

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA



LOCAL RULES

EFFECTIVE: ***, 2008

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES DISTRICT JUDGES

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Irene M. Keeley, Judge, Clarksburg, West Virginia
Robert E. Maxwell, Judge, Elkins, West Virginia
Frederick P. Stamp, Jr., Judge, Wheeling, West Virginia

UNITED STATES BANKRUPTCY JUDGE

Patrick M. Flatley, Wheeling, West Virginia

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CLERK OF DISTRICT COURT

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CLERK OF BANKRUPTCY COURT

Michael D. Sturm, Wheeling, West Virginia

PREFACE

The United States District Court for the Northern District of West Virginia (Court) adopts the following Local Rules of General Practice and Procedure (LR Gen P), Local Rules of Civil Procedure (LR Civ P), Local Rules of Criminal Procedure (LR Cr P), Local Rules of Prisoner Litigation Procedure (LR PL P) and Local Rules of Bankruptcy Procedure (LR Bk P). These Local Rules, in conjunction with the Standing Orders of this Court, govern the conduct and management of the business, operations, and proceedings of the Court.

The Local Rules of Magistrate Procedure, previously adopted by this Court, are repealed. The Federal Code at 28 U.S.C. § 631, et seq., sets forth provisions relating to appointment, tenure, location, jurisdiction, and powers of United States magistrate judges.

In the absence of any controlling statute, by standing order of the Court and agreement of the judicial officers, or directive by the Administrative Office of the United States Courts, or agreement by a majority of the district judges of this Court, the Chief Judge is authorized and empowered to implement these Local Rules.

These Local Rules supplement and complement the Federal Rules of Civil Procedure (Fed. R. Civ. P.), the Federal Rules of Criminal Procedure (Fed. R. Crim. P.), the Bankruptcy Rules and controlling statutes, and are applied, construed, and enforced to avoid inconsistency with those controlling statutes and other rules. They shall also be construed and applied to provide fairness and simplicity in procedure and avoid unjustifiable delay; secure just, expeditious and inexpensive determination of all actions and proceedings; and promote the efficient administration of justice. A district judge may, in the interest of orderly, expeditious, and efficient administration of justice, allow departures from these Local Rules when warranted by particular facts and circumstances.

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I. LOCAL RULES OF GENERAL PRACTICE AND PROCEDURE

LR Gen P 1.01. Courthouse Security.

(a) Entry of Federal Courthouse Buildings: 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) Persons Requiring Access: 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) Weapons: 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) Identification Card: 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) Enforcement: 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 issues regarding judicial 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 Procedure, the Federal Rules of Criminal Procedure, or the Rules Governing Judicial Conduct.

(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 shall deliver a copy of the disclosure statement to each judge acting in the action or proceeding.

Commencement of Action

LR Gen P 3.01. Proceedings In Forma Pauperis.

The Court may authorize the commencement, prosecution, or defense of any civil or criminal action or proceeding, or any appeal (except Prisoner Litigation Reform Act actions), without prepayment of fees and costs or security, by a person who affirms by affidavit that he or she is unable to pay costs or give security as provided in 28 U.S.C. § 1915.

In all civil cases initiated without payment of fees and costs, the plaintiff shall stipulate in an affidavit that any recovery in the action shall, pursuant to the order of the Court, be paid to the Clerk, who shall pay therefrom any remaining unpaid costs taxed against the plaintiff and remit the balance to the plaintiff or the plaintiff's attorney.

Contempt.

LR Gen P 4.01. Initiation of Civil Contempt Proceedings.

A proceeding to adjudicate a person in civil contempt of court shall be commenced by the service of a notice of motion or order to show cause. The affidavit upon which the notice of motion or order to show cause is based shall specify the alleged misconduct, any claim for damages, and any evidence that is available to the moving party as to the amount of damages. A reasonable attorney's fee may be included as an item of damage. Where the alleged contemner has appeared by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon his or her attorney; otherwise, service shall be made personally in the manner provided for by the Federal Rules of Civil Procedure for the service of a summons. Upon a showing of necessity, the Court may issue an order to show cause, which may include a direction to the United States Marshals Service to arrest the alleged contemner and hold him or her on bail in an amount fixed by the order, conditioned upon his or her appearance at the hearing, and further conditioned that the alleged contemner will hold himself or herself thereafter amenable to all orders of the Court for his or her surrender.

LR Gen P 4.02. Issues; Trial By Jury.

If the alleged contemner puts in issue his or her alleged misconduct or the damages sought, he or she shall, upon demand, be entitled to have evidence taken, either before the

Court or before a master appointed by the Court. When the alleged contemner is entitled to a trial by jury, he or she shall make written demand therefor at least thirty days before the trial date; otherwise he or she will waive the right to a trial by jury.

LR Gen P 4.03. Order of the Court; Confinement of Contemner.

If the alleged contemner is found to be in contempt of court, an order shall be entered:

(a) reciting the verdict or findings of fact upon which the adjudication is based;

(b) setting forth the amount of the damages to which the complainant is entitled;

(c) fixing the fine, if any, imposed by the Court payable to the Clerk of Court;

(d) stating any other conditions necessary to purge the contempt; and

(e) directing the arrest of the contemner by the United States Marshals Service and his or her confinement until the performance of the conditions in the order, or until the contemner is otherwise lawfully discharged.

Unless the order specifies otherwise, the place of confinement shall be in a federally approved jail facility in the area where the Court is sitting. No party shall be required to pay or to advance to the United States Marshals Service any expenses for the upkeep of the prisoner. A certified copy of the order committing the contemner shall be sufficient warrant to the United States Marshals Service for the arrest and confinement of the contemner. The aggrieved party shall also have the same remedies against the property of the contemner as if the order awarding the judgment were a final judgment.

In the event the alleged contemner is found not guilty of the charges, he or she shall be discharged from the proceeding and, in the discretion of the Court, may have judgment

against the complainant for his or her costs and disbursements and a reasonable attorney's fee.

Filing of Papers.

LR Gen P 5.01. Filing of Papers.

(a) Electronic Filing: Absent good cause, counsel shall file electronically using CM/ECF in this Court. Electronic filing of a document in CM/ECF, together with the transmission of a Notice of Electronic Filing (NEF), constitutes filing of the document for purposes of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, and constitutes entry of the document on the docket kept by the Clerk's Office under Fed. R. Civ. P. 58 and 79 and Fed. R. Crim. P. 49 and 55. Emailing a document to the Clerk's Office or to the assigned judge shall not constitute "filing."

(b) Working Copy to the Judge: For documents electronically filed within the page limits set by these Local Rules, no paper copies are necessary. Upon obtaining permission to exceed the respective page limit, counsel shall provide paper copies of the document to the assigned judge and magistrate judge within three (3) days of electronic filing, but not less than two (2) working days before any hearing on such filing. Counsel must submit both the attachments and the filing they support (i.e., if the attachments support a motion, provide the motion as well as the attachments).

(c) Filing in Paper: When filing in paper and not filing electronically per paragraph (a) above, except as otherwise permitted or required by the Federal Rules, these local rules, or order, filers shall provide the original and two copies of all filings to the Clerk's Office at the point of holding court in which the particular action or proceeding is docketed. In emergency situations, filers may file documents at any Clerk's Office. The receiving

Clerk's Office shall then forward the filing to the appropriate Clerk's Office. Within twenty days of the removal of an action from state court, counsel shall file an original plus two copies of the certified state court record, unless filing electronically.

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

LR Gen P 5.02. Definitions Related to Fax Transactions and CM/ECF.

(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) "Fax transaction" means the fax transmission of a document to or from the Court.

(c) "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) "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 fax machine within the Office of the Clerk, shall accept documents filed 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(d)(3) 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, and the Federal Rules of Criminal Procedure. All electronic filings shall be governed by this Court's Administrative Procedures for Electronic Case Filing, provisions of which are incorporated by reference, and that may be amended from time to time by the Court.

LR Gen P 5.04. General Provisions for Filing by Fax.

(a) Availability of Fax Services. Each Clerk's Office shall have a fax machine available for court-related business during regular business hours and such additional hours as may be established by the judge at each point of holding court.

(b) Form and Format. All documents conveyed via fax transmission must conform in form and format to existing standards established by applicable statutes or rules of court. They should be printed on, or the receiver shall make any necessary photocopies on, 8½

by 11-inch, 20-pound alkaline plain paper of archival quality, and satisfy all other requirements of these rules.

(c) Page Limitation. The Court will accept no fax transmission over 25 pages (excluding the cover sheet and affidavit with transmission record) without express consent by the Court or the Clerk of the Court.

(d) Oversized Documents. Fax transmission of, or involving, any original document larger than 8½ by 11 inches is prohibited absent express consent from the Court or the Clerk of the Court.

(e) Fax Cover Sheet. The sender must provide his or her or the entity's name, address, telephone number, fax number, the document(s) being transmitted by caption and matter, and the number of pages (including the cover sheet), and must provide clear and concise instructions as needed concerning processing.

(f) Signatures.

(1) Presumption of Authenticity. Any signature appearing on a fax copy of a document shall be presumed to be authentic.

(2) Inspection of Original, Physically-Signed Document or Certified Copy. Upon demand by the receiver, the sender of a fax shall make available to the receiver for inspection the original, physically-signed document or, if the Court is the sender, a certified copy of the original, physically-signed document.

(g) Verification of Receipt. If the sender so requests, court personnel shall verify, either orally or in writing, the receipt of documents filed by fax transmission.

(h) Filing Effective Upon Receipt of Transmission. A fax copy of a document shall be deemed filed when it is received in its entirety on a Clerk's Office fax machine without regard to the hours of operation of the Clerk's Office. Upon receiving a faxed filing, the Clerk of the Court shall note the filing date on the fax copy in the same manner as with other documents filed by mail or in person.

(i) Payment of Fees.

(1) No later than seven calendar days after filing by fax, the filing party must pay the required filing fee and provide a copy of the fax filing cover sheet.

(2) The Clerk of the Court may decline to process a faxed document until receiving the required filing fee, and the Court shall withhold the entry of judgment pending receipt of such fees.

(3) If any required fee is not received by the Court within seven calendar days after the filing by fax, the filing shall be voidable and no further notice need be given any party.

(j) Filing of Original. The original need not be filed, unless otherwise ordered by the Court or directed by the Clerk of the Court.

(k) Retention of Original. If filing of the original is not required, the sender must retain the original, physically-signed document in his or her possession or control.

(l) Photocopying Charges. The sender is responsible for all photocopying charges associated with processing any document filed by fax transmission.

(m) Transmission Error. If an error occurs in any fax transmission, the Clerk shall not accept or note the document as filed until a corrected, acceptable document is received.

(n) Notice of Transmission Error; Risk of Using Fax. If the receiver discovers or suspects a transmission error, the receiver shall notify the sender as soon as possible. The sender bears the risk of using fax transmission to convey any document to the Court. The potential receiver bears any risk of receiving any document by fax transmission from the Court.

(o) Nunc Pro Tunc Filing. If the attempted fax transmission is not accepted as filed with the Court because of a transmission error or other deficiency, the sending party may move acceptance nunc pro tunc by filing a written motion with the Court. The motion shall be accompanied by the activity report or other documentation to verify the attempted transmission. The Court, in the interest of justice and upon the submission of appropriate documentation, may entertain the motion and hold a hearing if the Court so chooses.

