

**U.S. DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
2009 LOCAL RULES REVISIONS**

A. Revisions to the General Local Rules

LR Gen P 1.01. Courthouse Security.

(a) All persons wishing to enter a federal building housing a United States Court within the Northern District of West Virginia (the building) must first properly clear the security screening post located in the main lobby at each facility. Court Security Officers staff the security screening post during normal business hours. The purpose for the security screening post is to ensure that no weapons, including guns, knives, explosives or other items that are deemed to be a possible weapon, are brought into the building. Any person refusing to submit to such inspection, including inspection of all carried items, shall be denied entrance to the building.

(b) All persons, other than those who are stationed in the building, having business in the building (i.e. contractors, work crews, repair persons) shall enter and leave the court facilities through the designated screening posts. Persons needing to use other entrances must make arrangements with Court Security prior to bypassing the screening posts. Workers seeking to work after hours must obtain prior approval from the appropriate officials. The Court Security Officers are charged with the enforcement of these regulations.

(c) The United States Marshal, Deputy United States Marshals and Court Security Officers may possess and oversee possession of firearms or other weapons in the building. Federal law enforcement agencies who have offices in the building, including but not limited to the United States Probation Office, Federal Bureau of Investigation, Drug Enforcement Agency, United States Attorneys, etc., shall be authorized to possess weapons on a direct route from the security screening post to their respective offices and return. No agency personnel may carry weapons inside any courtroom without specific authorization from the United States Marshal and the presiding judge. All agencies shall provide written authorization to the United States Marshal identifying which specific employees are authorized to carry weapons in the building. All other employees are prohibited from possessing weapons within the building. State, city and local law enforcement officers are required to secure their weapons with the Court Security Officers and successfully pass through the security screening post.

(d) All employees will use an identification card issued by the employee's agency. Employees will be required to display or show the identification card to the Court Security Officers to pass through the security screening post. If an employee fails to present their issued identification card, he or she must successfully pass through the security screening post.

(e) The United States Marshals and Court Security Officers are to coordinate enforcement of this Local Rule and to take into custody any person violating its provisions. Such persons violating the provisions of this Local Rule shall be brought

before the Court without unnecessary delay. The United States Marshals or Court Security Officers shall promptly take into their custodial possession all weapons or other items that are, or could be, used as possible weapons, carried into the building in violation of federal laws or the laws of the state of West Virginia. The United States Marshals shall retain such weapons or items until the possessor makes proper showing that possession thereof is lawful. If such weapons or items are not lawfully reclaimed within thirty days, they may be disposed of according to law.

LR Gen P 2.01. Disclosure Statement

For the judges to be aware of potential disqualification on the basis of financial information unknown to the Court, a non-governmental corporate party to any civil or criminal proceeding and the government in a criminal proceeding must provide the Court with sufficient information to allow the judge to make an informed decision about any potential conflict of interest pursuant to the applicable Federal Rules of Civil Procedures or the Federal Rules of Criminal Procedures.

(a) **Form Provided by Clerk.**

The Clerk of Court shall provide on the Court Internet Site (www.wvnd.uscourts.gov) a form that parties may use to provide any statement required by this Rule or, in lieu thereof, a party may prepare and file a similar statement containing the same information required by this Rule.

(b) **Form Delivered to Judge.**

The Clerk of Court must deliver a copy of the disclosure statement to each judge acting in the action or proceeding.

Filing and Service by Fax Transmission or Electronic Filing via CM/ECF.

LR Gen P 5.02. Definitions Related to Fax Transactions and Electronic Filing.

(a) “Facsimile” or “fax” refers to a document transmitted by a system that encodes the document into electronic signals, transmits these electronic signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.

(b) “Facsimile transaction” or “fax transaction” means the fax transmission of a document to or from the Court.

(c) “Service by facsimile transmission” or “service by fax transmission” means the transmission of a motion, notice, or other document to an attorney, attorney-in-fact, or a party under these rules.

(d) “Facsimile machine” or “fax machine” means a machine that can send and receive on plain paper a fax transmission using the international standard for scanning, coding, and transmitting established for Group 3 machines by the Consultative Committee of International Telegraphy and Telephone of the International Telecommunications Union, in regular resolution.

(e) “Electronic Filing” means uploading a document directly from the filer’s computer using the Court’s Case Management/Electronic Filing System (CM/ECF) onto the case docket.

LR Gen P 5.03. Applicability of Fax Transmissions and Electronic Filing.

(a) Filing by Fax: All points of holding court within the Northern District of West Virginia shall maintain a facsimile (fax) machine within the Office of the Clerk, shall accept the filing of documents by fax, and may send documents by fax transmission to the extent expressly provided for in these rules and not in conflict with statutes or other court rules. The faxed document must be a fax of the original document in its entirety, including any exhibits and attachments thereto.

