that “district judges are as powerful as you can get in their courtroom and now you have some committee in Washington telling them you can have three days instead of six days [with respect to some matter]—does that start to intrude on judicial independence?”³¹⁸ A subject with national rulemaking experience expressed this sentiment by noting pushback after an earlier attempt to amend the federal rules around discovery: “We got objections from a very large proportion of the district judges in America to doing that. They were like, ‘[W]e don’t need to be told by Washington about how to do things.’”³¹⁹ And a judge who is chair of a local rules committee (and who previously served on national rulemaking committees) stated a similar view—that they and their committee knew what was best for their district, and moreover, if there were a push for greater uniformity, whose rule would govern?³²⁰ Their concern was that the rules favored by large firms with national practices would be selected (and not necessarily the rules they thought would work

³¹³ Interview with Subject 44 (Apr. 29, 2024).

³¹⁴ Interview with Subject 18 (May 2, 2024).

³¹⁵ Interview with Subject 31 (May 6, 2024).

³¹⁶ Interview with Subject 33 (Apr. 17, 2024).

³¹⁷ See *supra* Subsection III.B.1.

³¹⁸ Interview with Subject 41 (May 1, 2024).

³¹⁹ Interview with Subject 21 (Apr. 4, 2024).

³²⁰ Interview with Subject 51 (May 7, 2024).

best in their district).³²¹ Another judge returned to notions of federalism and expectations of those in each district and circuit: “[W]e’re a federalist country, and different states have different practices and different localities have different norms. . . . People should be able to have expectations based on the way things have always been done there.”³²²

Rather than adopting either position, our view is that the extent to which one should favor uniformity or the expression of local interests at a high level of abstraction is something about which reasonable minds can disagree. National versus local control is a fundamental governance question, including in the courts. From the beginning of the federal judiciary, there have been debates about judicial “federalism”—it is not surprising that this debate surfaces in the rules around how we govern litigation in our court system, and we should not be surprised that there is no clear way to resolve it. As one judge with national rulemaking experience put it, “That’s the debate that you get on all kinds of things—what should be national, what should be local. . . . Good luck if you think you’re going to have one or the other. It’s always going to be the same great debate.”³²³

Moreover, as a practical matter, conflicts between federal and local are likely to be worked out without regard to grand theory. As is true for many conflicts in federalism and separation of powers, competing interests operate subject to legal rules and the practicalities of governance. Legally, federal rules trump local rules. But in practice, some local rules frustrate (if not directly contradict) federal rules, and federal rulemakers are wary to intrude too much on local preferences out of fear of backlash.³²⁴ National rulemakers described situations where they declined to make rules because the various circuits or districts were dug in or too far apart,³²⁵ but they also mentioned situations where a national rule could be needed to rein in some problematic variation.³²⁶ But, we admit, we were surprised at the rarity of conflict between nationalists and localists.

³²¹ *Id.*

³²² Interview with Subject 49 (June 12, 2024).

³²³ Interview with Subject 39 (June 13, 2024).

³²⁴ E.g., Interview with Subject 16 (Mar. 29, 2024); Interview with Subject 23 (May 2, 2024).

³²⁵ See, e.g., Interview with Subject 58 (Aug. 9, 2024) (characterizing a bankruptcy issue as “something we decided we couldn’t resolve” because it “was just too deeply ingrained”).

³²⁶ See, e.g., Interview with Subject 49 (June 12, 2024) (suggesting that there may be a need for a national rule on attorney admissions due to widespread variation that results in cumbersome bar passage requirements in states like California).

Cooperation, whether explicit (as when federal rules opt out) or implicit (as when federal rulemakers stay their hands), seemed much more common than conflict. And even when competing interests emerged, local and national power centers worked things out. Inevitably the result was somewhere in the middle.