(p) Fax Receipt and Transmission; Fees. The Clerk may send or receive fax transmissions involving court-related business.

LR Gen P 5.05. Filing and Service of Documents in Civil Actions by Fax Transmission.

(a) Method of Filing. A party may file any document in a civil action, other than a complaint or petition, by fax transmission. The Clerk shall accept the document as filed if the filing and the document comply with these and other applicable rules and statutes.

(b) Service. Service of any document in a civil action, other than original process, may be made by fax transmission subject to the provisions of these rules, other applicable rules and statutes, and Fed. R. Civ. P. 5(b).

(c) When Service Complete. Service by fax is complete upon receipt of the entire document by the receiver's fax machine.

(d) Proof of Service. Where service is made by fax transmission, proof of service shall be made by affidavit of the person making service or by certificate of an attorney. Attached to such affidavit or certificate shall be a copy of the sender's fax machine transmission record.

Service by Electronic Means.

LR Gen P 5.06. General.

(a) Service by Fax: The Court authorizes the service of court orders and notices by fax when the parties have expressly consented to the service in writing.

(b) Electronic Service through CM/ECF: When a document is filed electronically, CM/ECF sends a Notice of Electronic Filing (NEF) to all electronic filers signed up for 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, but upon consent of the person served, service of all other case documents may be accomplished electronically.¹ See section 9 of this Court's Administrative Procedures for Electronic Filing for details on electronic service through CM/ECF.

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.”

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 shall 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.

Contact with Jurors.

LR Gen P 47.01. Contact with Jurors.

No party, or a party's agent or attorney, shall communicate or attempt to communicate with any member of the jury regarding the jury's deliberations or verdict without obtaining a court order allowing such communication.

Entry of Judgments.

LR Gen P 58.01. Entry of Judgments and Orders.

Except for good cause, no judgment or order prepared by the parties may be presented for entry unless it bears the signature of all counsel and unrepresented parties. This rule does not apply to judgments or orders drawn or prepared by the Court. When counsel or unrepresented parties responsible for the preparation and presentation of a judgment or order unreasonably delay or withhold its presentation, the Court, upon determining that the delay has been unreasonable, may proceed to enter such judgment or order.

Bonds.

LR Gen P 65.01. Approval of Bonds by the Clerk.

Except in criminal cases, or where another procedure is prescribed by law, the Clerk may approve bonds without an order if:

- (a) the amount of the bond has been fixed by prior order, local rule, or statute; and
- (b) the bond is secured by:
 - (1) the deposit of cash or obligations of the United States,
 - (2) the guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury, or
 - (3) the guaranty of a qualified property owner when the guaranty is accompanied by an acceptable certificate of justification.

Principal Office; Points of Holding Court; and Sessions of the Court.

LR Gen P 77.01. Principal Office.

The headquarters of the United States District Court for the Northern District of West Virginia and of the Clerk's Office is located in the United States Courthouse, Wheeling, West Virginia. The mailing address is P.O. Box 471 Wheeling, WV 26003

LR Gen P 77.02. Points of Holding Court.

The Northern District of West Virginia is composed of thirty-two counties. Each of these counties is assigned to one of four points of holding court. Each point of holding court is given the name of the city at the point of holding court where the Court and offices of its Clerk are located. The addresses, fax numbers and phone numbers of points of holding court offices, and counties comprising each point of holding court are as follows:

<u>Point of Holding Court</u>	<u>Address/Telephone/Fax</u>	<u>Counties</u>
<u>Clarksburg</u>	<p><u>Street address:</u> Federal Building 500 West Pike Street Room 301 Clarksburg, WV 26301</p> <p><u>Mailing address:</u> P.O. Box 2857 Clarksburg, WV 26302 304-622-8513 (Fax) 304-623-4551</p>	Braxton, Calhoun, Doddridge, Gilmer, Harrison, Marion, Monongalia, Pleasants, Preston, Ritchie, and Taylor
<u>Elkins</u>	<p><u>Street address:</u> Federal Building 300 Third Street Elkins, WV 26241</p> <p><u>Mailing address:</u> P.O. Box 1518 Elkins, WV 26241 304-636-1445 (Fax) 304-636-5746</p>	Barbour, Grant, Hardy, Lewis, Pendleton, Pocahontas, Randolph, Tucker, Upshur and Webster
<u>Martinsburg</u>	<p><u>Street address:</u> Federal Building 217 West King Street Martinsburg, WV 25401</p> <p><u>Mailing address:</u> 217 W. King St., Room 207 Martinsburg, WV 25401 304-267-8225 (Fax) 304-264-0434</p>	Berkley, Hampshire, Jefferson, Mineral, and Morgan
<u>Wheeling</u>	<p><u>Street address:</u> Federal Building 1125 Chapline Street Room 247 Wheeling, WV 26003</p> <p><u>Mailing address:</u> P.O. Box 471 Wheeling, WV 26003 304-232-0011 (Fax) 304-233-2185</p>	Brooke, Hancock, Marshall, Ohio, Tyler and Wetzel

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 in the 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 79.01. Exhibits.

(a) Custody and Disposition of Exhibits.

(1) Paper Exhibits. After being marked for identification, all paper exhibits admitted in evidence shall be placed in the custody of the Clerk until the transcript has been completed and the record has been submitted to the United States Court of Appeals for the Fourth Circuit. Sixty days following submission of the record on appeal, the Clerk shall place such exhibits in the custody of the attorney or party producing them and the attorney or party shall execute a receipt therefor to be filed by the Clerk.

(2) Nonpaper Exhibits.

(i) After being marked for identification, all nonpaper exhibits admitted in evidence shall be placed in the custody of the Clerk through the conclusion of a hearing or trial. Upon conclusion of the hearing or trial, the Clerk shall place such exhibits in the custody of the attorney

or party producing them, and the attorney or party shall execute a receipt therefor to be filed by the Clerk.

(ii) A party or attorney who retains custody of a nonpaper exhibit shall make it available to this Court or any appellate court and shall grant the reasonable request of any party to examine or reproduce the exhibit for use in the proceeding.

(b) Custody of Sensitive Exhibits. Sensitive exhibits shall include, but are not necessarily limited to, controlled substances, weapons, ammunition, real or counterfeit currency, exhibits of a pornographic nature, and articles of high monetary value. Sensitive exhibits offered or received in evidence shall be maintained in the custody of the Clerk during the course of the hearing or trial. Following the return of a verdict in a jury case, the conclusion of a hearing, or the conclusion of a trial, and after the case is timely disposed of by the Court, sensitive exhibits shall be returned to the party entitled thereto. When the government is the party entitled thereto, the government can, at the conclusion of all the related cases, request that the United States Marshals Service destroy the evidence.

A party or attorney who retains custody of a sensitive exhibit shall make it available to this Court or any appellate court and shall grant the reasonable request of any party to examine or reproduce the exhibit for use in the proceeding.

(c) Alternative Procedures for Custody and Disposition of Exhibits. In its discretion on a case-by-case basis, the Court may provide the Clerk with alternative procedures for custody and instructions for disposition of specific exhibits.

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. However, the Clerk may permit temporary removal of papers by 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.

Attorneys; Representation of Parties; Pro Se Appearances; and Law Students.

LR Gen P 83.01. Permanent Members of Bar of Court.

Any person admitted to practice before the Supreme Court of Appeals of West Virginia and in good standing as a member of its bar is eligible for admission as a permanent member of the bar of this Court. An eligible attorney may be admitted as a permanent member of the bar of this Court upon motion of a permanent member who shall sign the register of attorneys with the person admitted. If the motion for admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorneys' register, and pay the admission fee.

Any attorney employed by the United States Attorney or the Federal Public Defender for this judicial district must qualify as a permanent member of the bar of this Court within one year of his or her employment. Until so qualified, the attorney may appear and practice as a visiting attorney under the sponsorship of the appointing officer.

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 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) upon providing this Court a verified statement of application for pro hac vice admission listing:

(i) the action, suit, proceeding or other matter that is the subject of the application;

(ii) the name, address and telephone number of the registration or disciplinary agency of all state courts, the District of Columbia or of the country in which such person is admitted;

(iii) the name and address of the member of the West Virginia State Bar who will be a responsible local attorney in the matter;

(iv) all matters before West Virginia tribunals or bodies in which such person is or has been involved in the preceding twenty-four months, unless such person is admitted to practice in West Virginia;

(v) all matters before West Virginia tribunals or bodies in which any member of applicant's firm, partnership, corporation or other operating entity is or has been involved in the preceding twenty-four months, unless such person is admitted to practice in West Virginia;

(vi) a representation by the applicant for each state, the District of Columbia or any other country where said applicant has been

admitted to practice, stating that the applicant is in good standing with the bar of every such jurisdiction and that he or she has not been disciplined in any such jurisdiction within the preceding twenty-four months;

(vii) an agreement to comply with all laws, rules and regulations of West Virginia state and local governments, where applicable, including taxing authorities and any standard for pro bono civil and criminal indigent defense legal services; and

(2) upon payment of a fee established by the Court and paid to the Clerk of Court for the United States District Court for the Northern District of West Virginia, if like courtesy or privilege is extended to members of the West Virginia State Bar in such other jurisdiction.

(b) Responsible Party: The responsible party of the local attorney to be associated with the applicant shall be as follows:

The applicant shall be associated with an active member in good standing of the state bar, having an office for the transaction of business within the State of West Virginia, who shall be a responsible local attorney in the action, suit, proceeding or other matter that is subject of the application. Service of notices and other papers upon such responsible local attorney shall be binding upon the client and upon such person. The local attorney shall be required to sign all pleadings and affix his or her West Virginia State Bar identification number thereto and to attend all hearings, trials or proceedings actually conducted before the judge, tribunal or other body of the State of West Virginia for which the applicant has sought admission pro hac vice. The local attorney shall further attend the

taking of depositions and other actions that occur in the proceedings that are not actually conducted before the judge, tribunal or other body of the State of West Virginia for which the applicant has sought admission pro hac vice and shall be a responsible attorney in the matter in all other respects. With prior permission of the Court, local counsel will not be required to attend routine court hearings or proceedings. To be a responsible local attorney, the local attorney must maintain an actual physical office equipped to conduct the practice of law in the State of West Virginia, being the primary office from which the responsible local attorney practices law on a daily basis. The responsible local attorney shall evidence his or her agreement to participate in the matter by his or her endorsement upon the verified statement of application, or by written statement attached to the application.

(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.

LR Gen P 83.03. Representation of Parties and Pro Se Appearances.

Every party to proceedings in this Court, except parties appearing pro se, shall be represented by a permanent member of the bar of this Court and may be represented by a visiting attorney as provided in LR Gen P 83.02. Although the United States Attorney may be associated with other government attorneys in proceedings involving the government, the United States Attorney (except in student loan collection cases), in addition to other government attorneys, shall sign all papers filed and served by the United States. All papers involving the government may be served on the United States Attorney in accordance with the service requirements of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. Parties appearing pro se shall, at their first

appearance, file their phone numbers, and complete names and addresses where all papers may be served upon them.

No attorney who has entered an appearance in any civil or criminal action shall withdraw the appearance or have it stricken from the record, except by order.