(b) Electronic Filing: Pursuant to Fed. R. Civ. P. 5(e) and Fed. R. Crim. P. 49, the clerk's office will accept filings signed or verified by electronic means that are consistent with the technical standards that the Judicial Conference of the United States establishes. A document filed by electronic means in compliance with this Rule constitutes a written paper for the purpose of applying these Rules, the Federal Rules of Civil Procedure. All electronic filings shall be governed by the Court's Administrative Procedures for Electronic Case Filing, the provisions of which are incorporated by reference, and which may be amended from time to time by the court.

LR Gen P 5.04: Section (s) to LR Gen P 5.04, General Provisions:

(s) Video Facilities and Equipment. If a party has a need for any type of courtroom technology for a hearing, including the document presentation equipment, video equipment, audio equipment and etc., counsel must notify the Clerk's office of the need for the courtroom technology at least 5 business days before the respective hearing or trial.

Service by Electronic Means.

LR Gen P 5.06 General.

(b) Electronic Service through CM/ECF: CM/ECF sends a Notice of Electronic Filing (NEF) to all parties signed participating in electronic filing in that particular case. Documents are deemed filed at the time and date stated on the NEF. The emailing of the NEF is equivalent to service of the document by first class mail in compliance with Fed. R. Civ. P. 5(b)(2)(D), Fed. R. Civ. P. 77(d), and Fed. R. Crim. P. 49(b).

(c) Service of Summonses: Summonses are precluded from electronic service because they must bear an original signature. The plaintiff must prepare the summonses in paper form and provide them to the Clerks' office, who will sign and seal the completed forms and return them by regular mail to counsel for the plaintiff. It is the responsibility of the parties, not the Clerk's office, to serve the summons. Parties may serve all other case documents electronically.¹

(d) Summons Forms: Summons forms are available at www.wvnd.uscourts.gov.

¹ FR Civ P 5(b)(d)(D): Service shall be accomplished by "[d]elivering a copy by any other means, including electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. If authorized by local rule, a party may make service under this subparagraph (D) through the court's transmission facilities."

(e) **Certificate of Service:** A certificate of service is required for all filings, including all documents filed electronically. Attach the certificate of service to every filing, specify who was served, and state the manner in which service or notice was accomplished on each party. A sample certificate of service is available at www.wvnd.uscourts.gov.

(f) **Service Upon Non-CM/ECF Filers:** Parties not using CM/ECF are entitled to paper copies of all electronically-filed documents. The filing party must therefore provide the non-CM/ECF filer with the document according to the Federal Rules of Civil Procedure.

(g) **Time to Respond Under Electronic Service:** Pursuant to Fed.R.Civ.P. 6(e) and Fed.R.Crim.P. 45, service by electronic means is treated the same as service by mail for purposes of adding three days to the prescribed period to respond.

(h) **Service of Sealed Filing:** Counsel may file sealed documents in CM/ECF only upon permission of the Court pursuant to LR Gen P 6.01.

LR Gen P 5.07. Video Technology.

(a) **Video Technology.** District judges, the bankruptcy judge, and the magistrate judges may conduct hearings and proceedings using video telecommunications pursuant to the provisions of this Local Rule in:

- (1) Criminal proceedings consistent with LR Cr P 43.01,
- (2) Civil proceedings, **and**
- (3) Bankruptcy proceedings.

(b) **Video Facilities and Equipment.** During any hearing or proceeding under this Local Rule, the Court shall assure that:

- (1) The facility and equipment enable counsel to be present personally with the out-of-court party and to confer privately with such party outside the reach of the camera and audio microphone.
- (2) The judge must be able to fully view the out-of-court party and counsel, though not necessarily at the same time. The out-of-court party and counsel must be able to fully view the judge and all attorneys present in the courtroom, though not necessarily at the same time.
- (3) The facility must have the capacity, through video equipment or through fax or e-mail, for the contemporaneous transmission of documents and exhibits.
- (4) Color images shall be transmitted in color.
- (5) The audio and video transmission shall be of such quality, design and architecture as to allow easy public viewing of all public proceedings. The use of video technology in conducting hearings and proceedings shall in no way abridge any right that the public may have to access the courtroom.
- (6) The official record of any proceeding conducted using video telecommunications shall be made in a manner prescribed by the judicial officer conducting the proceedings.

(c) **Counsel Duty to Notify.** If a party has a need for any type of courtroom technology for a hearing, including the document presentation equipment, video

equipment, audio equipment and etc., counsel must notify the Clerk's office of the need for the courtroom technology at least 5 business days before the respective hearing or trial.

E-Government Act.

