

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA



LOCAL RULES



EFFECTIVE: MAY 1, 2003

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES DISTRICT JUDGES

Irene M. Keeley, Chief Judge, Clarksburg, West Virginia

John P. Bailey, Judge, Wheeling, 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

UNITED STATES MAGISTRATE JUDGES

James E. Seibert, Wheeling, West Virginia

John S. Kaul, Clarksburg, West Virginia

David J. Joel, Martinsburg, West Virginia

CLERK OF DISTRICT COURT

Wally Edgell, Ph.D., Elkins, West Virginia

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 shall 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The Local Rules of Magistrate Procedure, previously adopted by this Court, are repealed. Reference is made to 28 U.S.C. § 631, *et seq.*, which generally 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 are intended to 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 to be 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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The Local Rules of the

United States Bankruptcy Court

Northern District of West Virginia

are available at

<http://www.wvnb.uscourts.gov> [VI-1](#)

I. LOCAL RULES OF GENERAL PRACTICE AND PROCEDURE

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 makes an affidavit that he or she is unable to pay costs or give security as provided in 28 U.S.C. § 1915.

In all cases initiated without payment of fees and costs, the affiant shall stipulate in his or her affidavit that any recovery in the action shall 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 to his or her attorney.

Contempt.

LR Gen P 4.1.1. 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 state with particularity the misconduct complained of, the claim, if any, for damages, and any evidence that is available to the moving party as to the amount of damages. A reasonable attorney's fee, necessitated by the contempt proceeding, 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. If an order to show cause is sought, the order, upon a showing of necessity, 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 4.1.2. 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 have waived a trial by jury.

LR Gen P 4.1.3. Order of the Court; Confinement of Contemner.

In the event the alleged contemner is found to be in contempt of court, an order shall be entered: (1) reciting the verdict or findings of fact upon which the adjudication is based; (2) setting forth the amount of the damages to which the complainant is entitled; (3) fixing the fine, if any, imposed by the Court payable to the Clerk of Court; (4) stating any other conditions necessary to purge the contempt; and (5) 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.

Except as otherwise permitted or required by the Federal Rules, these local rules, or order, the **original and two copies** of all papers shall be filed at the Clerk's Office at the point of holding court in which the particular action or proceeding is docketed. It is not necessary for the parties to provide additional copies to the judge or the magistrate judge. In emergency situations, due to travel conditions, time limitations or other factors, papers may be filed at any Clerk's Office. The receiving Clerk's Office shall then forward the papers to the Clerk's Office at the point of holding court in which the particular action or proceeding is docketed. 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.

Filing and Service by Facsimile Transmission.

LR Gen P 5.02. Applicability.

All points of holding court within the Northern District of West Virginia shall maintain a facsimile machine within the Office of the Clerk, shall accept the filing of pleadings and other documents by facsimile, and may send documents by facsimile 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.

LR Gen P 5.03. Definitions.

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

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

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

(d) “Facsimile machine” means a machine that can send and receive on plain paper a facsimile 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 (“CCITT”), in regular resolution.

LR Gen P 5.04. General Provisions.

(a) Availability of Facsimile Services. Each Clerk’s Office shall have a facsimile 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 facsimile transmission must conform in form and format to existing standards established by applicable statutes or rules of court. They should be received 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. No facsimile transmission over twenty-five pages in length (excluding the cover sheet and affidavit with transmission record) shall be accepted unless prior consent is given by the Court or by the Clerk of the Court.

(d) Oversized Documents. Facsimile transmission of, or involving, any original document larger than 8½ by 11-inches is prohibited unless prior consent is given by the Court or by the Clerk of the Court.

(e) Facsimile Cover Sheet. The sender must provide his or her or the entity's name, address, telephone number, facsimile 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 facsimile copy of a court pleading or other 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. Court personnel shall verify, either orally or in writing, the receipt of documents filed by facsimile transmission upon proper inquiry by the sender.

(h) Filing Effective Upon Receipt of Transmission. A facsimile copy of a pleading or other document shall be deemed filed when it is received in its entirety on a Clerk's Office facsimile 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 facsimile copy in the same manner as with pleadings or other documents filed by mail or in person.

(i) Payment of Fees.

(1) No later than seven calendar days after the filing by fax, the required filing fee, accompanied by a copy of the facsimile filing cover sheet, shall be paid by mail or in person.

(2) The Clerk of the Court may decline to process the pleading or other document until receipt of any 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 filing of the original shall not be required, 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 shall be responsible for any photocopying charges associated with the processing of any document filed by facsimile transmission.