LR Gen P 83.04. Legal Assistance by Law Students.

(a) Appearance on Behalf of Indigent. With the written consent of an indigent and his or her attorney of record, an eligible law student may appear on behalf of that indigent. With the written consent of the United States Attorney or his or her representative, an eligible law student may also appear on behalf of the United States. With the written consent of the Attorney General of the State of West Virginia or his or her representative, an eligible law student may appear on behalf of the State of West Virginia. In each case in which an eligible law student appears, the parties shall file the consent with the Clerk.

An eligible law student may assist in the preparation of pleadings, briefs, and other documents to be filed in this Court, but such documents must be signed by the attorney of record. An eligible law student may also participate in hearings, trials, and other proceedings with leave of Court, but only in the presence of the attorney of record. The attorney of record shall assume professional responsibility for the law student's work. The attorney of record shall be familiar with the case and be prepared to supplement or correct any written or oral statement made by the law student.

(b) Eligibility to Appear. To be eligible to appear pursuant to this rule, the law student must:

- (1) be enrolled in a law school approved by the American Bar Association;

- (2) have successfully completed legal studies for at least four semesters, or the equivalent if the school is on some basis other than a semester basis;
- (3) be certified by the dean of his or her law school as being of good character and competent legal ability. The dean's certification shall be filed with the Clerk. This certification may be withdrawn by the dean at any time without notice or hearing and without any showing of cause by notifying the Clerk in writing, or it may be terminated by the Court at any time without notice of hearing and without any showing of cause. Unless withdrawn or terminated, the certification shall remain in effect for eighteen months after it has been filed or until the law student has been admitted as a permanent member of the bar of this Court, whichever occurs first;
- (4) certify in writing that he or she has read the Rules of Professional Conduct as adopted by the Supreme Court of Appeals of West Virginia;
- (5) be introduced to the Court by a permanent member of the bar of this Court; and
- (6) neither ask for nor receive any compensation or remuneration of any kind for services from the party assisted, but this shall not prevent an attorney, legal services program, law school, public defender agency, the State of West Virginia, or the United States from paying compensation to the law student, nor from making appropriate charges for such services.

Conduct and Examination of Witnesses.

LR Gen P 84.01. Ethical Considerations.

In all appearances, actions and proceedings within the jurisdiction of this Court, attorneys shall conduct themselves in accordance with the Rules of Professional Conduct and the Standards of Professional Conduct adopted by the Supreme Court of Appeals of West Virginia, and the Model Rules of Professional Conduct published by the American Bar Association, and shall be subject to the statutes, rules and orders applicable to the procedures and practice of law in this Court. These rules provide minimal standards for the conduct of attorneys and the Court encourages attorneys to conform their conduct to the highest ethical standards.

Judges and others serving in a judicial capacity are expected to comply with the Code of Conduct for United States Judges adopted by the Judicial Conference of the United States. Judiciary employees of this Court shall comply with the Code of Conduct for Judicial Employees, also adopted by the Judicial Conference.

LR Gen P 84.02. Bias and Prejudice.

The United States District Court for the Northern District of West Virginia aspires to achieve absolute fairness in the determination of cases and matters before it and expects the highest standards of professionalism, human decency, and considerate behavior toward others from lawyers and court personnel, as well as from all witnesses, litigants, and other persons who come before it. As to matters in issue before the Court, conduct and statements toward one another must be without bias with regard to such factors as gender, race, ethnicity, religion, handicap, age, and sexual orientation when such conduct or statements bear no reasonable relationship to a good faith effort to argue or present a

position on the merits. Judicial officers must ensure that appropriate action is taken to preserve a neutral and fair forum for all persons. Nothing in this local rule, however, is intended to infringe unnecessarily or improperly upon the otherwise legitimate rights, including the right of freedom of speech, of any person, nor to impede or interfere with the advocacy of causes and positions by lawyers and litigants.

LR Gen P 84.03. Addressing the Court; Examination of Witnesses.

Attorneys and pro se litigants must stand and speak clearly when addressing the Court. Only one attorney for each party may participate in examination and cross-examination of a witness. With the Court's permission, the attorney may approach a witness to present or inquire about an exhibit.

Photographing and Broadcasting Court Proceedings, Electronic Equipment.

LR Gen P 85.01. Photography in and Broadcasting from Courtroom.

The taking of photographs in the courtroom or in the corridors immediately adjacent during judicial proceedings or during any recess, and the transmitting or sound recording of proceedings for broadcast by radio or television, is not permitted. Upon approval of the Court and under its supervision, non-judicial proceedings designed and conducted as ceremonies, such as administering oaths of office to appointed officials of the Court, presentation of portraits, naturalization proceedings, and similar ceremonial occasions, may be photographed in or broadcast from the courtroom.

LR Gen P 85.02. Impoundment of Equipment.

The United States Marshal, Deputy United States Marshal or Court Security Officer may impound any camera, recording, broadcasting and other related equipment brought into the courtroom or the adjacent corridors in violation of LR Gen P 83.08. The impounded

equipment shall be returned to its owner or custodian after the proceedings have concluded.

LR Gen P 85.03. Electronic Equipment in the Courthouse.

Attorneys are permitted limited use of electronic devices, such as cellular telephones, pagers, PDAs, Blackberrys, and laptop computers, in the courthouses within the District. The recording of any audio or video, or the taking of any photographs is not permitted while in the courthouse. Cellular telephones and pagers are to be programmed so as to not emit any audible noise while in the courtroom. PDAs, Blackberrys and laptop computers may be used to assist attorneys in data entry or data display in furtherance of courtroom proceedings. The use of electronic devices for purposes of transmitting or receiving is not permitted while in the courtrooms. The use of electronic devices shall not be disruptive to court proceedings. Electronic devices of any kind are not permitted in the grand jury rooms. Each judicial officer may modify this rule as the circumstances warrant.

Social Security Cases.

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.

(b) Contents of Complaints: Complaints filed pursuant to Section 205(g) of the Social Security Act, as amended, 42 U.S.C. § 405(g), shall contain, in addition to the information required by Fed. R. Civ. P. 8(a), the following:

(1) in cases involving claims for retirement, survivor's, disability, and health insurance benefits, the Social Security number of the worker on whose wage record the application for benefits was filed; and

(2) in cases involving claims for supplemental security income benefits, the Social Security number of the plaintiff.

LR Gen P 86.02. Social Security Appeals.

(a) Referral: Upon receipt of a properly completed complaint and either (1) the full filing fee or (2) an Application for Leave to Proceed Without Prepayment of Fees, pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 73, actions filed pursuant to 42 U.S.C. § 405(g) will be referred to the United States Magistrate Judge designated by Standing Order No. 2 who is designated and authorized to consider the record and do all things proper to recommend disposition of any dispositive motions filed in the action and to rule upon any nondispositive motions, including, without limitation, conducting a hearing on the motions, if necessary, and entering into the record a written order setting forth the disposition of the motions or recommendation for disposition, as the case may be.

(b) Answer: Within sixty days after the date of service of the complaint, the defendant shall file an answer and a complete copy of the record of the administrative proceedings and serve a copy of the same on plaintiff.

(c) Plaintiff's Brief in Support: Within thirty days after the defendant has filed an answer and a complete copy of the administrative record, the plaintiff shall file a brief in

support of his or her claim(s) for relief. The plaintiff shall serve copies of his or her brief upon the United States Attorney's Office.

(d) Defendant's Brief in Support: Within thirty days after the plaintiff's brief is filed, the defendant shall file a brief and serve copies upon plaintiff. The defendant is specifically directed to address **all of the contentions and arguments** made by the plaintiff in the same order in which the plaintiff has stated them in his or her brief.

(e) Page Limits: The briefs shall not exceed a total of fifteen pages, except as approved by the Court upon motion. **Any motion to exceed the court's page limit shall be filed no later than one week before the deadline for the submission of the brief.** The Court will grant an extension only on the showing of good cause. If a party desires an extension of time within which to respond, the moving party must file a motion for extension before the date upon which the brief or response is due. The case shall be deemed submitted as of the date on which the defendant's reply brief is filed.

(f) Extension of Time: If the Court, in response to a party's motion, grants an extension of time for any pleading or brief, the opposing party is automatically granted an extension for the same amount of time to file a responsive pleading or brief.

(g) References to the Administrative Record: Claims or contentions by the plaintiff alleging deficiencies in the Administrative Law Judge's (hereinafter ALJ) consideration of claims or alleging mistaken conclusions of fact or law and contentions or arguments by the Commissioner, supporting the ALJ's conclusions of fact or law **must include a specific reference, by page number, to the portion of the record** that (1) recites the ALJ's consideration or conclusion and (2) supports the party's claims, contentions or arguments.

(h) Date Received: The time limitations set forth above shall not be altered except as set forth in LR Civ P 16.01(f). All dates for submissions, deliveries, and filings refer to the date the materials must actually be received, not the mailing date.

Court Library.

LR Gen P 87.01. Court Library.

Attorneys and other persons authorized by the Court may use the Court's library. Library books may not be removed from the Court's premises. Persons using library books shall be responsible for their care and preservation and shall return them to their proper places in the library.

Scheduling Conflicts and Requests for Continuance.

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 a scheduling conflict with West Virginia state courts exists. 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

II. LOCAL RULES OF CIVIL PROCEDURE

Summons.

LR Civ P 4.01. Waiver of Service.

A plaintiff who intends to obtain service of the complaint on a defendant under the provisions of Fed. R. Civ. P. 4(d)(2) shall, within ten business days of filing the complaint, mail a copy of the notice and request via first-class mail or other reliable means to the defendant and file the original thereof.

If a plaintiff fails to mail and file the notice and request within the period specified, service of the complaint shall be effected by means other than by waiver of service unless otherwise ordered.

A plaintiff who mails a notice and request under the provisions of Fed. R. Civ. P. 4(d)(2) shall allow the defendant not less than thirty days nor more than forty-five days from the date on which the notice and request is sent within which to return the waiver of service. If the defendant is addressed outside any judicial district of the United States, a plaintiff who mails a notice and request under the provisions of Fed. R. Civ. P. 4(d)(2) shall allow the defendant not less than sixty days nor more than seventy-five days from that date within which to return the waiver of service.

The plaintiff shall file the original and one copy of the waiver of service within five days after its return.

Court Filings.

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

(a) Discovery Not Filed; Certificate of Service Filed: Parties shall not file disclosures pursuant to Fed. R. Civ. P. 26(a)(1), (2) and (3), 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, or answers and responses thereto shall unless ordered or required under these Local Rules of Civil Procedure. Parties shall file only certificates of service of discovery materials.

(b) Custodial Responsibility: Unless otherwise stipulated or ordered, the party taking a deposition or obtaining any material through discovery is responsible for its custody, preservation and delivery to the Court if needed or ordered; this responsibility shall not terminate upon dismissal of any party while the action is still pending in the District or appellate courts. The custodial responsibility of the dismissed party may be discharged by stipulation of the parties to transfer the custody of the discovered material to one or more of the remaining parties. If for any reason a party or concerned citizen believes that any of the named documents should be filed, that party or citizen may request, ex parte, that the document be filed, stating the reasons therefor. The Court may also order filing sua sponte. A party seeking relief under Fed. R. Civ. P. 26(c) or 37, shall file copies of the relevant portions of disputed documents with any motion. If the moving party under Fed. R. Civ. P. 56 or the opponent relies on discovery documents, the moving party shall file copies of the pertinent portions with the motion or opposition.