LR Gen P 5.08. E-Government Act.

(a) **Documents:** In compliance with the policy of the Judicial Conference of the United States and the E-Government Act of 2002, consistent with Fed.R.Cr.P. 49.1, and to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the Court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the Court.

1. **Social Security Numbers:** if an individual's social security number must be included in a filing, use only the last four digits of that number.
2. **Names of Minor Children:** if the involvement of a minor child must be mentioned, use only the child's initials.
3. **Dates of Birth:** if an individual's date of birth must be included in a filing, use only the year.
4. **Financial Account Numbers:** if financial account numbers are relevant, use only the last four digits of these numbers.
5. **Home Address in Criminal Cases:** If a home address must be included in a document to be filed, include only the city and state.

(b) **Redaction Policy:** In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above must:

1. File a redacted, unsealed version of the document along with a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list must refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as a right, or
2. With approval of the Court, file an unredacted version of the document under seal. The Court may, however, still require the party to file a redacted copy for the public file. The unredacted version of the document or the reference list remain sealed and retained by the Court as part of the record.
3. The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review each filing for compliance with this Local Rule.

(c) **Transcripts of Hearings:** If information listed in section (a) of this Rule is elicited during testimony or other court proceedings, it will become available to the public when the official transcript is filed at the courthouse unless, and until, it is redacted. The better practice is to avoid introducing this information into the record in the first place. If a restricted item is mentioned in court, any party or attorney may ask to

have it stricken from the record or partially redacted to conform to the privacy policy, or the Court may do so on its own motion.

Sealed Documents

LR Gen P 6.01 Sealed Documents in Public Cases.

A. Motion for Leave to File Under Seal:

1. Motion: To file a document under seal, a party must first electronically file a Motion for Leave to File Under Seal. If the Motion for Leave to File Under Seal itself contains sensitive information, the party may
 - i. Electronically file it under seal in CM/ECF and because this is a sealed event that is inaccessible to recipients of the NEF, parties shall effect service of process traditionally, or
 - ii. File the motion with the Clerks office in paper. The Clerks office will then file the motion under seal. The parties remain responsible for effecting service of process traditionally.
2. Memorandum: Along with the motion to file under seal, the party shall file a memorandum of law that explains why sealing is required.
3. Exhibits:
 - i. If necessary, the filer may present exhibits that contain the sensitive information in an envelope marked "sealed" to the Clerks office.
 - ii. If filing the Motion for Leave to File Under Seal is itself filed under seal per A.1.i or ii above, the filer may attach the exhibits to the Motion for Leave to File Under Seal.

B. Order on Motion for Leave to File Under Seal: If the Court grants the Motion for Leave to File Under Seal, the judge will electronically enter the order authorizing the filing of the documents in the appropriate manner. The party then may file the document under seal in CM/ECF or may bring the document to the Clerk's Office to be filed as appropriate.

C. Service: Sealed filings produce a NEF, but the recipient cannot open the attached document. Consequently, filers must effect service through traditional means, as appropriate.

LR Gen P 77.02. Points of Holding Court.

County Changes: Tyler County to Wheeling
Preston County to Clarksburg
Lewis County to Elkins
Mineral County to Martinsburg

LR Gen P 77.03. Sessions.

a. Court Hours: The Court is considered open and in continuous session at all points of holding court on all business days throughout the year in accordance with the provisions of 28 U.S.C. § 139, Fed. R. Civ. P. 77(a) and (c), Fed. R. Crim. P. 56, and

other controlling statutes and rules. Regular business hours are 8:30 a.m. to 5:00 p.m. Monday through Friday.

b. **Filing Deadline:** The filing deadline for electronic filing is midnight, Eastern Time Zone, to be considered timely filed that day. A filing is deemed made on the date and at the time specified on the Notice of Electronic Filing that is automatically generated by the CM/ECF system.

LR Gen P 79.02. Removal of Papers from Custody of Clerk.

The Office of the Clerk shall produce filed papers pursuant to subpoena from a court of competent jurisdiction. Filed papers may be removed from the Clerk's Office only upon order. The Clerk may also permit temporary removal of papers by a **U.S. district judge**, a bankruptcy judge, a magistrate judge, or a master in matters relating to their official duties.

Any person receiving filed papers shall provide to the Clerk's Office a signed receipt identifying the papers removed. The Clerk's Office shall file the receipt on the docket.

