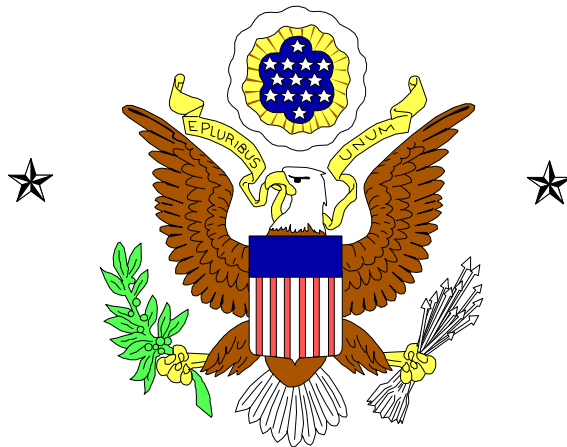


UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA



LOCAL RULES

EFFECTIVE: JULY 20, 2010

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

UNITED STATES DISTRICT JUDGES

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

UNITED STATES BANKRUPTCY JUDGE

Patrick M. Flatley, Wheeling, West Virginia

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

Cheryl Dean Riley, Wheeling, 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, in conjunction with the Standing Orders of this Court, govern the conduct and management of the business, operations, and proceedings of the Court.

The Local Rules of Magistrate Procedure, previously adopted by this Court, are repealed.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

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

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

TABLE OF CONTENTS

I. <u>LOCAL RULES OF GENERAL PRACTICE AND PROCEDURE</u>	1
Courthouse Security	
LR Gen P 1.01	1
(a) Entry of Federal Courthouse Buildings	1
(b) Persons Requiring Access	1
(c) Weapons	1
(d) Identification Card	2
(e) Enforcement	2
Disclosure Statement	
LR Gen P 2.01	3
(a) Form Provided by the Clerk	3
(b) Form Delivered to the Judge	3
Commencement of Action	
LR Gen P 3.01. Proceedings <i>In Forma Pauperis</i>	3
Contempt	
LR Gen P 4.01. Initiation of Civil Contempt Proceedings	4
LR Gen P 4.02. Issues; Trial By Jury	4
LR Gen P 4.03. Order of the Court; Confinement of Contemner	5
Filing of Papers	
LR Gen P 5.01. Filing of Papers	6
(a) Electronic Filing	6
(b) Working Copy to the Judge	6

(c)	Filing in Paper	6
Filing and Service by Fax Transmission or Electronic Filing by CM/ECF		
	LR Gen P 5.02. Definitions Related to Fax Transactions and CM/ECF	7
(a)	Facsimile or Fax	7
(b)	Fax Transaction	7
(c)	Service by Fax Transmission	7
(d)	Fax Machine	7
(e)	Electronic Filing	7
	LR Gen P 5.03. Applicability	7
(a)	Filing by Fax	7
(b)	Electronic Filing	8
(c)	Attorney Signatures	8
	LR Gen P 5.04. General Provisions for Filing by Fax	8
(a)	Availability of Fax Services	8
(b)	Form and Format	8
(c)	Page Limitation	9
(d)	Oversized Documents	9
(e)	Fax Cover Sheet	9
(f)	Signatures	9
(g)	Verification of Receipt	9
(h)	Filing Effective Upon Receipt of Transmission	10
(i)	Payment of Fees	10
(j)	Filing of Original	10

(k)	Retention of Original	10
(l)	Photocopying Charges	10
(m)	Transmission Error	10
(n)	Notice of Transmission Error; Risk of Using Fax	11
(o)	Nunc Pro Tunc Filing	11
(p)	Fax Receipt and Transmission; Fees	11

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

	Transmission	11
(a)	Method of Filing	11
(b)	Service	11
(c)	When Service Complete	11
(d)	Proof of Service	12