(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. 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.

Time.

LR Civ P 6.01. Definitions.

For the purpose of these Local Rules of Civil Procedure:

(a) “Judicial officer” means a district judge or, when authorized by a district judge, a statute, the Federal Rules of Civil Procedure, or these Local Rules of Civil Procedure, a magistrate judge.

(b) “Business days” means days counted under Fed. R. Civ. P. 6 when the period of time prescribed or allowed under the Federal Rules of Civil Procedure is less than eleven days.

(c) “Days,” when not preceded by the adjective “business,” means days counted under Fed. R. Civ. P. 6 when the period of time prescribed or allowed under the Federal Rules of Civil Procedure is eleven or more days.

Filings.

LR Civ P 7.01. Stipulations.

Unless otherwise ordered, stipulations under the Federal Rules of Civil Procedure and these Local Rules of Civil Procedure must be in writing, signed by the parties making

them or their counsel, and promptly filed. With electronic filings, each party or attorney may sign via the s/ signature consistent with section 15 of this Court's Administrative Procedures for Electronic Filing.

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 font or Courier New font. The font size must be 12 point proportionally spaced type or 11 point nonproportionally spaced type. Footnotes and indented quotations may be single-spaced and footnote text shall be no smaller than 11 point proportionally spaced or ten point nonproportionally spaced type.

Nothing in this rule prevents a party from filing a memorandum in support of a nondispositive motion. Examples of nondispositive motions for which a supporting memorandum is not required unless ordered are motions for enlargement or extensions of time under Fed. R. Civ. P. 6, or motions to amend clerical errors in pleadings. Counsel

shall file the original plus two copies. Motions for summary judgment shall include or be accompanied by a short and plain statement of facts.

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

(1) Original Memoranda:

(i) Traditional Filing: When not filing electronically in CM/ECF, parties shall file the original and two copies of the memoranda and other materials in response to motions, and serve opposing counsel and unrepresented parties within 14 days from the date of service of the motion, as required by Fed. R. Civ. P. 5(b).

(ii) Electronic Filing: When filing in CM/ECF, the filer must provide any non-CM/ECF filer with the document according to this Rule. CM/ECF filers need not, however, provide paper copies to other CM/ECF filers, as the document will be served electronically.

(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.

(i) Traditional Filing: When filing in paper and not filing in CM/ECF, parties shall file the original and two copies of the reply memoranda and serve opposing counsel and unrepresented parties within 7 business days from the date of service of the memorandum in response to the motion.

(ii) Electronic Filing: When filing in CM/ECF, the filer must provide any non-CM/ECF filer with the document according to these Rules.

CM/ECF filers need not, however, provide paper copies to other CM/ECF filers, as the document will be served electronically. 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.

(3) Surreply and Surrebuttal: Parties shall not file surreply memoranda except by leave of court.

(4) Time Limits: Judicial Officer Discretion: The judicial officer to whom the motion is addressed may modify the times for serving memoranda.

(5) Courtesy Copy: When electronically filing a memorandum with the clerk's office, the filing party must file a courtesy copy of the memorandum to the court if the memorandum, together with documents in support thereof, is 50 or more pages.

(c) Referral to Magistrate Judge. All nondispositive motions and any dispositive motion may be referred to a magistrate judge by the district judge assigned the case.

(d) Action on Motions. All motions shall be decided expeditiously to facilitate compliance with the deadlines established by the scheduling order. Failure of a judicial officer to rule on a dispositive motion may be good cause for modification of a scheduling order pursuant to LR Civ P 16.01(f)(1) upon motion of a party.

District judges may impose time limits on referred motions and monitor those time limits.

Answer.

LR Civ P 12.01. Extensions of Answer Date.

Unless otherwise ordered, the time to answer or otherwise respond to a complaint may be extended by stipulation. For purposes of LR Civ P 16.01(a) only, the stipulation shall constitute an appearance by any defendant who is a party to the stipulation. An extension by stipulation will not affect other deadlines established by the Federal Rules of Civil Procedure, these Local Rules of Civil Procedure, or the Court.

LR Civ P 12.02. Motions to Dismiss.

Motions to dismiss shall be given priority status provided they are designated prominently as a motion to dismiss and filed as a separate pleading.

Conferences.

LR Civ P 16.01. Scheduling Conferences.

(a) Convening of Scheduling Conferences; Transferred Actions.

Except in actions exempted by paragraph (g) of this rule or by standing order, a judicial officer shall, unless the Court determines otherwise, convene a scheduling conference as soon as practicable, but in any event, within eighty days after the appearance of a defendant and within 110 days after the complaint has been served on a defendant.

A judicial officer shall establish the date, time and place of the scheduling conference. As soon as practicable, but in no event, later than five business days after the appearance of a defendant, the Clerk shall mail a notice of the conference to all counsel then of record and to each then unrepresented party for whom an address is available from the record. The notice shall also establish the date by which a meeting of the parties must

be held pursuant to Fed. R. Civ. P. 26(f) and paragraph (b) of this rule, and the date by which a written report on the meeting of the parties must be filed pursuant to Fed. R. Civ. P. 26(f) and paragraph (c) of this rule.

In a case removed or transferred to this Court, a judicial officer shall convene a scheduling conference as soon as practicable, but in no event, later than sixty days after removal or transfer. The Clerk shall mail a notice of the conference to all counsel then of record and to each then unrepresented party for whom an address is available from the record no later than five business days after the case is removed or transferred.

(b) Obligation of the Parties to Meet. As soon as practicable, and in any event, at least twenty-one days before the date set for the scheduling conference, the parties shall meet in person or by telephone to discuss and report on all Fed. R. Civ. P. 16 and 26(f) matters and to:

- (1) consider, consistent with paragraph (d) of this rule, whether the case is complex and appropriate for monitoring in an individualized and case-specific manner through one or more case-management conferences and, if applicable, to propose for the Court's consideration three alternative dates and times for the first conference;
- (2) agree, if possible, upon the disputed facts that have been alleged with particularity in the pleadings;
- (3) consider consenting to trial by a magistrate judge;
- (4) consider alternative dispute resolution processes such as that in LR Civ P 16.05; and

(5) prepare an agenda of matters to be discussed at the scheduling conference.

Counsel and all unrepresented parties who have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, agreeing on matters to be considered at the scheduling conference, and considering a prompt settlement or resolution of the case.

(c) Written Report of Meeting; Canceled Scheduling Order. Counsel and all unrepresented parties who were present or represented at the meeting are jointly responsible for filing a written report on their meeting no later than fourteen days before the date set for the scheduling conference.

Any matters on which the parties differ shall be set forth separately and explained in the parties' meeting report. The parties' proposed pretrial schedule and plan of discovery and disclosures shall advise the Court of their best estimates of the time needed to accomplish specified pretrial steps. The parties' meeting report shall be considered by the judicial officer as advisory only.

If, after the date fixed for filing the written report, the judicial officer determines that the scheduling conference is not necessary, it may be canceled and the scheduling order may be entered.

(d) Conducting Scheduling Conferences. Except in a case in which a scheduling conference has not been scheduled pursuant to order by a judicial officer or has been canceled pursuant to paragraph (c) of this rule, a judicial officer shall convene a scheduling conference in person, by telephone, or by video conference, within the mandatory time frame specified in paragraph (a) of this rule regardless of whether the parties have met

pursuant to paragraph (b) of this rule or filed a written report pursuant to paragraph (c) of this rule. At the scheduling conference, the judicial officer shall consider any written report filed by the parties and discuss time limits and other matters counsel were obligated to consider in their meeting and that may be addressed in the scheduling order.

At or following the scheduling conference, if one is held, or as soon as practicable after the date fixed for filing the written report if the scheduling conference is canceled, the judicial officer shall determine whether the case is complex or otherwise appropriate for careful and deliberate monitoring in an individualized and case-specific manner. The judicial officer shall consider assigning in the scheduling order any case so categorized to a case-management conference or series of conferences under LR Civ P 16.02. If the case is so assigned, the scheduling order, notwithstanding paragraph (e) of this rule, may be limited to establishing time limits and addressing other matters that should not await the first case-management conference. The factors to be considered by the judicial officer in determining whether the case is complex include:

- (1) the complexity of the issues, the number of parties, the difficulty of the legal questions and the uniqueness of proof problems;
- (2) the amount of time reasonably needed by the parties and their attorneys to prepare the case for trial;
- (3) the judicial and other resources required and available for the preparation and disposition of the case;
- (4) whether the case belongs to those categories of cases that:
 - (A) involve little or no discovery,
 - (B) ordinarily require little or no additional judicial intervention, or

(C) generally fall into identifiable and easily managed patterns;

(5) the extent to which individualized, case-specific treatment will promote the goal of reducing cost and delay; and

(6) whether the public interest requires that the case receive more intense judicial attention.

(e) Scheduling Orders. Following the scheduling conference, if one is held, or as soon as practicable after the date fixed for filing the written report if the scheduling conference is canceled, but in any event, within ninety days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant, the judicial officer shall enter a scheduling order pursuant to Fed. R. Civ. P. 16(b). The order shall advise the parties that the term “complete discovery” as used in Fed. R. Civ. P. 16(b) means that all discovery, objections, motions to compel and all other motions and replies relating to discovery must be filed in time for the parties objecting or responding to have opportunity under the Federal Rules of Civil Procedure to make responses. Unless otherwise ordered, the term “all discovery” as used in the preceding definition of “complete discovery” includes the disclosures required by Fed. R. Civ. P. 26(a)(1) and (2) and Fed. R. Civ. P. 26(a)(5), but not the disclosures required by Fed. R. Civ. P. 26(a)(3).

(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: A party or parties requesting 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.

(2) Subject to subparagraph (3), stipulations to modify disclosure or discovery procedures or limitations will be valid and enforced if they are in writing, signed by the parties making them or their counsel, filed promptly, and do not affect the trial date or other dates and deadlines specified in subparagraph (1).

(3) A private agreement to extend discovery beyond the discovery completion date in the scheduling order will be respected by the Court if the extension does not affect the trial date or other dates and deadlines specified in subparagraph (1). A discovery dispute arising from a private agreement to extend discovery beyond the discovery completion date need not, however, be resolved by the Court.

(g) Categories of Actions Exempted. In addition to those actions and proceedings identified in Fed. R. Civ. P. 81 to which the Federal Rules of Civil Procedure do not apply, the following categories of actions are exempted from the requirements of Fed. R. Civ. P. 16(b), 26(a)(1)-(4) and 26(f), and of the Local Rules of Civil Procedure relating thereto unless otherwise ordered:

(1) habeas corpus cases and motions attacking a federal sentence;

- (2) procedures and hearings involving recalcitrant witnesses before federal courts;
- (3) actions for injunctive relief;
- (4) review of administrative rulings;
- (5) Social Security cases;
- (6) prisoner petitions pursuant to 42 U.S.C. § 1983 and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971);
- (7) condemnation actions;
- (8) bankruptcy proceedings appealed to this Court;
- (9) collection and forfeiture cases in which the United States is plaintiff and the defendant is unrepresented by counsel;
- (10) Freedom of Information Act proceedings;
- (11) post-judgment enforcement proceedings and debtor examinations;
- (12) enforcement or vacation of arbitration awards;
- (13) civil forfeiture actions;
- (14) student loan collection cases;
- (15) actions that present purely legal issues, require no resolution of factual issues, and that may be submitted on the pleadings, motions and memoranda of law; and
- (16) such other categories of actions as may be exempted by standing order.