LR Gen P 83.02. Visiting Attorneys

(a) **General:** Whenever it shall appear that a person, who has not been lawfully licensed and admitted to the practice of law in the State of West Virginia, has been duly licensed to be admitted to practice before a court of record of general jurisdiction in any other state or country or in the District of Columbia, and is in good standing as a member of the bar of such jurisdiction ~~or has been admitted to the practice of law in the State of West Virginia~~, but has not been admitted to the bar of the United States District Court for the Northern District of West Virginia **or the United States Bankruptcy Court for the Northern District of West Virginia**, he or she may appear in a particular action, suit, proceeding or other matter in this Court:

(1)

(2)

(3) upon certification that the **pro hac vice** applicant has paid to the West Virginia State Bar the **pro hac vice** fee required by Rule 8.0 of the Rules of Admission for the West Virginia State Bar.

Additional Section:

(c) Department of Justice Attorneys: Attorneys employed by the Department of Justice are exempt from paying the **pro hac vice** fee described in section (a)(2) of this rule.

Additional Section:

§ (c): Special Admission for Attorneys Appearing on Behalf of the United States Justice Department. Unless the presiding judge otherwise directs, attorneys licensed to be admitted to practice before a court of record of general jurisdiction in any other state or in the District of Columbia, and who are in good standing as a member of the bar of such jurisdiction, who are employed or

retained by the United States government or any of its agencies may practice in this Court in all actions or proceedings within the scope of their employment or retention by the United States. Such attorneys shall be exempt from the requirements of LR Gen P 83.02 (a) and (b), but shall otherwise be subject to all the basic ethical considerations and disciplinary rules for the conduct of attorneys practicing in this Court under LR Gen P 83.05. The court may at any time revoke such permission for good cause without a hearing.

LR Gen P 86.01. Complaints Filed Pursuant to Social Security Act.

(a) **Electronic Filing:** Absent a showing of good cause, litigants shall file and notice all documents in social security reviews, except case opening documents and social security transcripts, electronically. The United States Attorney shall provide social security transcripts to the Clerk's office in electronic format, either via email, Compact Disc, or other electronic format suitable for filing in CM/ECF. The United States Attorney shall provide a paper copy of the social security transcript to the magistrate judge to whom the case is referred or assigned. See section 5 of this Court's Administrative Procedures for Electronic Filing.

LR Gen P 88.01. Scheduling Conflicts with State Court.

Parties must inform the Court no later than 10 days before a scheduled event if the scheduled event conflicts with a West Virginia state court scheduled event. Parties must work with the Court to resolve all such scheduling conflicts pursuant to the provisions of West Virginia Trial Court Rule 5.

LR Gen P 88.02. Requests for Continuance.

A party or parties requesting a continuance must contact all other parties to determine three possible dates to which to move the deadline or hearing. The moving party must specify these three possible dates within the motion to continue

B. Revisions to the Civil Local Rules

LR Civ P 5.01. Nonfiling of Discovery Materials Other Than Certificates of Service.

(b) Electronic Service of Discovery: Parties may serve documentary discovery matters in electronic format rather than traditionally via paper on all non-*pro se* parties. Parties may convert such matters to PDF format and email such matters to all non-*pro se* parties. Service by electronic means constitutes service of the discovery materials, with the same legal force and effect as if served via paper. Because *pro se* parties are electronic filers, parties must serve *pro se* parties traditionally via paper. This Rule applies to all documentary discovery, including but not limited to depositions upon oral examination or written questions and any notice thereof, notices of receipt of depositions, interrogatories, requests pursuant to Fed. R. Civ. P. 34, requests for admissions, and answers and responses thereto, and any other discovery material that can be scanned or otherwise converted into a PDF document format. Consistent with LR Civ P 5.01(a), counsel must file certificates of service of all discovery materials filed electronically, specifying the method used to serve the discovery materials.

(c) Electronic Service of Discovery: Parties may serve documentary discovery matters in electronic format rather than traditionally via paper on all non-*pro se* parties. Parties may convert such matters to PDF format and email such matters to all non-*pro se* parties. Service by electronic means constitutes service of the discovery materials, with the same legal force and effect as if served in paper. If the recipient counsel's email system rejects the mailing of documentary discovery, by agreement of the parties after confirming that the recipient has the appropriate technology available, the filer may serve such documents through the regular mail by CD-ROM, DVD or other removable media, or may post the PDF files to a secured extranet site for downloading.

(d) Pro Se Parties: Because *pro se* parties are not electronic filers, parties must serve *pro se* parties traditionally with paper. This Rule applies to all documentary discovery, including but not limited to depositions upon oral examination or written questions and any notice thereof, notices of receipt of depositions, interrogatories, requests pursuant to Fed. R. Civ. P. 34, requests for admissions, and answers and responses thereto, and any other discovery material that can be scanned or otherwise converted into a PDF document format. Consistent with LR Civ P 5.01(a), counsel must file certificates of service of all discovery materials filed electronically, specifying the method used to serve the discovery materials.

LR Civ P 7.02. Motion Practice.