Service by Electronic Means

	LR Gen P 5.06. General	12
(a)	Service by Fax	12
(b)	Electronic Service Through CM/ECF	12
(c)	Service of Summonses	12
(d)	Summons Forms	13
(e)	Certificate of Service	13
(f)	Service Upon Non-CM/ECF Filers	13
(g)	Time to Respond Under Electronic Service	13
(h)	Service of Sealed Filing	13
	LR Gen P 5.07. Video	13

(a)	Video Technology	13
(b)	Video Facilities and Equipment	13
(c)	Counsel Duty to Notify	14
 E-Government Act		
	LR Gen P 5.08. E-Government Act	15
(a)	Documents	15
(b)	Redaction Policy	15
(c)	Transcripts of Hearings	16
(d)	Violations of Rule	16
 Time		
	LR Gen P 5.09. Computing and Extending Time	17
 Sealed Documents		
	LR Gen P 6.01. Sealed Documents in Public Cases	17
(a)	Motion For Leave to File Under Seal	17
(b)	Order on Motion for Leave to File Under Seal	18
(c)	Service	18
 Contact with Jurors		
	LR Gen P 47.01. Contact with Jurors	18
 Entry of Judgments		
	LR Gen P 58.01. Entry of Judgments and Orders	18
 Bonds		
	LR Gen P 65.01. Approval of Bonds by the Clerk	19

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

LR Gen P 77.01. Principal Office 19

LR Gen P 77.02. Points of Holding Court 19

LR Gen P 77.03. Sessions 21

(a) Court Hours 21

(b) Filing Deadlines 21

LR Gen P 79.01. Exhibits 21

(a) Custody and Disposition of Exhibits 21

(b) Custody of Sensitive Exhibits 22

(c) Alternative Procedures for Custody and Disposition of Exhibits . 22

LR Gen P 79.02. Removal of Papers from Custody of Clerk 23

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

LR Gen P 83.01. Permanent Members of Bar of Court 23

LR Gen P 83.02. Visiting Attorneys 24

(a) General 24

(b) Responsible Local Attorney 25

(c) Exceptions to Payment of Visiting Attorney Fee 26

LR Gen P 83.03. Representation of Parties and *Pro Se* Appearances 27

LR Gen P 83.04. Legal Assistance by Law Students 28

(a) Appearance on Behalf of Indigent 28

(b) Eligibility to Appear 29

Conduct and Examination of Witnesses

LR Gen P 84.01. Ethical Considerations 30

LR Gen P 84.02. Bias and Prejudice	30
LR Gen P 84.03. Addressing the Court; Examination of Witnesses . . .	31
LR Gen P. 84.04. <i>Pro Se</i> Litigants	31
Photographing and Broadcasting Court Proceedings; Electronic Equipment	
LR Gen P 85.01. Photography in and Broadcasting from Courtroom . .	31
LR Gen P 85.02. Impoundment of Equipment	32
LR Gen P 85.03. Electronic Equipment in the Courthouse	32
Court Library	
LR Gen P 87.01. Court Library	32
Scheduling Conflicts; Requests for Continuance	
LR Gen P 88.01. Scheduling Conflicts with State Court	33
LR Gen P 88.02. Requests for Continuance	33

II. LOCAL RULES OF CIVIL PROCEDURE	34
Applicability of General Rules	
LR Civ P 1.01. Applicability	34
Summons	
LR Civ P 4.01. Waiver of Service	34
Court Filings	
LR Civ P 5.01. Discovery	35
(a) Discovery Not Filed; Certificate of Service Filed	35
(b) Custodial Responsibility	35
(c) Electronic Service of Discovery	36
(d) <i>Pro Se</i> Parties	36
Filings	
LR Civ P 7.01. Stipulations	36
LR Civ P 7.02. Motion Practice	37
(a) Motions and Supporting Memoranda	37
(b) Memoranda in Response to Motions and Reply Memoranda ...	38
(c) Referral to Magistrate Judge	39
(d) Action on Motions	39
Social Security Cases	
LR Civ P 9.01. Complaints Filed Pursuant to Social Security Act	40
(a) Electronic Filing	40
(b) Contents of Complaint	40
(c) Internet Access	40