(m) Transmission Error. If an error occurs in any facsimile 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 Use of Facsimile Transmission. If the receiver discovers or suspects a transmission error, the receiver shall notify the sender as soon as possible. The sender bears any risk of using facsimile transmission to convey any document to the Court. The potential receiver bears any risk of receiving any document by facsimile transmission from the Court.

(o) Nunc Pro Tunc Filing. If the attempted facsimile 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 in order 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 in its discretion.

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

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

(a) Method of Filing. A party may file any document in a civil action, other than a complaint or petition, by facsimile transmission to any Clerk's Office having a facsimile machine. 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 facsimile 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 facsimile machine.

(d) Proof of Service. Where service is made by facsimile 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 facsimile machine transmission record.

Service by Electronic Means.

LR Gen P 5.06. General.

The Court authorizes the service of court orders and notices by facsimile when the parties have expressly consented to the service in writing.

Contact with Jurors.

LR Gen P 47.01. Contact with Jurors.

No party, nor his or her agent or attorney, shall communicate or attempt to communicate with any member of the jury regarding the jury's deliberations or verdict without obtaining an 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 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 delays or withholds its presentation, the Court, upon determining that the delay has been unreasonable, may proceed to enter such judgment or order.

Bonds.

LR Gen P 65.1.1. 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, Clarksburg, West Virginia. The mailing address is 500 West Pike Street, Room 301, P.O. Box 2857, Clarksburg, West Virginia 26302.

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/Facsimile</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</p> <p>304-622-8513 304-623-4551 (FAX)</p>	Harrison, Doddridge, Gilmer, Marion, Monongalia, Taylor, Ritchie, Calhoun, Braxton, Lewis, Tyler and Pleasants
<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</p> <p>304-636-1445 304-636-5746 (FAX)</p>	Randolph, Barbour, Grant, Hardy, Mineral, Pendleton, Preston, Tucker, Upshur, Webster and Pocahontas
<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</p> <p>304-267-8225 304-264-0434 (FAX)</p>	Jefferson, Hampshire, Morgan and Berkeley

<u>Point of Holding Court</u>	<u>Address/Telephone/Facsimile</u>	<u>Counties</u>
<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</p> <p>304-232-0011 304-233-2185 (FAX)</p>	Ohio, Brooke, Hancock, Marshall and Wetzel

LR Gen P 77.03. Sessions.

The Court is considered open and in continuous session at all points of holding court of the District 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.

Custody and Disposition of Exhibits.

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. After being marked for identification, all models and other 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.

A party or attorney who retains custody of a nonpaper exhibit shall make it available for the use of 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 for the use of 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 a signed receipt identifying the papers removed.

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 one time 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.

Attorneys shall remain in good standing as a member of the bar of the Supreme Court of Appeals of West Virginia. If an attorney's admission to practice before the Supreme Court of Appeals is either revoked or suspended, the attorney shall be restricted from practice in this Court for the duration of that revocation or suspension. An attorney may seek readmission to practice in this Court, only after being properly and fully readmitted or reinstated by the Supreme Court of Appeals of West Virginia subsequent to such disciplinary action, and shall follow the admission requirements of this section in order to do so. A conditional readmission of an attorney is not deemed to be full readmission for the purpose of this rule. No additional fee will be required for readmission. If the motion for readmission is granted, the applicant shall take the attorney's admissions oath.

LR Gen P 83.02. Visiting Attorneys.

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

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

(1) the action, suit, proceeding or other matter which is the subject of the application;

(2) 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;

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

(4) 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;

(5) 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;

(6) 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;

(7) 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

(b) 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.

The responsible party of the local attorney to be associated with the applicant shall be a 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 which 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 which 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. In order 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, which office is the primary location from which the “responsible local attorney” practices law on a daily basis. The responsible local attorney's agreement to participate in the matter shall be evidenced by his or her endorsement upon the verified statement of application, or by written statement attached to the application.

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 pleadings, notices and other papers filed and served by the United States. All pleadings, notices and other 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 complete names and addresses where pleadings, notices and other papers may be served upon them, and their telephone numbers.

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 also appear on behalf of the State of West Virginia. In each case in which an eligible law student appears, the consent shall be filed 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 pleadings, briefs, or 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 personal 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 83.05. Ethical Considerations.

The Rules of Professional Conduct, as adopted by the Supreme Court of Appeals of West Virginia, provide the basic ethical considerations and disciplinary rules for the conduct of attorneys practicing in this Court. 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 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 of ethical standards.

Judges and others serving in a judicial capacity are expected to comply with the Code of Conduct for United States Judges.

LR Gen P 83.06. 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 83.07. 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 of Court Proceedings.