(a) Motions and Supporting Memoranda. All motions shall be concise, shall state the relief requested precisely, shall be filed timely but not prematurely, and, except for nondispositive motions other than a motion for sanctions, shall be accompanied by a

supporting memorandum of not more than 25 pages, double-spaced, and by copies of depositions (or pertinent portions thereof), admissions, documents, affidavits, and other such materials upon which the motion relies. A judicial officer for good cause shown may allow a supporting memorandum to exceed twenty-five pages. A dispositive motion or a motion for sanctions unsupported by a memorandum will be denied without prejudice. The memorandum must be submitted on 8½ by 11-inch paper. Margins must be one-inch on all four sides. Page numbers may be placed in the margins, but no text can be placed in the margins. The memorandum must be in either Times New Roman, Courier New, or **Arial font**.

7.02(b) Memoranda in Response to Motions and Reply Memoranda.

(1) **Original Memoranda:** The original and two copies of the memoranda and other materials in response to motions shall be filed and served on opposing counsel and unrepresented parties within 14 days from the date of service of the motion, **as required by FR Civ P 5(b)**.

(2) **Memoranda in Response:** The memoranda in response may not exceed 25 pages and is subject to the restrictions set forth in LR Civ P 7.02(a) regarding paper, font size, and line spacing.

(3) The original and two copies of the reply memoranda shall be filed and served on opposing counsel and unrepresented parties within 7 business days from the date of service of the memorandum in response to the motion. The reply memoranda may not exceed 15 pages, subject to the restrictions set forth in LR Civ P 7.02(a) regarding paper and font size and line spacing.

(4) **Surreply and Surrebuttal:** Surreply memoranda shall not be filed except by leave of court.

(5) **Time Limits:** The times for serving memoranda may be modified by the judicial officer to whom the motion is addressed.

(6) **Courtesy Copy:** When electronically filing a memorandum with the clerk's office, a paper courtesy copy to the assigned judicial officer is not required except where any memorandum, together with documents in support thereof, is 50 pages or more in length.

LR Civ P 16.01. Scheduling Conferences.

(f) Modification of Scheduling Order.

(1) **a. Time Limits:** Time limits in the scheduling order for the joinder of other parties, amendment of pleadings, filing of motions, and completion of discovery, and dates for conferences before trial, a final pretrial conference, and trial may be modified for cause by order.

b. Requests for Continuance: When a party or parties request(s) a continuance, must contact the all other parties to determine three possible dates to which to move the deadline or hearing. The moving party must specify these three

possible dates within the motion to continue.

LR Civ P 16.06. Alternative Dispute Resolution (Mediation Program -- Settlement Week). New section, L (in small case):

(l) Mediation Report. Parties must supply a mediation report within 5 days of a mediation, whether the mediation did or did not result in settlement.

Discovery.

LR Civ P 26.01. Control of Discovery.

(b) Disclosures Under Fed R Civ P 26(a)(2) Regarding Experts. Unless otherwise ordered or stipulated by the parties, the making, sequence, and timing of disclosures under Fed. R. Civ. P. 26(a)(2) will be as follows:

- (1) the party bearing the burden of proof on an issue shall make the disclosures required by Fed. R. Civ. P. 26(a)(2)(A) and (B) to all other parties or their counsel no later than sixty days prior to the discovery completion date;
- (2) the party not bearing the burden of proof on an issue shall make the disclosures required by Fed. R. Civ. P. 26(a)(2)(A) and (B) to all other parties or their counsel no later than forty days prior to the discovery completion date; and
- (3) all parties shall provide, no later than twenty days prior to the discovery completion date, the disclosures required by Fed. R. Civ. P. 26(a)(2)(A) and (B) if the evidence is intended solely to contradict or rebut evidence on the same issue identified by another party under Fed. R. Civ. P. 26(a)(2)(C).

The disclosures described in Fed. R. Civ. P. 26(a)(2)(B) shall not be required of witnesses who have not been specially retained or employed by a party to give expert testimony in the case, including physicians and other medical providers who examined or treated a party or party's decedent unless the examination was for the sole purpose of providing expert testimony in the case, or one whose duties as the party's employee regularly involve giving expert testimony. Also note that, in accordance with LR Civ P 5.01, file only the certificate of service.

In all events, a party seeking to elicit opinion testimony under Federal Rules of Evidence 702, 703, or 705 from such witnesses shall:

- (1) To the extent that such opinions are explicitly stated in records prepared by such witnesses and have been produced in the course of discovery, identify each such person as an expert witness who is anticipated to testify at the trial of the case;
- (2) To the extent that such opinions are not explicitly stated in records prepared by such witnesses or have not been produced in the course of discovery, identify each witness and state the subject matter on which the expert will testify, the substance of the facts and opinions to which the expert will testify, and a summary of the grounds for each opinion or, in the alternative, provide a report, prepared by the witness, that comports

with the provisions of Fed.R.Civ.P. 26(a)(2)(B).