That said, we think there is value in observing why, more theoretically, the extreme positions fail, and why the disagreement is reasonable. We think the case against extreme localism is plain, and it is not just out of reverence for the Rules Enabling Act or the Federal Rules. Again, as one subject said, “There needs to be a recognition that there is a tax on national practitioners” any time districts or circuits diverge.³²⁷ This local rules tax is one that falls disproportionately on those without experience in the local court. This is a real problem—perhaps not an insurmountable one for the large national firms that can afford to “buy” local knowledge, but certainly for the many practitioners and litigants whose litigation sometimes spreads beyond their home district. As one subject with prior national rulemaking experience explained, “If you look at any decision, you can say, ‘Let 1,000 flowers bloom.’ But if you do that again and again, you have acres of flowers! . . . How much are we going to ask lawyers to do?”³²⁸

But a purely national approach is also not possible, or desirable. It is almost a fact of nature that the Federal Rules will not cover everything. That is why so many of our interview subjects referred to local rules as filling gaps. Even if we wanted to cajole the federal committees into churning out more rules, those committees have only so much bandwidth to create and amend national rules—at least as currently constituted. Accordingly, there is something of an upper bound on how many new rules and amendments will go into effect in any year. And on the desirability front, as noted above, different districts and circuits truly have different needs—it would be nearly impossible to create a system of national rules that anticipates every such scenario without collapsing under its own weight.

Moreover, to those who might be inclined to go further in limiting local variation, it is important to appreciate that there is something of a hydraulic effect at work here, and local interests might be expressed in individual judge practices were it not for local rules. If judges are going

³²⁷ Interview with Subject 31 (May 6, 2024).

³²⁸ Interview with Subject 33 (Apr. 17, 2024).

to run their courtrooms according to local needs and local preferences either way, then it is better to subject those local procedures to formal process. The formal process can potentially weed out some exceptionally problematic or outlier procedures; it can ensure some level of consistency across judges within a district; it can make those procedures transparent to practitioners who might not be “insiders”; and it can make those practices easier to challenge in individual litigation or the rulemaking process. Echoing the sentiments of other subjects, one judge described it this way: “I would hate not to have local rules and have every chambers have its own rules. It would be chaos . . . lawyers would be gray before their time.”³²⁹ This issue is perhaps less stark at the court of appeals,³³⁰ but even there, the rules of appellate practice are both written and unwritten.³³¹ So even if we rejected the idea that local needs should be respected, there is still the reality that, where unconstrained by national rules—or even sometimes despite those constraints—there will be local variation. And local rules provide the better course.

A telling example here comes from the Middle District of Georgia. Recall that this district was a favorite of the Local Rules Project because of its single local rule.³³² Might this have been the “least local” district in the country? Hardly. In addition to the single local rule, many civil cases in the district were governed by something called “Judges Fitzpatrick’s and Owens’ Procedures and Policies for Civil Cases.”³³³ So the court had rules, just not “Rules.” And these procedures mattered. One of the judges’ procedures dramatically limited the availability of summary judgment, providing in part:

[T]he filing of motions for summary judgment is frequently a waste of your time, opposing counsel’s time, our clerk’s time, and the court’s time—not to mention the expense of each party and the taxpayers. To assist you in avoiding the filing of summary judgment motions that have no possible merit, the court requests that before filing such a motion you advise the court and opposing counsel in person (call the

³²⁹ Interview with Subject 56 (June 11, 2024).

³³⁰ See Fed. R. App. P. 47(a)(1) (“A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order.”).

³³¹ See generally Newman & Levy, *supra* note 144 (describing both the written and unwritten rules of the federal courts of appeals).

³³² See *supra* note 111 and accompanying text.

³³³ *Brown v. Crawford County*, 960 F.2d 1002, 1007–09 (11th Cir. 1992).

judge for an appointment) or by letter if you desire to file such motion and your factual and legal reasons, *succinctly stated*, for believing you will prevail on the motion. Opposing counsel can then respond in person or by letter and the court can suggest whether or not the case seems to be appropriate for summary judgment.³³⁴

In the courtrooms, summary judgment motions would not be entered unless the parties complied with this rule's commands. And because this "procedure" was not a local rule, it was not formally presented to the Circuit Judicial Council. But when the "procedure" was brought to the attention of the Eleventh Circuit in a litigated case after a party was denied the ability to seek summary judgment on a pure issue of law (absolute legislative immunity), the court was "greatly disturbed."³³⁵ More broadly, this example shows that the judges of the Middle District of Georgia very much had local procedures even without local rules. Localism finds a way.

In sum, the extreme national or local position cannot be right all the time. At the extreme ends, there will be times when uniformity is crucial and times when local needs and interests will necessarily have to be taken into account. And in practice, a mix of federal and local rules is inevitable. But perhaps surfacing this tension will bring some clarity. Local rules committees could do more to ask whether their divergence from, say, the other districts in their circuit is truly worth imposing the local rules tax. There could be greater consideration of whether a given rule is necessary and the costs that it may be imposing on those who practice before the federal courts.