LR Gen P 83.08. 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, proceedings, other than 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 83.09. Impoundment of Photography and Broadcasting 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 83.10. Electronic Equipment in the Courthouse. (Revised 9/22/05)

Attorneys are permitted limited use of electronic devices, such as cellular telephones, pagers, PDAs, Blackberrys, laptop computers, in the courthouses within the District. The recording of any audio, 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 and/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 83.11. Complaints Filed Pursuant to Social Security Act.

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:

(a) 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

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

LR Gen P 83.12. Social Security Appeals.

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.

(a) 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.

(b) 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.

(c) 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.

(d) 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.** No extensions of time for filing briefs shall be allowed absent a showing of good cause. If a party desires an extension of time within which to respond, the moving party is specifically directed to 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.

(e) 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.

(f) 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 which (1) recites the ALJ's consideration or conclusion and (2) which supports the party's claims, contentions or arguments.

(g) 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 83.13. 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.

LR Gen P 83.14. Scheduling Conflicts.

All scheduling conflicts with West Virginia state courts will be resolved pursuant to the provisions of West Virginia Trial Court Rule 5.

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 the filing of 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.

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, and answers and responses thereto shall not be filed unless ordered or required under these Local Rules of Civil

Procedure. Certificates of service of discovery materials shall be filed. 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, which responsibility shall not terminate upon dismissal of any party while the action is still pending in the District and/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, an ex parte request may be made that the document be filed, stating the reasons therefor. The Court may also order filing sua sponte. If relief is sought under Fed. R. Civ. P. 26(c) or 37, copies of the relevant portions of disputed documents shall be filed with any motion. If the moving party under Fed. R. Civ. P. 56 or the opponent relies on discovery documents, copies of the pertinent portions shall be filed with the motion or opposition.

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.

Pleadings.

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.

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 twenty-five pages in length, 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. The original and two copies of the memoranda and other materials in response to motions shall be filed and served on opposing counsel and unrepresented parties within fourteen days from the date of service of the motion. The memoranda in response may not exceed twenty-five pages and is subject to the restrictions set forth in LR Civ P 7.02(a) regarding paper, font size, and line spacing. The original and two copies of the reply memoranda shall be filed and served on opposing counsel and unrepresented parties within seven business days from the date of service of the memorandum in response to the motion. The reply memoranda may not exceed fifteen pages, subject to the restrictions set forth in LR Civ P 7.02(a) regarding paper and font size and line spacing.

(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; Removed and 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 on the Meeting of the Parties; Cancellation of Scheduling Conference.

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) Conduct of 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, which may be held by telephone, 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) 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.

(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 which present purely legal issues, require no resolution of factual

issues, and which 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 Conference 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 of 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 Pretrial and Settlement Conferences; Pretrial Order.

(a) Obligation of Counsel to Meet; Pretrial Disclosures Under Federal Rule of Civil Procedure 26(a)(3). 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 which 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 which 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 (Mediation Program -- Settlement Week).

(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.

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 Federal Rule of Civil Procedure 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 Federal Rule of Civil Procedure 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, discovery under Fed. R. Civ. P. 26(a)(5) shall be limited as follows:

(1) ten depositions upon oral examination or written questions by all plaintiffs;

(2) ten depositions upon oral examination or written questions by all defendants;

(3) ten depositions upon oral examination or written questions by all third-party defendants;

- (4) twenty-five written interrogatories, including all discrete subparts; and
- (5) twenty-five requests for admission.

(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) which 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:

(I) For documents: (1) the type of document, e.g., letter or memorandum; (2) the general

subject matter of the document; (3) the date of the document; and (4) 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;

(II) For oral communications: (1) 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; (2) the date and place of communication; and (3) 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 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 Following 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 to Requests for Admission Following 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:

(A) the names of the parties who conferred or attempted to confer,

(B) the manner by which they conferred, and

(C) the date and time of the conference.

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.

(4) 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.

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. The original and two copies of the bill of costs shall be filed with a copy served on counsel for the adverse party or on the unrepresented adverse party. The adverse party 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.

Hearings on Motions.

LR Civ P 78.01. Hearings on Motions.

The judicial officer may require or permit hearings on motions. Attendance by telephone may be permitted.

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.

Duties of Magistrate Judge.

LR Cr P 10.01. Duties.

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.

Discovery.

LR Cr P 16.01. Pretrial Discovery and Inspection.

Within seven days after the arraignment, the United States Attorney shall provide to counsel for defendant(s) copies of:

(a) Any relevant written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.

(b) Any relevant results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the case, or copies thereof, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.

(c) Any relevant recorded testimony of the defendant before a grand jury.

(d) Any books, papers, documents or photographs, or to inspect tangible objects, buildings or places which are the property of the defendant and which are within the possession, custody or control of the government.