(3) The disclosures discussed in paragraph (2) above must be made within the time lines detailed in LR Civ P 26.01(b), *supra*.

(c) Discovery Event Limitations. Unless otherwise ordered or stipulated, and except as to complex cases governed by LR Civ P 16.02, discovery under Fed. R. Civ. P. 26(a)(5) shall be limited as follows:

- (1) ten depositions upon oral examination or written questions by each plaintiff;
- (2) ten depositions upon oral examination or written questions by each defendant;
- (3) ten depositions upon oral examination or written questions by each third-party defendants;
- (4) Forty written interrogatories, including all discrete subparts, per party; and
- (5) Forty requests for admission per party.

LR Civ P 41.01. Dismissal of Actions.

When it is apparent in any pending civil action that the principal issues have been adjudicated

or have become moot, or that the parties have shown no interest in further prosecution, the judicial officer may give notice to all counsel and unrepresented parties that the action will be dismissed thirty days after the date of the notice unless good cause for its retention on the docket is shown. In the absence of good cause shown within that period of time, the judicial officer may dismiss the action. Upon request and payment of all applicable costs, the Clerk shall mail a certified copy of any order of dismissal to all counsel and unrepresented parties. This rule does not modify or affect provisions for dismissal of actions under Fed. R. Civ. P. 41 or any other authority.

C. Revisions to the Criminal Local Rules

LR Cr P 2.01. Grand Jury.

Pursuant to the Amended Jury Selection Plan dated May 9, 2000, the Court empaneled grand jurors in each of the four active points of holding court within the district, i.e. Clarksburg, Elkins, Martinsburg and Wheeling. The jurors drawn from those counties assigned to the four active points of holding court typically review evidence or indictments of crimes committed in their respective counties.

Occasionally, due to issues that may arise and effect the statute of limitations, the Speedy Trial Act, 18 U.S.C. §3161, et seq., criminal complaints and other matters, it may be necessary for the United States Attorney to present matters to a grand jury in one point of holding court that arose from another point of holding court. In recognition of speedy trial concerns and judicial economy, the Court may permit such action to occur. The United States Attorney or an Assistant United States Attorney shall provide notice to the Court to proceed pursuant to this Rule.

LR Cr P 10.01. Duties. (Formerly Standing Order #7)

(a) All magistrate judges are specially designated to handle arraignments in criminal cases pursuant to Fed. R. Crim. P. 10, including acceptance of not guilty pleas, scheduling of motions hearings, pretrial conferences and trials, and issuance of bench warrants for the arrest of a defendant who fails to appear for arraignment.

(b) Defendants may waive their right to be present at their arraignment. Waivers must be submitted in writing, and signed by the defendant, not later than 2 working days before the arraignment, to permit the Court and/or the Government sufficient time to order the defendant's appearance if required. No hearing shall be necessary to determine the providence or voluntariness of the defendant's written, signed waiver of the right to appear at the arraignment.

(d) Additional Duties: As an additional duty under 28 U.S.C.A. 636(c), all magistrate judges are designated to take pleas in felony criminal cases under Rule 11 of the Federal Rules of Criminal Procedure. With written consent of the parties, the magistrate judge may take the plea and enter it on the record. Such pleas, conducted with the consent of the parties, do not require de novo review by the district judge if no exceptions are made to the recommendation of the magistrate judge. See United States v. Osborne, 345 F.3d 281 (4th Cir. 2003). If a defendant does not consent to a magistrate judge taking the plea, the magistrate judge may conduct the proceeding and make a recommendation to the district judge.

LR Cr P 16.01. Pretrial Discovery and Inspection.

(a) Do Not File Discovery With the Court: Parties shall not file discovery with the Court. Parties will serve Discovery on the respective parties, and file with the Court only the Certificate of Service.

(b) Standard Discovery Request Form: At arraignment or upon filing of an information or indictment, counsel for the defendant may file standard requests for discovery. An Arraignment Order and Standard Discovery Request form is available on the Court's website. Counsel for the government and counsel for the defendant shall sign the form for entry by the magistrate judge.

(c) Reciprocal Discovery: If counsel for the defendant requests discovery under FR Cr P 16(a), the defendant must provide reciprocal discovery to the government under FR Cr P 16(b)(1).

(d) Time for Government Response: Unless the parties agree otherwise, or the Court so orders, within 10 days of the Standard Discovery Request, the government must provide the requested material to counsel for the defendant and file with the clerk a written response to each of defendant's requests.