B. Ways Forward

Just as several of our interview subjects observed that it is challenging to have a "one-size-fits-all" approach to the content of the rules governing litigation,³³⁶ we observed that it is also challenging to have a "one-size-fits-all" approach to a theory about when local rules are desirable. Instead, in this Section, we return to key issues and themes that this Article has raised around local rules to help identify opportunities to improve the different sets of rules and the relationships among them. We organize our discussion around four themes: (1) duplication and contradiction; (2)

³³⁴ Id. at 1007.

³³⁵ Id. at 1009.

³³⁶ See Interview with Subject 51 (May 7, 2024); Interview with Subject 16 (Mar. 29, 2024).

codification; (3) experimentation; and (4) attempts to attract (or repel) certain classes of cases. For each, we suggest how progress can be made even without agreement on the deeper question of national versus local.

1. Duplication and Conflict

If one is looking to improve local rules of both the trial and appellate courts, the lowest-hanging fruit would seem to lie with rules that duplicate or conflict with national rules. The national rules themselves state as much. Federal Rule of Civil Procedure 83, which permits district courts to adopt local rules, requires that local rules be “consistent with[,] but not duplicate” federal statutes and federal rules.³³⁷ Federal Rule of Appellate Procedure 47 employs nearly the same language: “A local rule must be consistent with[,] but not duplicative of” federal statutes and federal rules.³³⁸

On the duplication front, it is plain enough that no purpose is served by having a local rule that simply restates a federal one. And indeed, duplication comes at a cost—there is one more rule for practitioners to read, crowding out the local rules that add new and different requirements. More importantly, duplication—particularly imperfect duplication—can lead to confusion. Rules that paraphrase, using slightly different words, can lead lawyers to wonder what they should do to be in compliance with the rules of the court.³³⁹ We do not have a sense that duplication is a widespread problem, especially now that the numbering systems between the national rules and the local rules are coordinated (and the inadvertent restating of rules would be hard to overlook). Still, we noticed some local rules that duplicate federal ones in our own review.³⁴⁰ Such rules should be taken off the rulebooks, as it were, and it would help the court system for the local rules committees to examine their rules to ensure that there is no duplication and for the Judicial Conference Committees to suggest as much.

Local rules that conflict with national rules would seem like the other clear category of rules to address—and eliminate. It is worth underscoring that when we asked our subjects what would happen if a local rule were to be found to conflict with a federal one, nearly everyone said that the

³³⁷ Fed. R. Civ. P. 83(a)(1).

³³⁸ Fed. R. App. P. 47(a)(1).

³³⁹ See *supra* notes 174–75 and accompanying text.

³⁴⁰ See *supra* notes 170–73 and accompanying text.

local rule would need to be amended or repealed in some form.³⁴¹ As one subject said, capturing the larger sentiment, “[T]he Supremacy Clause applies to rules, too!”³⁴²

And yet conflict is a more complicated concept than duplication—mainly because it is not always pellucidly clear when a local rule conflicts with a national one. As one interview subject with national rulemaking experience put it, there is a “question of whether something is really in conflict—that’s an interesting question.”³⁴³ They continued, if a national rule “gives play in the joints but the local rule says ‘you have to do *X*,’ is that a conflict?”³⁴⁴ When courts convert phrases such as “promptly” or “when justice so requires” in the federal rules into fixed time periods in the local rules, is that a conflict?³⁴⁵

To take a slightly more complicated example, we can return to the Second Circuit local rule that establishes its briefing deadlines.³⁴⁶ The corresponding Federal Rule of Appellate Procedure lays out very particular deadlines,³⁴⁷ and then states that courts may deviate from this schedule by shortening the deadlines.³⁴⁸ But the Second Circuit’s rule allows for the possibility of *extending* the deadlines, by permitting the appellant to select when they will file their brief within a ninety-one-day window, and then permitting the appellee to do the same.³⁴⁹ It would seem that there is a conflict between the circuit rule and the national one. But then one can consider Federal Rule of Appellate Procedure 26(b), which provides that the time prescribed by the national rules to perform any act (except filing a notice of appeal) may be extended for good cause.³⁵⁰ Does the circuit rule still seem to be in conflict with the federal rule, or does Rule 26(b) make the Second Circuit’s variation permissible? One can see, based on this discussion, why the Local Rules Project wrote to chief judges to inform them that there was the possibility of a conflict and

³⁴¹ See, e.g., Interview with Subject 16 (Mar. 29, 2024); Interview with Subject 26 (Apr. 3, 2024); Interview with Subject 38 (Apr. 23, 2024); Interview with Subject 18 (May 2, 2024) (that said, this judge did note that “some judges—a real minority—feel that they can do as they wish”).