(e) The Federal Bureau of Investigation Identification Sheet indicating defendant's prior criminal record.

(f) A summary of testimony of expert witnesses describing the witnesses' opinions, the bases and reasons for those opinions, and the witnesses' qualifications.

Within fourteen days of receipt of the government's discovery, the defendant shall provide reciprocal discovery pursuant to Fed. R. Crim. P. 16(b)(1) unless defendant has refused discovery from the government.

Discovery provided by the government and reciprocal discovery provided by the defendant shall not be filed.

In cases involving voluminous discovery, a motion for modification of this rule may be filed.

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, disclosure may be declined in writing by setting forth specific reasons therefor. A declination of any requested disclosure shall be in writing, 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 ten days of the arraignment (or such later time as may be set by the Court for the filing of pretrial motions) in an effort 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 which 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.

Notice of Federal Rule of Evidence 404(b) evidence, Giglio material and any Roviaro witness not included in the government's witness list shall be disclosed fourteen days before trial. 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. Jencks Act Material.

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

LR Cr P 16.08. List of Witnesses.

Fourteen days before trial, counsel for each party shall file, with service on opposing counsel, a list of probable witnesses and possible witnesses (identified as such), but not whether or not the defendant shall be a witness. The list shall state the full name and address of each witness and shall also contain a brief statement of the subject matter to be covered by each witness. Expert witnesses and record custodians shall be identified as such on the list. The word 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 16.09. List of Exhibits.

Fourteen days before trial, counsel for each party shall file, with service on opposing counsel, a list of exhibits to be offered at trial. In addition, counsel for each party shall number the listed exhibits with evidence tags which may be obtained 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 16.10. 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 shall 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 16.11. 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 16.12. 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 16.13. 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 days before trial, all proposed voir dire questions, motions in limine (which must be limited to matters actually in dispute) and proposed jury instructions shall be filed with service on opposing counsel.

If the instructions are being typed on a computer, counsel shall provide to the Court a disk labeled with the case name and party proposing the instructions. The envelope containing the disk should be marked "Contains Disk - Do Not X-Ray - May Be Opened For Inspection." The disk will be returned to counsel if requested.

Videoconference in Criminal Cases.

LR Cr P 43.01. Matters Which May Be Conducted By Videoconference in Criminal Cases.

In criminal proceedings, the Court may utilize video telecommunications in conducting:

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

Continuance of Trial.

LR Cr P 50.01. Continuances.

Continuance of the trial date will be granted only for just cause.

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

LR Cr P 55.01. Disclosure of Records.

Except as otherwise provided, no confidential records of the Court maintained by the probation office, including presentence records, pretrial services records, and probation records, shall be disclosed unless a written application is made to the Court particularizing the need for specific information. No disclosure shall be made until an order is entered. However, necessary probation records shall be released to other federal, state, county, and municipal law enforcement agencies as required by 18 U.S.C. § 4042, without petitioning the Court or without obtaining a court order directing the disclosure of those records. The probation officer shall immediately provide the Court with notice of such disclosure.

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

LR Cr P 55.02. Disclosure of Presentence Reports.

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.

The time requirements of Fed. R. Crim. P. 32(b)(6) may be modified by the Court for good cause, except that the thirty-five day period from the initial disclosure of the presentence report until the sentencing hearing may not be reduced without the consent of the defendant.

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.

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

LR Cr P 58.01. Forfeiture of Collateral.

(a) 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 which 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 which 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) The provisions of this rule do not create or otherwise define an offense. This rule applies to petty offenses which have otherwise been created and/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) Nothing contained in this rule shall prohibit a law enforcement officer from arresting a person for the commission of 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) If a person charged with a petty offense not requiring a mandatory appearance fails to post and forfeit collateral, a notice directing the defendant to appear before a United States Magistrate Judge shall be issued and any penalty, including fine, imprisonment or probation, may be imposed within the limits established by law upon conviction.

(e) 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 said forfeiture shall signify that the defendant does not contest the charge nor request a hearing. Such action shall be tantamount to a finding of guilt and the defendant shall be deemed convicted of any offense for which collateral is paid and forfeited.

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

(g) 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) 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 which resulted in the original charges.

IV. LOCAL RULES OF PRISONER LITIGATION PROCEDURE

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.

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. 2¹ 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.

¹ 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 Title 42, United States Code, Section 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 Title 28, United States Code, Section 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 Title 28, United States Code, Section 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 Title 28, United States Code, Section 2255.

LR PL P 83.15. Initial Screening.

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.

LR PL P 83.16. Review for Recommended Disposition.

If it is apparent 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 via first-class mail.

(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>**