LR Civ P 16.02. Case-Management Conferences in Complex Cases.

(a) Conduct of Case-Management Conferences. Case-management conferences shall be presided over by a judicial officer who, in furtherance of the scheduling order required by LR Civ P 16.01(e), may:

- (1) explore the possibility of settlement;
- (2) identify the principal issues in contention;
- (3) prepare a specific discovery schedule and plan that may:
 - (A) identify and limit the discovery available to avoid unnecessary, unduly burdensome or expensive discovery,
 - (B) sequence discovery into two or more stages, and
 - (C) include time limits for the completion of discovery;
- (4) establish deadlines for filing motions and a schedule for their disposition;
- (5) consider the bifurcation of issues for trial as set forth in Fed. R. Civ. P. 42(b); and
- (6) explore any other matter appropriate for the management of the case.

(b) Obligation of Counsel to Confer. The judicial officer may require counsel and unrepresented parties to confer before a case-management conference and prepare a statement containing:

- (1) an agenda of matters that any party believes should be addressed at the case-management conference; and
- (2) a report of whether the case is progressing within the allotted time limits and in accord with specified pretrial steps.

This statement is to be filed no later than three business days before the case-management conference.

(c) Number of Case-Management Conferences and Orders. The judicial officer may convene as many case-management conferences as appropriate.

After a case-management conference, the judicial officer shall enter an order reciting the action taken. The order shall control the subsequent course of the action and may be modified in the same manner as a scheduling order under LR Civ P 16.01(f).

LR Civ P 16.03. Pretrial Conferences in Non-Complex Cases.

(a) Convening Pretrial Conferences. In addition to any scheduling conference and the final pretrial conference, the judicial officer to whom the case is assigned for trial may convene as many pretrial conferences as the judicial officer determines will reduce cost and delay in the ultimate disposition of the case and may require the parties to meet or confer in advance of a pretrial conference.

(b) Pretrial Conference Orders. After a pretrial conference, the judicial officer shall enter an order reciting the action taken. The order shall control the subsequent course of the action and may be modified in the same manner as a scheduling order under LR Civ P 16.01(f).

LR Civ P 16.04. Final Conferences; Pretrial Order.

(a) Obligation of Counsel to Meet; Pretrial Disclosures. Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, counsel and unrepresented parties shall meet no later than twenty-one days before the date of the final pretrial conference to conduct settlement negotiations. Lead counsel for the plaintiff first named in the complaint shall take the initiative in scheduling the meeting. If the action is not

settled, and if there is no order or stipulation to the contrary, counsel and unrepresented parties shall make all Fed. R. Civ. P. 26(a)(3) disclosures at the meeting. The parties shall prepare a proposed pretrial order for filing. Counsel and unrepresented parties must be prepared at the final pretrial conference to certify that they conducted settlement negotiations during their meeting.

(b) Proposed Pretrial Order. Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, counsel and unrepresented parties shall file, no later than three business days prior to the final pretrial conference, a proposed pretrial order setting forth:

- (1) the pretrial disclosures required by Fed. R. Civ. P. 26(a)(3) and any objections thereto;
- (2) contested issues of law requiring a ruling before trial;
- (3) a realistic, brief statement by counsel for plaintiff(s) and third-party plaintiff(s) of essential elements that must be proved to establish any meritorious claim remaining for adjudication and the damages or relief sought, accompanied by supporting legal authorities;
- (4) a realistic, brief statement by counsel for defendant(s) and third-party defendant(s) of essential elements that must be proved to establish any meritorious defense(s), accompanied by supporting legal authorities. Corresponding statements must also be included for counterclaims and cross-claims.
- (5) a brief summary of the material facts and theories of liability or defense;

- (6) a single listing of the contested issues of fact and a single listing of the contested issues of law, together with case and statutory citations;
- (7) stipulations;
- (8) suggestions for the avoidance of unnecessary proof and cumulative evidence;
- (9) suggestions concerning any need for adopting special procedures for managing potentially difficult or protracted aspects of the trial that may involve complex issues, multiple parties, difficult legal questions or unusual proof problems;
- (10) a statement of all damages claimed, including an itemized list of special damages;
- (11) a statement setting forth a realistic estimate of the number of trial days required; and
- (12) any other matters relevant for pretrial discussion or disposition, including those set forth in Fed. R. Civ. P. 16.

(c) Final Pretrial Conference. The judicial officer to whom the case is assigned for trial shall preside at the final pretrial conference.

The final pretrial conference shall be attended by unrepresented parties and by lead trial counsel for each represented party rather than “by at least one of the attorneys who will conduct the trial for each of the parties” as provided in Fed. R. Civ. P. 16(d). Individuals with full authority to settle the case for each party shall be present in person or, if permitted by the Court, immediately available by telephone.

The agenda of the final pretrial conference shall include consideration of those matters in the proposed pretrial order and any other appropriate matter, including those set forth in Fed. R. Civ. P. 16(c) and (d).

(d) Final Pretrial Order. Following the final pretrial conference, the judicial officer shall enter a final pretrial order, which shall be modified only to prevent manifest injustice.

(e) Final Settlement Conference. Unless otherwise ordered, a final settlement conference shall be held in each case.

The conference shall be conducted by the judicial officer and attended by unrepresented parties and lead trial counsel for each represented party.

Individuals with full authority to settle the case for each party shall be present in person or, if permitted by the Court, immediately available by telephone.

(f) Settlement Before Trial. All fees and juror costs may be imposed upon the parties unless counsel have notified the Court and the Clerk's Office of any settlement not later than 4:00 p.m. of the last business day before trial. The costs shall be assessed equally against the parties and their counsel unless otherwise ordered.

LR Civ P 16.05. Authority Regarding Settlement, Stipulations, and Admissions at Conferences.

At least one of the attorneys for each party and all unrepresented parties participating in any conference before trial shall have authority to make decisions as to settlement, stipulations, and admissions on all matters that the participants reasonably anticipate may be discussed.

Alternative Dispute Resolution (Mediation Program -- Settlement Week).

LR Civ P 16.06. Alternative Dispute Resolution.

(a) Settlement Week Defined. The Settlement Week mediation program is a mandatory program involving those cases selected by the assigned judicial officer. Any party may suggest mediation and may do so without disclosing the request to anyone except the presiding judicial officer.

The process involved is mediation, not arbitration or any other form of decision-making by a third party. Mediators are attorneys who have been professionally trained in mediation techniques that will enable them to assist the parties in reaching a resolution of their dispute. The mediators will have no power whatsoever to make any decisions in regard to the cases they mediate. The mediators are volunteers who are giving a substantial amount of their time to this effort. They are neutral and impartial, and will keep communications made to them by or on behalf of the parties at settlement conferences totally confidential. The identity of the mediator is not disclosed until the mediation conference commences. Parties or counsel are not permitted to contact mediators prior to the initial mediation conference nor are mediators permitted to contact parties or counsel prior to the initial mediation conference.

(b) Scheduling Mediation Conferences. After the judicial officer has determined that a case shall be mediated, an order shall be sent to all counsel of record and any unrepresented parties setting the date, time and location of the mediation conference. The order sets forth the requirements for mediation conferences.

(c) The Mediation Conference.

(1) Each settlement conference is scheduled for two hours, although there may be instances when conferences will take more or less than that amount of time. Mediators are authorized by the Court to schedule additional mediation if, in the opinion of the mediator, such might be beneficial in helping to resolve the case.

(2) While individual mediators may approach their task in somewhat different ways, and while individual cases may lend themselves to somewhat different approaches, in general the mediation process will involve a series of discussions with the mediator jointly (all parties and their counsel together) and individually (individual parties and their counsel alone).

(d) Preparation for Mediation Conference. Attendance at the mediation conference is mandatory for counsel and the parties or their representatives who have full authority to make final and binding decisions, in accordance with the order scheduling the case for mediation. All parties and their counsel shall be prepared to knowledgeably discuss the facts and issues of the case and shall participate in Settlement Week conferences in good faith.

(e) Confidentiality. Mediators shall maintain strict confidentiality with respect to all information that is communicated by the parties and their counsel in connection with the Settlement Week conferences. The only information relative to an individual conference that will be reported to the Court by the mediator will be: (1) the fact that the conference was actually held; (2) whether the mediator intends to conduct further mediation in the case in the future; and (3) whether, in the opinion of the mediator, the case should continue

routinely through the judicial process or might profit from being scheduled for a status or settlement conference before the Court. The mediator is also required to advise the Court if a representative without settlement authority attends the conference or if either party disrupts the mediation process, fails to appear or fails to negotiate in good faith.

Mediation shall be regarded as confidential settlement negotiations, subject to Rule 408 of the Federal Rules of Evidence. A mediator shall keep confidential from opposing parties information obtained in an individual session unless the party to that session or the party's counsel authorizes disclosure. A mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the dispute mediated.

(f) Immunity. A person acting as a mediator under these rules shall have immunity in the same manner and to the same extent as a judicial officer.

(g) Disqualification. Each mediator must consider disqualification as appropriate under 28 U.S.C. § 455 as if he or she were a judge or magistrate judge, other applicable law, and professional responsibility standards.

(h) Scheduling Mediation. While attempting to be helpful to all parties concerned, rescheduling of mediation conferences will be kept to a minimum due to the limited resources of the Clerks's Office and given the extensive, time-consuming task of managing mediation. The Clerk's Office shall strictly adhere to the Rules for Resolution of Court Scheduling Conflicts.

(i) Settlement Prior to Scheduled Mediation. If a case settles prior to the scheduled conference, counsel shall immediately contact the office of the presiding judge.

(j) Presence of Judicial Officer; Technical Support. Every effort shall be made to assure the presence of a judicial officer and a court reporter either in person at the site of the mediation conference or by telephone. Necessary technical support will be available so that documents can be prepared immediately, if appropriate, to memorialize any agreement that is reached between or among the parties during the settlement conference.

(k) Program Administrator. The Clerk of Court will serve as the Program Administrator.

(l) Mediation Report. Mediators must file with the Clerk's office a mediation report within 5 days of a mediation, whether the mediation did or did not result in settlement. It is the responsibility of the parties to ensure compliance with this Rule.

LR Civ P 16.07. Other Alternative Dispute Resolution Programs.

The Court may, from time to time, experiment with other forms of alternative dispute resolution including, but not limited to, early neutral evaluation, summary jury trials, mini-trials, arbitration, and other types of mediation programs.

Discovery.

LR Civ P 26.01. Control of Discovery.

(a) Initial Disclosures Under Fed R Civ P 26(a)(1). Unless otherwise ordered or stipulated by the parties, the disclosures required under Fed. R. Civ. P. 26(a)(1) shall be made no later than thirty days after the meeting required under Fed. R. Civ. P. 26(f) and LR Civ P 16.01(b). In accordance with LR Civ P 5.01, only the certificate of service is filed.