(e) Reciprocal Discovery Response: Defendant must provide all reciprocal discovery due the government within 10 days of receiving discovery materials from the government.

(f) Defense Discovery Request Deemed Speedy Trial Motion: Any request made by the defendant pursuant to this rule will be deemed a motion under the provisions of the Speedy Trial Act, 18 U.S.C. § 3161.

(g) Duty to Supplement: All duties of disclosure and discovery in this rule are continuing. The parties must produce any additional discovery as soon as they receive it, and in no event later than the time for such disclosure as required by law, rules of criminal procedure, or order of the court, and without the necessity of further request by the opposing party.

(h) Modification for Complex Cases.

(1) At any time after arraignment, the Court on its own motion or upon motion by any party, and for good cause shown, may designate a case as complex. (2) In all cases designated as complex, the parties shall, not later than 5 days following such designation, confer to develop a Proposed Complex Case Schedule addressing the following:

(i) the scope, timing, and method of the disclosures required by federal statute, rule, or the United States Constitution, and any additional disclosures that will be made by the government;

(ii) whether the disclosures should be conducted in phases, and the timing of such disclosures;

(iii) discovery issues and other matters about which the parties agree or disagree, and the anticipated need, if any, for motion practice to resolve discovery disputes;

(iv) proposed dates for the filing of pretrial motions;

(v) stipulations with regard to the exclusion of time for speedy trial purposes under 18 U.S.C. §3161.

(3) The parties shall file the Proposed Complex Case Schedule no later than five days after conferring under this section.

(4) As soon as practicable after the filing of the Proposed Complex Case Schedule, the Court shall enter an Order fixing the schedule for discovery, pretrial motions, and trial, and determining exclusions of time under 18 U.S.C. §3161, or shall conduct a pretrial conference to address

unresolved scheduling and discovery matters.

LR Cr P 16.02. Declination of Disclosure.

If, in the judgment of the United States Attorney, it would not be in the interests of justice to make any one or more disclosures set forth in LR Cr P 16.01 and requested by the defendant's counsel, the United States Attorney may decline disclosure. A declination of any requested disclosure shall be in writing, set forth specific reasons therefor, directed to defendant's counsel, and signed personally by the United States Attorney or the Assistant United States Attorney assigned to the case, and shall specify the types of disclosures that are declined. If the United States Attorney invokes declination, the United States Attorney or the Assistant United States Attorney assigned to the case shall immediately notify the magistrate judge for the purpose of expediting a hearing thereon.

LR Cr P 16.06. Rule 404(b), Giglio and Roviario Evidence.

No later than fourteen days before trial, the government shall disclose all Notice of Federal Rule of Evidence 404(b) evidence, Giglio material and any Roviario witness not included in the government's witness list shall be disclosed fourteen days before trial not previously turned over in discovery. See Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763, 31 L.Ed.2d 104 (1972); Roviario v. United States, 353 U.S. 53, 77 S. Ct. 623, 1 L.Ed.2d 639 (1957).

~~**LR Cr P 16.07. Jencks Act Material:**~~

~~Fourteen days before trial, the government shall disclose materials described in 18 U.S.C. § 3500, commonly known as the Jencks Act.~~

LR Cr P 24.01/30.01. Voir Dire, Motions in Limine and Instructions.

No later than seven days before the final pretrial conference, or no later than seven days before trial if no pretrial conference is held, counsel shall file and serve on opposing counsel all proposed voir dire questions, motions in limine (which must be limited to matters actually in dispute), responses and proposed jury instructions. If the instructions are being typed on a computer, counsel shall provide to the Court a disk labeled with the case name and party proposing the instructions. The envelope containing the disk should be marked "Contains Disk - Do Not X-Ray - May Be Opened For Inspection." The disk will be returned to counsel if requested.

LR Cr P 50.01. Continuances:

Continuance for the trial date and other hearings and deadlines will be granted only for just cause. When a party or parties request(s) a continuance, the moving party or parties must contact the all other parties to determine three possible dates to which to continue the deadline or hearing. The moving party must specify these three possible dates within the motion to continue. At the discretion of the Court, days sought by the defendant in a criminal matter may be construed as a waiver of the speedy trial calculation for those days included in the continuance.

LR Cr P 55.01 Disclosure of Records and/or Testimony

Except as otherwise provided, no confidential records of the court maintained by the probation office, including presentence reports, pre-trial services records, probation records and/or testimony, shall be disclosed or provided unless a written application is made to the Court in compliance with the Rules For Disclosure adopted by the Judicial Conference of the United States in March 2003. No disclosure shall be made, or testimony provided, until an order is entered. However, necessary probation records shall be released to other federal, state, county, and municipal law enforcement agencies as required by 18 U.S.C. § 4042, without petitioning the Court or without obtaining a court order directing the disclosure of those records. The probation officer shall immediately provide the Court with notice of such disclosure.