³⁴² Interview with Subject 16 (Mar. 29, 2024).

³⁴³ Interview with Subject 22 (Apr. 5, 2024).

³⁴⁴ *Id.*

³⁴⁵ See *supra* notes 192–93 and accompanying text.

³⁴⁶ 2d Cir. R. 31.2.

³⁴⁷ Fed. R. App. P. 31(a)(1).

³⁴⁸ Fed. R. App. P. 31(a)(2).

³⁴⁹ 2d Cir. R. 31.2(a)(1).

³⁵⁰ Fed. R. App. P. 26(b).

invited them to examine their rules themselves; as in other parts of civil procedure, whether rules are in conflict is not always an easy question to answer.³⁵¹

That said, to the extent that there is a direct conflict between a local rule and a national rule—something several subjects noted being aware possibly occurred³⁵²—the conflict should be remedied. We would simply add here that the optimal solution in the long term is not necessarily that the local rule give way. One could imagine changing circumstances, say, a new technology, that might require quick action more easily achieved by local rules than by a federal one.³⁵³ Even apart from emergencies, it is possible that it takes a contradictory local rule to spur the federal rulemakers into action. If the status quo seems to be working as far as what the local rules provide for, the solution may ultimately come from a national rule permitting such variation. Or perhaps, the contradictory local rule eventually should be adopted on a nationwide basis.

2. Codification

We observed above that codification of judge practices was a common purpose identified by our interview subjects. And we suggested earlier in this Part that this purpose of local rules was central to the case in favor of them—that inevitable local variation could be channeled into local rules, regularizing the process and making the variation transparent to outsiders.

Here we want to suggest that this core purpose of local rulemaking should itself become more regularized and transparent. While local rules are subject to review, there is no statutory or rule-based requirement to review individual judge practices. Yet those practices could easily have the same problems of duplication and contradiction that we identified for local rules. Individual judge practices also can create further costs for practitioners—a local local rules tax. So, much like Congress (and the Advisory Committees) “intended to address the problem of local proliferation partly by regularizing local procedural amendment

³⁵¹ Cf. *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 396, 399 (2010) (plurality opinion) (discussing when a federal rule conflicts with state law); *Burlington N. R.R. Co. v. Woods*, 480 U.S. 1, 2, 7 (1987) (same).

³⁵² Interview with Subject 18 (May 2, 2024); Interview with Subject 16 (Mar. 29, 2024).

³⁵³ On this point, we advert to a local rule from the District of New Jersey, providing that “[t]he Chief Judge may, after recommendation by the Lawyers’s Advisory Committee and with the approval of the Court, authorize the relaxation, dispensation or modification of any Rule on a temporary basis. The effective period of any such authorization shall not exceed one year.” D.N.J. Civ. R. 83.2(a).

processes and opening them to public participation,”³⁵⁴ we think courts should do the same for individual judge practices.

There are multiple forms this recommendation could take. There could be amendments to federal or even local rules requiring submission of individual judge practices to local rules committees—though we worry slightly that such a requirement would motivate judges to opt for unwritten norms over written orders, thus worsening the transparency problem. Perhaps, more informally, local rules committees could routinely review the practices of the judges in the court, with an eye to moving things from individual judge practices to court-wide rules—“corral that back,”³⁵⁵ to use the phrase of one of our interview subjects.

We also want to say a word in this context about local rules that “rulify” federal standards. The Local Rules Project sometimes treated these practices as “contradictions,” and the Ninth Circuit struck down one as contravening Federal Rule 83.³⁵⁶ And we agree, in spirit, that it seems plausible that national rulemakers might prefer a system of open-textured standards to govern pretrial conferences or other aspects of case management, while local rulemakers might disagree and opt instead for more mechanical rules. But even if we label these rulifications as “contradictions,” they might be contradictions that would happen whether or not there is a local rule. If every judge in the district treats “promptly” in Federal Rule 7.1 as meaning “within 14 days,”³⁵⁷ a local rule that says as much might be a worthwhile one, even if it is seen as contradictory to the open-textured federal rule.³⁵⁸ Here, again, what might appear to be conflict between national and local is, in practice, something closer to accommodation.