(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 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. Also note that, in accordance with LR Civ P 5.01, only the certificate of service is filed.

(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.

(d) Further Discovery. After the opportunities for discovery pursuant to paragraph (c), stipulation of the parties or order have been exhausted, any requests that the parties may make for additional depositions, interrogatories, or requests for admissions shall be made by discovery motion.

The judicial officer shall not consider any discovery motion under this rule unless it is accompanied by a certification that the moving party has made a reasonable and good-faith effort to reach agreement with counsel or unrepresented parties opposing the further discovery sought by the motion.

LR Civ P 26.02. Uniform Definitions in Discovery Requests.

(a) Incorporation by Reference and Limitations. The full text of the definitions set forth in paragraph (c) of this rule is incorporated by reference into all discovery requests under Fed. R. Civ. P. 26(a)(5), but shall not preclude:

(1) the definition of other terms specific to the particular case;

(2) the use of abbreviations; or

(3) a narrower definition of a term defined in paragraph (c).

(b) Effect on Scope of Discovery. This rule does not broaden or narrow the scope of discovery permitted by the Federal Rules of Civil Procedure or these Local Rules.

(c) Definitions. The following definitions apply to all discovery requests:

(1) “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise);

(2) “document” is synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a). A draft or non-identical copy is a separate document;

(3) “identify” when referring to a person means to give, to the extent known, the person’s full name and present or last known address. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person;

(4) “identify” when referring to documents means to give, to the extent known, the:

(A) type of document,

(B) general subject matter,

(C) author(s), addressee(s), and recipient(s), and

(D) date the document was prepared;

(5) “plaintiff,” “defendant,” a party’s full or abbreviated name, or a pronoun referring to a party means the party, and where applicable, its officers, directors, employees, and partners. This definition does not impose a discovery obligation on any person who is not a party to the case;

(6) “person” means any natural person or any business, legal or governmental entity or association; and

(7) “concerning” means referring to, describing, evidencing, or constituting.

LR Civ P 26.03. Inspection of Documents and Copying Expense.

(a) Inspection of Documents. Except as otherwise provided in an order pursuant to Fed. R. Civ. P. 26(c), all parties to an action shall be entitled to inspect documents produced by another party pursuant to Fed. R. Civ. P. 33 or 34 at the location where they are produced.

(b) Copies of Documents. Except as otherwise provided in an order pursuant to Fed. R. Civ. P. 26(c), a party who produces documents pursuant to Fed. R. Civ. P. 33 or 34 shall provide copies of all or any specified part of the documents upon the requesting party’s agreement to pay the reasonable copying costs. No party shall be entitled to obtain copies of documents produced by another party pursuant to Fed. R. Civ. P. 33 or 34 without paying the reasonable copying costs.

LR Civ P 26.04. Discovery Disputes.

(a) Objections to Disclosures or Discovery.

(1) Waiver. Objections to disclosures or discovery that are not filed within the response time allowed by the Federal Rules of Civil Procedure, the scheduling order(s), or stipulation of the parties pursuant to Fed. R. Civ. P. 29, whichever governs, are waived unless otherwise ordered for good cause shown.

(2) Claims of Privilege.

(A) Where a claim of privilege is asserted in objecting to any means of discovery or disclosure including, but not limited to, a deposition, and an answer is not provided on the basis of such assertion:

- (i) The attorney asserting the privilege shall identify the nature of the privilege (including work product) that is being claimed and, if the privilege is governed by state law, indicate the state's privilege rule being invoked and certify the attorney had reviewed each document for which privilege is asserted; and
- (ii) The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

(1) For documents:

- (a) the type of document, e.g., letter or memorandum;
- (b) the general subject matter of the document;
- (c) the date of the document; and
- (d) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate, the author of the document, the addressees of the document, and any other recipients shown in the document, and, where not apparent, the

relationship of the author, addressees, and recipients to each other;

(2) For oral communications:

(a) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication;

(b) the date and place of communication; and

(c) the general subject matter of the communication.

(B) Where a claim of privilege is asserted during a deposition, and information is not provided on the basis of such assertion, the information set forth in paragraph (a) above shall be furnished:

(i) at the deposition, to the extent it is readily available from the witness being deposed or otherwise, and

(ii) to the extent that the information is not readily available at the deposition, in writing within ten business days after the deposition session at which the privilege is asserted, unless otherwise ordered by the Court.

(C) Where a claim of privilege is asserted in response to discovery or disclosure other than a deposition, and information is not provided on

the basis of such assertion, the information set forth in paragraph (a) above shall be furnished in writing at the time of the response to such discovery or disclosure, unless otherwise ordered by the Court.

(D) A party who produces material or information without intending to waive a claim of privilege does not waive that claim under these rules or the Rules of Evidence if -- within ten days or a shorter time ordered by the Court after the producing party actually discovers that such production was made -- the producing party amends the response, identifying the material or information produced and stating the privilege asserted. If the producing party thus amends the response to assert a privilege, the requesting party must promptly return the specified material or information and any copies pending any ruling by the Court denying the privilege.

(b) Duty to Meet. Before filing any discovery motion, including any motion for sanctions or for a protective order, counsel for each party shall make a good faith effort to meet in person or by telephone to narrow the areas of disagreement to the greatest possible extent. It shall be the responsibility of counsel for the moving party to arrange for the meeting.

Interrogatories to Parties.

LR Civ P 33.01. Interrogatories.

(a) Form of Response. Each answer, statement or objection shall be preceded by the interrogatory to which it responds.

(b) Reference to Records. As permitted in Fed. R. Civ. P. 33(d), whenever a party answers any interrogatory by reference to records from which the answer may be derived or ascertained:

(1) The producing party shall make available any computerized information or summaries thereof that it either has or can adduce by a relatively simple procedure, unless these materials are privileged or otherwise not subject to discovery;

(2) The producing party shall provide any relevant compilations, abstracts, or summaries in its custody or readily obtainable, unless these materials are privileged or otherwise not subject to discovery;

(3) The documents shall be made available for inspection and copying within fourteen days after service of the answers to interrogatories or at a date agreed upon by the parties; and

(4) If a party answers an interrogatory by reference to a deposition in the action, the party shall identify the deponent and the pages of specific transcripts where the answer may be found. If a party answers an interrogatory by reference to a deposition in another action, the party shall identify the deponent, the date of deposition, the style of the action, the pages of a specific transcript where the answer may be found, and shall make the deposition available for inspection and copying.

(c) Answers to Interrogatories Following Objections. When it is ordered that interrogatories to which objections were made must be answered, the answers shall be

served within fourteen days of the order, unless the Court directs or the parties stipulate otherwise.

Production of Documents.

LR Civ P 34.01. Document Production.

(a) Form of Response. Each answer, statement, or objection shall be preceded by the request to which it responds.

(b) Objections to Document Requests.

(1) When an objection is made to any document request or subpart, it shall state with specificity all grounds for the objection. Any ground not stated in an objection within the time provided by the Fed. R. Civ. P. 34, or within any extensions of time, is waived.

(2) No part of a document request shall be left unanswered because an objection was interposed to another part of the document request.

(c) Answers to Document Request After Objections. When it is ordered that document requests to which objections were made must be answered, the answers shall be served within twenty days of the order, unless the Court directs or the parties stipulate otherwise.

Requests for Admissions.

LR Civ P 36.01. Admissions.

(a) Form of Response. Each answer, statement or objection shall be preceded by the request for admission to which it responds.

(b) Statements in Response After Objections. When it is ordered that a request for admission to which objections were made is proper, the matter shall be deemed admitted

unless, within fourteen days of the order, the party to whom the request was directed serves a statement denying the matter or setting forth the reasons why that party cannot admit or deny the matter, as provided in Fed. R. Civ. P. 36.

Sanctions.

LR Civ P 37.01. Sanctions.

Counsel and parties are subject to sanctions for failures and lack of preparation specified in Fed. R. Civ. P. 16(f) respecting pretrial conferences or orders. Counsel and parties are also subject to the payment of reasonable expenses, including attorney's fees, as provided in Fed. R. Civ. P. 37(g) for failure to participate in good faith in the development and submission of a proposed discovery plan as required by Fed. R. Civ. P. 26(f) and LR Civ P 16.01(b) and (c).

Motions to Compel.

LR Civ P 37.02. Motions to Compel.

(a) Motions to Compel: A motion to compel disclosure or discovery must be accompanied by a statement setting forth:

- (1) Verbatim each discovery request or disclosure requirement and any response thereto to which an exception is taken. If the discovery request or disclosure requirement is ignored, the movant need only file a motion to compel without setting forth verbatim the discovery request or disclosure requirement.
- (2) The specific rule, statute or case authority supporting the movant's position as to each such discovery request or disclosure requirement.

(3) The following specifics in the certification of the good faith conference required under Fed. R. Civ. P. 37:

- (i) the names of the parties who conferred or attempted to confer,
- (ii) the manner by which they conferred, and
- (iii) the date and time of the conference.

(b) Waiver: A motion to compel, or other motion in aid of discovery, is deemed waived if it is not filed within thirty days after the discovery response or disclosure requirement sought was due, which date is determined in accordance with a rule or by mutual agreement among the parties, unless such failure to file the motion was caused by excusable neglect or by some action of the non-moving party. In any event, the moving party must show good cause to delay the trial or modify the scheduling order.

(c) Response: Every response to a motion to compel shall set forth the specific rule, statute or case authority supporting the position of the party responding as to each such discovery request or disclosure requirement.

Dismissal of Actions.

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. The Clerk shall mail a certified

copy of any order of dismissal to all counsel and unrepresented parties who so request and pay all applicable costs.

This rule does not modify or affect provisions for dismissal of actions under Fed. R. Civ. P. 41 or any other authority.

Trial.

LR Civ P 47.01. Trial Juries.

(a) Examination of Prospective Jurors. The judicial officer shall conduct the examination of prospective jurors called to serve in civil actions. In conducting the examination, the judicial officer shall identify the parties and their respective counsel and briefly outline the nature of the action. The judicial officer shall interrogate the jurors to elicit whether they have any prior knowledge of the case and what connections they may have, if any, with the parties or their attorneys. Inquiries directed to the jurors shall embrace areas and matters designed to discover basis for challenge for cause, to gain knowledge enabling an intelligent exercise of peremptory challenges, and to ascertain whether the jurors are qualified to serve in the case on trial. The judicial officer may consult with the attorneys, who may request or suggest other areas of juror interrogation. To the extent deemed proper, the judicial officer may then supplement or conclude his or her examination of the jurors.

(b) Jury Lists. Names of jurors drawn for jury service from the Court's qualified jury wheel may be disclosed only in accordance with the Court's Jury Selection Plan, approved and made effective May 7, 2001, and as it may be modified. Jury lists prepared by the Clerk shall be made available to counsel and unrepresented parties as provided in the Jury Selection Plan.

Fees and Costs.

LR Civ P 54.01. Fees and Costs.

Fees and costs shall be taxed and paid in accordance with the provisions of 28 U.S.C. §§ 1911-1929, and other controlling statutes and rules. If costs are awarded, the reasonable premiums or expenses paid on any bond or other security given by the prevailing party shall be taxed as part of the costs.