When a demand for a disclosure of presentence records, pre-trial services records, probation records and/or the testimony of a probation officer is made to a probation officer by way of subpoena or other judicial process, and such a demand is not in compliance with the Rules Of Disclosure adopted by the Judicial Conference of the United States, the Chief Probation Officer, or his designee, may deny disclosure of any records or testimony sought. The Chief Probation Officer, or his designee, must immediately inform the Court upon denying any such demand. No disclosure shall be made until an order is entered.

When a demand for a disclosure of presentence records, pretrial services records, probation records and/or testimony is made to a probation officer by subpoena or other judicial process, the Chief Probation Officer, or his designee, shall request an order regarding a response. No disclosure shall be made until an order is entered.

LR Cr P 55.02. Disclosure of Presentence Reports (PSR).

(a) Disclosure of PSR: Any disclosure of the PSR to the defendant, defendant's counsel, attorney for the government or any individual or entity other than the Court shall not include any recommendation as to sentence. The time requirements of Fed. R. Crim. P. 32(b)(6) Fed.R.Crim.P. 32(e)(2) may be modified by the Court for good cause, except that the thirty-five day period from the initial disclosure of the PSR until the sentencing hearing may not be reduced without the consent of the defendant.

(b) Probation Officer duties: The probation officer shall inform the Court of the date of the initial PSR disclosure to the parties, after which a sentencing hearing will be scheduled. As an alternative, the Court may set a date when the PSR will be initially disclosed, after which the sentencing hearing will be scheduled. The PSR shall be deemed to have been disclosed:

- (1) when a copy of the report is physically delivered to the defendant, the defendant's counsel, and the attorney for the government, or
- (2) three days after a copy of the PSR is mailed to the defendant, counsel

for the defendant, and the attorney for the government.

(c) Objections: Counsel shall provide to the probation office written objections to the PSR, and provide a copy to opposing counsel. Counsel shall not, however, file objections to the PSR electronically in CM/ECF or with the Clerk's office in any manner.

(d) No Objection form: Counsel shall not file the "no objection" form with the Court. Counsel may provide the "no objections" form to the probation office. If counsel files a "no objections" form with the probation office, counsel must also file a copy upon opposing counsel. Nonetheless, counsel shall not file the form with the Court either electronically or in paper.

(e) Sentence Memoranda: The Court will accept sentencing memoranda received in the Clerk's Office no later than 3 business days before the sentencing hearing. This 3-day time period shall exclude holidays and weekends. To file a sentencing memorandum with the Court, counsel must present the sentencing memorandum to the Clerk's office to be filed under seal. To do so, Counsel may present the document in person, via the mail (but must be received by the deadline, regardless of date mailed), via email, via fax, or may file the sentence memoranda on the public docket via CM/ECF using the Sentencing Memoranda event.

LR PL P 83.15. Initial Screening.

(a) Upon receipt of an original and two copies of a properly completed motion to vacate, set aside, or correct the sentence, all actions filed by a prisoner pursuant to 28 U.S.C. § 2255 will be referred to the United States Magistrate Judge designated by Standing Order No. 2. If it is apparent from the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the District Court, the United States Magistrate Judge shall make a report and recommendation for its summary dismissal.

(b) Upon receipt of prisoner filings which, although labeled otherwise, are in fact a 2255 motion, the United States Magistrate Judge may designate the filing as a petition under 28 U.S.C. 2255. However, pursuant to *United States v. Castro*, 540 U.S. 375, 383 (2003), the district court must:

- i. Notify the litigant that the Court intends to recharacterize the filing,
- ii. Warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restrictions on "second or successive" motions, and
- iii. Provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims s/he believes s/he has.

D. Revisions to the Local Rules of Prisoner Litigation

LR PL P 83.15. Initial Screening.

(a) Upon receipt of an original and two copies of a properly completed motion to vacate, set aside, or correct the sentence, all actions filed by a prisoner pursuant to 28 U.S.C. § 2255 will be referred to the United States Magistrate Judge designated by Standing Order No. 2. If it is apparent from the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the District Court, the United States Magistrate Judge shall make a report and recommendation for its summary dismissal.

(b) (b) Mislabeled Petitions. Upon receipt of prisoner filings that, although labeled otherwise, are in fact a 2255 motion, the United States Magistrate Judge may designate the filing as a petition under 28 U.S.C. 2255. However, pursuant to United States v. Castro, 540 U.S. 375, 383 (2003), the district court must:

- i. Notify the litigant that the Court intends to recharacterize the pleading,
- ii. Warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restrictions on “second or successive” motions, and
- iii. Provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims s/he believes s/he has.