³⁵⁴ Tobias, *Suggestions for Circuit Court Review*, *supra* note 20, at 362. The Rules Enabling Act also required courts to submit local rules to the Administrative Office of the United States Courts, 28 U.S.C. § 2071(d), but the courts have understood this requirement to be superseded by the E-Government Act’s requirement that local rules be posted on the court’s website, E-Government Act of 2002, Pub. L. No. 107-347, § 205(a)(2), 116 Stat. 2899, 2913 (codified at 44 U.S.C. § 3501).

³⁵⁵ Interview with Subject 44 (Apr. 29, 2024).

³⁵⁶ See *supra* note 195 and accompanying text.

³⁵⁷ See S.D. & E.D.N.Y. Loc. Civ. R. 7.1.1.

³⁵⁸ See Frederick Schauer, *The Tyranny of Choice and the Rulification of Standards*, 14 J. Contemp. Legal Issues 803, 805–06 (2005) (describing this general phenomenon).

3. *Laboratories of Experimentation*

Throughout the interview process, we were consistently told that one of the main purposes of local rules is to have laboratories of experimentation, to assist rulemaking by other local committees, and, to a greater extent, by the national committees. As one subject put it, local rules provide an opportunity to “experiment, before we bake something into a national rule that hasn’t been tested. . . . It’s essential to have that lab and it lets us avoid [national] mistakes.”³⁵⁹

There is certainly something compelling about this argument. Given how important the federal rules are in how cases are adjudicated within the third branch, there is a clear benefit to “soft-launching” rules in parts of the country and seeing how they fare before extending them nationwide. This argument gains force when one considers just how difficult it is to undo a national rule—as the judge above noted, they become baked in.³⁶⁰ At a minimum, it would take a few years before a rule change would occur (from proposal to implementation). This stickiness of national rules makes an error all the more costly. And so again, it stands to reason that having a chance to experiment at the district and circuit level is of great importance.

Yet we were also consistently told throughout the process that there is no systematic review of these experiments. In fact, the same judge quoted above also said of the experimentation process, “This is unregulated and unreported—not peer reviewed in that sense.”³⁶¹ For the laboratories of experimentation to be most effective, there needs to be a way of sharing the laboratory results, as it were.³⁶²

Now to be sure, when a national rules committee undertakes its consideration of a particular issue, it will gather information from districts and circuits to see how they have approached the matter. So this is not to say that there is no feedback loop. But it was made clear to us that there

³⁵⁹ Interview with Subject 34 (Apr. 24, 2024). This theory also helps justify, in part, the prevalence of local rules outside of the federal rules. Perhaps some of these outside rules reflect not the conclusion of federal rulemakers that the topic is ill-suited for rulemaking, but instead that it is not yet ripe for a national rule. Artificial intelligence, litigation funding, and others may be examples here.

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² See Levy, *supra* note 206, at 386 (calling for increased communication between the circuits around case management practices such as “additional meetings of judges, clerks of court, and staff attorneys devoted solely to discussing case-management practices and sharing their ‘laboratory results’”).

is no way of routinely “monitoring” what is happening across the district and circuit courts. Certainly, the districts may not know what is happening with their colleagues across the country; as there is a relatively small number of circuits, we were told that there is more consistent information-sharing, particularly among the clerks of court.³⁶³ We also were told, more than once, that informal networks—sometimes friendships—determined which districts would be sources of information for local rulemakers.³⁶⁴

Appreciating the limited bandwidth of the national committees, as noted throughout, we still think more could be done in a relatively low-cost way to share information about different local rules, particularly ones that are innovative or in response to new problems (such as artificial intelligence, third-party financing, and the like). We note that there was a time when the national committees considered a rule that would expressly permit experimentation³⁶⁵—it may be worth revisiting such a rule with the thought that there would be more consistent reporting of results to the benefit of rulemaking more broadly. With or without a federal rule, coordination and information-sharing could be improved.

4. Inviting Litigation and Creating Barriers to Entry

A final theme raised in the interviews was local rules attracting and repelling litigation. This topic was typically phrased as a concern—a reason to worry about local rules and their effects on the market for litigation.