The prevailing party shall prepare a bill of costs within thirty days after entry of the final judgment on Form AO 133 -- Bill of Costs -- supplied by the Clerk. The bill of costs shall contain an itemized schedule of the costs documenting each separate cost and a statement signed by counsel for the prevailing party that the schedule is correct and the charges were actually and necessarily incurred. When not filing in CM/ECF, the party shall file the original and two copies of the bill of costs and serve a copy on counsel for the adverse party or on the unrepresented adverse party. The adverse party, when not filing in CM/ECF, shall file an original and two copies of specific objections to the bill of costs within ten days with a copy served on counsel for the prevailing party or on the unrepresented prevailing party. When filing in CM/ECF, the filer must provide any non-CM/ECF filer with the document according to this Rule. CM/ECF filers need not, however, provide paper copies to other CM/ECF filers, as the document will be served electronically.

Hearings on Motions.

LR Civ P 78.01. Hearings on Motions.

The judicial officer may require or permit hearings on motions and may permit attendance by telephone.

III. LOCAL RULES OF CRIMINAL PROCEDURE

Applicability of General Rules.

LR Cr P 1.01. Applicability.

In all criminal proceedings, the General Rules of this Court shall be followed insofar as they are applicable.

All rights and duties contained in these Local Rules of Criminal Procedure apply equally to all parties.

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 shall provide notice to the Court proceed pursuant to this Rule.

Duties of Magistrate Judge.

LR Cr P 10.01. Duties.

(a) Jurisdiction: The United States Magistrate Judges in this judicial district are hereby specially designated and, with the consent of the parties, shall have jurisdiction to

try persons accused of, and sentence persons convicted of misdemeanors committed within the judicial district in accordance with the provisions of 18 U.S.C. § 3401, Fed. R. Crim. P. 58 and 28 U.S.C. 636.

(b) Arraignments: 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.

(c) Waiver of Presence at Arraignment: 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 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. The magistrate judge may conduct the proceedings and make a recommendation to the district judge. 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).

Discovery.

LR Cr P 16.01. Pretrial Discovery and Inspection.

(a) Standard Discovery Request Form: At arraignment or upon filing of an information or complaint, 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.

(b) 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).

(c) 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.

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

(e) 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.

(f) 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.

(g) 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, and shall specify the types of disclosures that are declined. If the United States Attorney invokes declination, the United States Attorney shall immediately notify the magistrate judge for the purpose of expediting a hearing thereon.

LR Cr P 16.03. Additional Discovery or Inspection.

If additional discovery or inspection is sought, defendant's attorney shall confer with the appropriate Assistant United States Attorney within 10 days of the arraignment (or such later time as may be set by the Court for the filing of pretrial motions) to satisfy these requests in a cooperative atmosphere without recourse to the Court. The request may be oral or written, and the United States Attorney shall respond in like manner.

In the event defendant thereafter moves for additional discovery or inspection, the motion shall be filed within the time set by the Court for the filing of pretrial motions. It shall contain:

- (a) a statement that the prescribed conference was held;
- (b) the date of said conference;

(c) the name of the Assistant United States Attorney with whom the conference was held;

(d) a statement that agreement could not be reached concerning the discovery or inspection that is the subject of defendant's motion; and

(e) the pertinent facts and law bearing upon the issues raised by the motion, as required by LR Cr P 47.01.

LR Cr P 16.04. Additional Evidence.

If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered that is subject to inspection or discovery under the Federal Rules of Criminal Procedure, this Local Rule, court order or other judicial/statutory obligation, such party shall promptly notify the other party or that other party's attorney and the Court of the existence of the additional evidence or material.

LR Cr P 16.05. Exculpatory Evidence.

Exculpatory evidence as defined in Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963), as amplified by United States v. Bagley, 473 U.S. 667, 105 S. Ct. 3375, 87 L.Ed.2d 481 (1985), shall be disclosed at the time the disclosures described in LR Cr P 16.01 are made. Additional Brady material not known to the government at the time of disclosure of other discovery material, as described above, shall be disclosed immediately in writing setting forth the material in detail.

LR Cr P 16.06. Rule 404(b), Giglio and Roviaro 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 Roviaro witness not included in the government's witness list. See Giglio v. United States, 405 U.S. 150, 92

S. Ct. 763, 31 L.Ed.2d 104 (1972); Roviaro v. United States, 353 U.S. 53, 77 S. Ct. 623, 1 L.Ed.2d 639 (1957).

LR Cr P 16.07. List of Witnesses.

No later than fourteen days before trial, counsel for each party shall file, with service on opposing counsel (electronic service in CM/ECF is sufficient under this Rule), a list of probable witnesses and possible witnesses (identified as such), but not whether or not the defendant shall be a witness. Parties shall include in the list the full name and address of each witness and a brief statement of the subject matter to be covered by each witness, and shall expressly identify expert witnesses and record custodians as such. "Witnesses," as used in this paragraph, means probable and possible witnesses, including experts and record custodians, to be called in each party's case-in-chief.

LR Cr P 16.08. List of Trial Exhibits.

No later than fourteen days before trial, counsel for each party shall file, with service on opposing counsel (electronic service in CM/ECF is sufficient under this Rule), a list of exhibits to be offered at trial. In addition, counsel for each party shall number the listed exhibits with evidence tags available from the Clerk and shall exchange a complete set of marked exhibits with opposing counsel (except for large or voluminous items or other exhibits that cannot be reproduced easily).

LR Cr P 16.09. Protective and Modifying Orders.

Upon a sufficient showing, the Court may at any time order that the discovery, inspection or disclosure be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party, the Court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the Court

alone. Upon written request, either party may be entitled to an evidentiary hearing on this issue. If the Court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the Court to be made available to the appellate court in the event of an appeal.

LR Cr P 16.10. Failure to Comply With Discovery.

If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with LR Cr P 16, the Court may order such party to permit the discovery or inspection, grant a continuance or prohibit the party from introducing evidence not disclosed, or the Court may enter such other order as it deems just under the circumstances up to and including dismissal of the indictment with prejudice. The Court may specify the time, place and manner of making the discovery, inspection or disclosure and may prescribe such terms and conditions as are just.

LR Cr P 16.11. Continuing Disclosure.

Any duty of disclosure or discovery is a continuing one. All parties shall immediately produce any additional information subsequently acquired up to and including the end of the trial.

LR Cr P 16.12. Effect of Disclosure by the Government.

Any disclosure filed by the government shall be considered as relief sought by the defendant and granted by the Court unless the defendant files a pleading within three days of arraignment stating he or she is refusing and is not seeking such disclosures pursuant to Fed. R. Crim. P. 16.

Trial Jurors.

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

Seven working days before the pretrial conference, all motions in limine (which must be limited to matters actually in dispute) shall be filed by counsel with service on opposing counsel, and responses filed at least one working day before the pretrial conference. If no pretrial conference is conducted, then all motions in limine (which must be limited to matters actually in dispute) shall be filed by counsel, with service on opposing counsel, seven working days before trial, and responses filed at least three working days before trial.

Videoconference in Criminal Cases.

LR Cr P 43.01. Matters That May Be Conducted By Videoconference.

In criminal proceedings, the Court may use video telecommunications to conduct:

- (a) Initial appearances pursuant to Fed. R. Crim. P. 5(a) with the consent of the defendant;
- (b) Arraignment pursuant to Fed. R. Crim. P. 10 with the consent of the defendant;
- (c) Hearings to determine whether probable cause exists to revoke pretrial release with the consent of the defendant;
- (d) Hearings to determine whether probable cause exists to revoke supervised release with the consent of the defendant;
- (e) Any postconviction proceedings under 28 U.S.C. §§ 2254 or 2255 or any prisoner case under 42 U.S.C. § 1983;
- (f) The taking of a plea of guilty to a misdemeanor charge;
- (g) Detention hearings with the consent of the defendant;
- (h) Returns by the grand jury;

- (i) Removal hearings; and
- (j) Any other proceeding in which the parties consent.

Deadlines.

LR Cr P 45.01. Deadlines.

The deadlines set forth in LR Cr P 16.08, 16.09 and 45.01 are deadlines for hand-delivery or delivery by fax. If the items required to be served on opposing counsel are served by mail, the deadline for mailing shall be two days earlier.

All deadlines contained in this rule may be shortened or lengthened by the Court on motion and for good cause shown to the satisfaction of the Court. Any party, including the government, may be relieved from the performance of any of the obligations described in this rule, in advance of any applicable deadline, upon motion and for good cause shown. Good cause may include, without limitation, the safety or security of witnesses or the necessity for protection of the identity of informants.

Motions.

LR Cr P 47.01. Motions.

(a) Pretrial Motions. All motions, including motions for bill of particulars under Fed. R. Crim. P. 7(f), shall be made within ten days after receipt by defense counsel of LR Cr P 16.01 materials unless the Court, for good cause shown, extends the time upon written application made within the ten-day period. Such application shall set forth the grounds upon which the motion is made and shall be served on the opposing party.

All such motions and accompanying memorandum shall contain the reasons and legal support for granting such motion.

Within ten days of service thereof, the opposing party shall file a response to all such motions with legal support or memoranda.

Each such motion, response and memorandum shall be filed with service upon all other counsel of record in the action and upon any person appearing therein pro se.

Each such motion, response and memorandum shall cite reasons, points of authority and legal support either in the body of the motion or in a separate brief or memorandum when the complexity of the motion requires more than a short statement of authorities.

(b) Post-trial Motions. Within seven days from the return of the verdict by the jury or the Court, all post-trial motions shall be filed unless the Court extends the time upon written application. Within fifteen days following the filing of post-trial motions, the non-moving party shall file a response.

Continuance of Trial.

LR Cr P 50.01. Continuances.

The Court will grant a continuance for trial date, other hearings and deadlines only for just cause. When a party or parties request(s) a continuance, the moving party or parties must contact 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.

Petition for Disclosure of Presentence, Pretrial or Probation Records and Guideline Presentence Reports.

LR Cr P 55.01. Disclosure of Records or Testimony.

Except as otherwise provided, no confidential records of the court maintained by the probation office, including presentence reports, pretrial services records, probation records 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, the probation officer shall release necessary probation records 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, pretrial services records, probation records 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 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. The probation officer shall make no disclosure until an order is entered.

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

(a) Disclosure: Any disclosure of the presentence report to the defendant, defendant's counsel, attorney for the government or any party other than the Court shall not include any recommendation as to sentence.

(b) Time: The Court may modify the time requirements of Fed.R.Crim.P. 32(e)(2) for good cause, but may not reduce the thirty-five day period from the initial disclosure of the presentence report until the sentencing hearing without the consent of the defendant.

(c) Probation Officer duties: The probation officer shall inform the Court of the date of the initial presentence report disclosure to the parties, after which a sentencing hearing will be scheduled. As an alternative, the Court may set a date when the presentence report will be initially disclosed, after which the sentencing hearing will be scheduled. The presentence report 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 presentence report is mailed to the defendant, counsel for the defendant, and the attorney for the government, or
- (3) three days after a copy of the presentence report is electronically sent in a secure manner to the defendant, counsel for the defendant, and the attorney for the government.

(d) Objections: Counsel may provide to the probation officer written objections to the PSR, and shall 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. If counsel files a "no objections" form to the probation office, counsel must also file a copy with 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.

(f) Presentence Report After Sentencing: When a term of imprisonment is imposed at trial or on revocation of supervision, the probation officer shall forward the presentence report to the United States Marshal Service, and shall not file the presentence report on the docket via CM/ECF under any circumstance. The presentence report will be placed under seal to assure the confidentiality of the report. Immediately upon receiving the documentation, the United States Marshal Service shall forward the presentence report, the United States Marshal Service designation form, and the judgment and commitment

order to the Bureau of Prisons. The presentence report will not be opened by anyone other than the addressee, Bureau of Prisons, except by order of the Court.

Forfeiture of Collateral in Lieu of Appearance for Certain Misdemeanor Offenses.

LR Cr P 58.01. Forfeiture of Collateral.

(a) Posting Collateral: Pursuant to Fed. R. Crim. P. 58(d)(1), a person charged with certain petty offenses as defined in 18 U.S.C. § 19 and described in a schedule of collateral offenses that will be published and announced by court order may, in lieu of appearance, post collateral in the amount indicated for the offense, waive appearance before a United States Magistrate Judge, and consent to forfeiture of collateral. The schedule of collateral offenses will also describe certain petty offenses that require a mandatory appearance before a United States Magistrate Judge. The current schedule of collateral offenses will be reflected by the latest order appearing on the court docket. The Clerk of the Court will distribute copies of such order to all offices, agencies and individuals involved in the forfeiture of collateral program and shall make copies available upon request.

(b) Petty Offense: The provisions of this rule do not create or otherwise define an offense. This rule applies to petty offenses that have otherwise been created or defined by federal statutes, regulations or applicable state statutes lawfully assimilated by virtue of 18 U.S.C. § 13, which petty offenses are committed within the jurisdiction of the United States District Court for the Northern District of West Virginia.

(c) Arrest: Nothing contained in this rule shall prohibit a law enforcement officer from arresting a person for committing any offense, including those for which collateral may be posted and forfeited, and requiring the person charged to appear before a United States

Magistrate Judge or, upon arrest, taking the person charged immediately before a United States Magistrate Judge.

(d) Failure to Post Collateral: If a person charged with a petty offense not requiring a mandatory appearance fails to post and forfeit collateral, the Court shall issue a notice directing the defendant to appear before a United States Magistrate Judge, and shall impose any penalty within the limits established by law upon conviction, including fine, imprisonment or probation,.

(e) Collateral Posted: If collateral is posted for any offense in which forfeiture of collateral is authorized by this rule, the collateral shall be forfeited to the United States and shall signify that the defendant neither contests the charge nor requests a hearing. Such action shall be tantamount to a finding of guilty and the defendant shall be deemed convicted of any offense for which collateral is paid and forfeited.

(f) Violation Notices: The Clerk of this Court shall establish a procedure for the processing of violation notices, citations and collateral. Such procedure may include use of automated facilities located in other United States District Court.

(g) Certification of Record of Traffic Violation: Either the Clerk or United States Magistrate Judge shall certify the record of any conviction of a traffic violation as required by applicable state law to the proper state authority.

(h) Non-Collateral Forfeiture Cases: No collateral forfeiture will be permitted for the following violations:

- (1) Offenses denominated in the schedule of collateral offenses for which appearance is mandatory.

(2) Offenses resulting in an accident with personal injury or property damage in excess of \$500.00.

(3) Subsequent offenses not arising from the same facts or sequence of events that resulted in the original charges.

IV. LOCAL RULES OF PRISONER LITIGATION PROCEDURE

Duties of Magistrate Judge.

LR PL P 72.01. Duties.

Pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B), the United States Magistrate Judge who is designated by Standing Order No. 2² to hear a case brought pursuant to 42 U.S.C. § 1983, Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), or 28 U.S.C. §§ 2241, 2254 or 2255 is authorized to consider the record and do all things proper to recommend disposition of any dispositive motions filed in the action and to rule upon any non-dispositive motions, including, without limitation, conducting a hearing on motions, if necessary, and entering into the record a written order setting forth the disposition of the motions or recommendation for disposition, as the case may warrant.

Applicability of Rules Regarding Prisoner Litigation.

LR PL P 83.01. Applicability. In proceedings brought by prisoners pursuant to 28 U.S.C. §§ 2241, 2254 and 2255, 42 U.S.C. § 1983, and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), the General Rules of this Court shall be followed insofar as they are applicable.

All rights and duties contained in these Local Rules of Prisoner Litigation Procedure apply equally to all parties.

² Standing Order No. 2 can be obtained from the Clerk's Office or from the Court's website at wvnd.uscourts.gov.

Complaints Brought Under 42 U.S.C. § 1983 and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

LR PL P 83.02. Initial Screening.

Upon receipt of a properly completed complaint, and either (1) the full filing fee or (2) an Application for Leave to Proceed Without Prepayment of Fees, a Trust Account Report, ledger sheets and a Consent to Collection of Fees from Trust Account form, the United States Magistrate Judge will conduct as soon as practicable a screening of the complaint pursuant to 28 U.S.C. § 1915(e)(2) and 28 U.S.C. §§ 1915A(a) and (b) and make a recommendation for disposition.

If the United States Magistrate Judge issues a report on the initial screening recommending the complaint be dismissed, and it is accepted and adopted by the United States District Judge, the action shall be dismissed and stricken from the docket.

If the United States Magistrate Judge determines on the initial screening that the complaint should not be dismissed, the action shall proceed as set forth in LR PL P 83.03 to 83.08.

LR PL P 83.03. Service of the Complaint.

If the plaintiff has been granted leave to proceed without prepayment of fees, the Clerk will complete and issue a summons form for each defendant, complete the Form USM 285 -- Process Receipt and Return -- and forward these documents, along with copies of the complaint and order directing service, to the United States Marshals Service. If the plaintiff has not been granted leave to proceed without prepayment of fees, the Court will enter an order directing the plaintiff to serve the complaint on each defendant.

LR PL P 83.04. Notice of Right to Trial by Magistrate Judge.

On the date the Court receives a responsive pleading from the defendant(s), the Clerk shall provide all parties with Form AO 85 -- Notice, Consent, and Order of Reference - Exercise of Jurisdiction by a United States Magistrate Judge.

LR PL P 83.05. Consent to Trial by Magistrate Judge.

Within thirty days of the filing of the responsive pleading, each party shall advise the Clerk in writing whether or not it will consent to having the United States Magistrate Judge assigned conduct any and all proceedings in the action pursuant to 28 U.S.C. § 636(c).

LR PL P 83.06. Discovery.

All discovery shall be fully served and completed within 120 days of service of the complaint. "Completed discovery" as used in Fed. R. Civ. P. 16(b) means that all discovery, objections, motions to compel and all other motions and replies relating to discovery in this civil action must be filed in time for the parties objecting or responding to have the opportunity under the Federal Rules of Civil Procedure to make responses.

LR PL P 83.07. Dispositive Motions.

All dispositive motions, as well as deposition transcripts, admissions, documents, affidavits, and any other such matters in support thereof, shall be filed within 150 days of service of the complaint. Any such motion must be supported by a memorandum at the time the motion is filed. Memoranda in opposition to such motions shall be filed, with copies served upon opposing counsel, on or before 165 days of service of the complaint. Any reply memoranda shall be filed, with copies served upon opposing counsel, within 180 days of service of the complaint. These deadlines include the additional time allotted by Fed. R. Civ. P. 6(e).

LR PL P 83.08. Deadlines.

The time limitations set forth above shall not be altered except as set forth in LR Civ P 16.01(f). All dates for filings refer to the date the materials must actually be received, not the mailing date.

Petitions Filed Under 28 U.S.C. § 2241.

LR PL P 83.09. Initial Screening.

Upon receipt of an original and two copies of a properly completed petition for writ of habeas corpus and either (1) the full filing fee or (2) an Application for Leave to Proceed Without Prepayment of Fees, Prisoner Trust Account Report and ledger sheets, pursuant to 28 U.S.C. §§ 636 (b) (1) (A) and (B), all actions filed by a prisoner pursuant to 28 U.S.C. § 2241 will be referred to the United States Magistrate Judge designated by Standing Order No. 2.

If the United States Magistrate Judge issues a report on the initial screening recommending the petition be dismissed, and it is accepted and adopted by the United States District Judge, the action shall be dismissed and stricken from the docket.

If the United States Magistrate Judge determines on the initial screening that the petition should not be dismissed, the action shall proceed as set forth in LR PL P 83.10 to 83.12.

LR PL P 83.10. Service of the Petition.

The Clerk shall deliver or serve a copy of the petition on the respondent via first-class mail.

LR PL P 83.11. Answer.

The respondent shall answer or otherwise respond to the petition within thirty days of service.

LR PL P 83.12. Deadlines.

The time limitations set forth above shall not be altered except as set forth in LR Civ P 16.01(f). All dates for submissions, deliveries, and filings refer to the date the materials must actually be received, not the mailing date.

Petitions Filed Under 28 U.S.C. § 2254.

LR PL P 83.13. Initial Screening.

Upon receipt of an original and two copies of a properly completed petition for writ of habeas corpus and either (1) the full filing fee or (2) an Application for Leave to Proceed Without Prepayment of Fees, Prisoner Trust Account Report and ledger sheets, pursuant to 28 U.S.C. §§ 636 (b) (1) (A) and (B), all actions filed by a prisoner pursuant to 28 U.S.C. § 2254 will be referred to the United States Magistrate Judge designated by Standing Order No. 2.

If the United States Magistrate Judge issues a report on the initial screening recommending the petition be dismissed, and it is accepted and adopted by the United States District Judge, the action shall be dismissed and stricken from the docket.

LR PL P 83.14. Review for Recommended Disposition.

If it is apparent from the petition and any annexed exhibits and the prior proceedings that the petitioner may or may not be entitled to relief in the District Court, the United States Magistrate Judge shall order the following:

(a) Service of the Petition. The Clerk shall deliver or serve a copy of the petition on the respondent and the West Virginia Attorney General via certified mail.

(b) Answer of Respondent. The respondent shall answer or otherwise respond to the petition within thirty days of service.

(c) Deadlines Final. The time limitations set forth above shall not be altered except as set forth in LR Civ P 16.01(f). All dates for submissions, deliveries, and filings refer to the date the materials must actually be received, not the mailing date.

Motions Filed Under 28 U.S.C. § 2255.

LR PL P 83.15. Initial Screening.

(a) Referral. 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) 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.

LR PL P 83.16. Review for Recommended Disposition.

If it appears from the motion and any annexed exhibits and the prior proceedings that the motion should not be summarily dismissed, the United States Magistrate Judge shall order the following:

(a) Service of the Motion. The Clerk shall deliver or serve a copy of the motion on the United States Attorney for this District electronically via CM/ECF.

(b) Answer of United States Attorney. The United States Attorney shall answer or otherwise respond to the motion within thirty days of service.

(c) Deadlines Final. The time limitations set forth above shall not be altered except as set forth in LR Civ P 16.01(f). All dates for submissions, deliveries, and filings refer to the date the materials must actually be received, not the mailing date.

V. LOCAL RULES OF MAGISTRATE JUDGE PROCEDURE

[REPEALED]

VI. LOCAL RULES OF BANKRUPTCY PROCEDURE

The Local Rules of the
United States Bankruptcy Court
Northern District of West Virginia
are available at
<http://www.wvnb.uscourts.gov>