For reasons already detailed, we do not think that the possibility of courts using local rules for “forum selling” is a reason to get rid of local rules altogether. Again, there will always be local variation, whether codified or not. We also would not want to discourage courts from developing procedures that work. If a district with a substantial patent docket developed procedures that better facilitated the “just, speedy, and inexpensive determination of every action,”³⁶⁶ then more power to them.

Instead, our suggestion is more modest. When circuit judicial councils review district court rules, or when the Judicial Conference reviews circuit rules, those bodies should be attentive to the possibility of this type of local rules purpose. The national committees also might think about

³⁶³ Interview with Subject 25 (Apr. 11, 2024); Interview with Subject 40 (May 1, 2024).

³⁶⁴ E.g., Interview with Subject 8 (Apr. 23, 2024); Interview with Subject 38 (Apr. 23, 2024).

³⁶⁵ See *supra* note 48 and accompanying text.

³⁶⁶ Fed. R. Civ. P. 1.

areas in which districts and circuits “compete” as areas for which national rules are important. In other words, competition by local rule might be a signal of a topic for which uniformity is valuable.

Similarly, we should be attentive to situations where local rules seek to attract and repel not classes of cases, but classes of lawyers. Most obviously, we should be worried about local rules that unjustifiably favor local lawyers (and the local economy) over practitioners from outside the district.³⁶⁷ Indeed, in perhaps the most important local rules decision of the modern era, the Supreme Court in *Frazier v. Heebe* struck down a local rule of the Eastern District of Louisiana that limited admission to the district to attorneys that lived or worked in Louisiana.³⁶⁸ Here, too, bodies with supervisory authority should be on alert to this kind of favoritism that can crop up in local rules. Local rules exist in part to take account of local interests—but there is a limit on how solicitous of those local interests local rules should be.

CONCLUSION

There are 677 authorized judgeships for the U.S. district courts and 179 more for the courts of appeals.³⁶⁹ Together, these judges oversee litigation in the federal system from Bangor, Maine, to San Juan, Puerto Rico; from Manhattan, New York, to Hagåtña, Guam; and everywhere in between. For closing in on nine decades, we have had a single set of federal rules to govern how litigation is conducted in our trial courts, and closing in on six decades, we have had the same for the courts of appeals. But these rules do not cover every aspect of adjudication, and local rules have flourished in the spaces in between, around, and sometimes even on top of these rules.

This Article has tried to provide a comprehensive account of the thousands of local rules—both what they cover and how they interact with the federal rules. It has also laid out the reasons for having local rules and their drawbacks, based upon scores of interviews of those with the greatest expertise in the local and national rulemaking process.

To be sure, the roles of local rules—to provide for variation across districts and circuits and to enable experimentation—echo arguments for

³⁶⁷ Interview with Subject 31 (May 6, 2024).

³⁶⁸ 482 U.S. 641, 645 (1987).

³⁶⁹ Judicial Vacancies, Admin. Off. of the U.S. Cts., <https://www.uscourts.gov/judges-judge-ships/judicial-vacancies> [<https://perma.cc/K6SQ-NMZL>] (last visited Sept. 13, 2025).

local control generally in a federal system. There will always be those who seek more room for district or circuit interests (and with it, court autonomy), and those who instead seek greater uniformity and fewer taxes on practitioners who are the ones expected to comply with local rules. Our own view is that this debate, while important, may present something of a false dichotomy, as attempts to limit local rules will likely result in the proliferation of “local local rules”—that is, individual judge practices—without the benefit of transparency and public participation. In a system that is “federalism all the way down,”³⁷⁰ trying to stifle variation at one level will likely lead to more of it one step below. And this is especially true among judges, who often view their courtrooms as their own “kingdoms,” to quote one of our interview subjects.³⁷¹

But recognizing the dynamics in play does not mean that local rules cannot be improved upon. We have outlined several places where we think rulemakers can fruitfully focus attention, including local rules that conflict with, or duplicate, federal rules. We also offer process-based suggestions about how more can be done to regularly look over local rules and to take stock of various experiments that have run over different districts and circuits.

Ultimately, ours is a dynamic and complex system of adjudication, meant to resolve disputes of hundreds of thousands of individuals and corporations across the country each year. We should not lose sight of what governs it, beginning with local rules.

³⁷⁰ See generally Heather K. Gerken, *The Supreme Court, 2009 Term—Foreword: Federalism All The Way Down*, 124 Harv. L. Rev. 4 (2010).

³⁷¹ Interview with Subject 26 (Apr. 3, 2024).