LR Civ P 9.02. Social Security Appeals	41
(a) Referral	41
(b) Answer	41
(c) Plaintiff's Motion for Summary Judgment and Memorandum In Support	41
(d) Defendant's Memorandum in Opposition	42
(e) Page Limits	42
(f) Extension of Time	42
(g) References to the Administrative Record	42
(h) Date Received	43
 Answer	
LR Civ P 12.01. Extensions of Answer Date	43
LR Civ P 12.02. Motions to Dismiss	43
 Amended Pleadings	
LR Civ P 15.01. Motions to Amend	43
 Conferences	
LR Civ P 16.01. Scheduling Conferences	43
(a) Convening Scheduling Conferences; Transferred Actions	43
(b) Obligation of the Parties to Meet	44
(c) Written Report of Meeting; Canceled Scheduling Conference ..	45
(d) Conducting Scheduling Conferences	46
(e) Scheduling Orders	47
(f) Modification of Scheduling Order	48

(g)	Categories of Actions Exempted	48
	LR Civ P 16.02. Case-Management Conferences in Complex Cases .	50
(a)	Conduct of Case-Management Conferences	50
(b)	Obligation of Counsel to Confer	50
(c)	Number of Case-Management Conferences and Orders	51
	LR Civ P 16.03. Pretrial Conferences in Non-Complex Cases	51
(a)	Convening Pretrial Conferences	51
(b)	Pretrial Conference Orders	51
	LR Civ P 16.04. Final Conferences; Pretrial Order	51
(a)	Obligation of Counsel to Meet; Pretrial Disclosures	51
(b)	Proposed Pretrial Order	52
(c)	Final Pretrial Conference	53
(d)	Final Pretrial Order	54
(e)	Final Settlement Conference	54
(f)	Settlement Before Trial	54
	LR Civ P 16.05. Authority Regarding Settlement, Stipulations, and	
	Admissions at Conferences	54
	LR Civ P 16.06. Mediation	54
(a)	Cases to Mediate	54
(b)	Selection of Mediator; Notice of Nomination	55
(c)	Preparation for Mediation Conference	55
(d)	Mediation Statements	55
(e)	Confidentiality	56

(f)	Impartiality of Mediator	56
(g)	Immunity	56
(h)	Mediation Report	56
(i)	Settlement Proceedings	57

Discovery

LR Civ P 26.01. Control of Discovery	57
(a) Initial Disclosures Under Fed. R. Civ. P. 26(a)(1)	57
(b) Disclosures Under Fed. R. Civ. P. 26(a)(2) Regarding Experts	57
(c) Discovery Event Limitations	59
(d) Further Discovery	59
LR Civ P 26.02. Uniform Definitions in Discovery Requests	60
(a) Incorporation by Reference and Limitations	60
(b) Effect on Scope of Discovery	60
(c) Definitions	60
LR Civ P 26.03. Inspection of Documents and Copying Expense	61
(a) Inspection of Documents	61
(b) Copies of Documents	61
LR Civ P 26.04. Discovery Disputes	62
(a) Objections to Disclosures or Discovery	62
(b) Duty to Meet	65
LR Civ P 26.05. Protective Orders and Sealed Documents	65
(a) Protective Orders	65
(b) Sealed Documents	65

Interrogatories to Parties

LR Civ P 33.01. Interrogatories 66

(a) Form of Response 66

(b) Reference to Records 66

(c) Answers to Interrogatories Following Objections 67

Production of Documents

LR Civ P 34.01. Document Production 67

(a) Form of Response 67

(b) Objections to Document Requests 67

(c) Answers to Document Requests After Objections 67

Requests for Admissions

LR Civ P 36.01. Admissions 68

(a) Form of Response 68

(b) Statements in Response After Objections 68

Sanctions

LR Civ P 37.01. Sanctions 68

Motions to Compel

LR Civ P 37.02. Motions to Compel 68

(a) Motions to Compel 68

(b) Waiver 69

(c) Response 69

Dismissal of Actions

LR Civ P 41.01. Dismissal of Actions 70

Trial

LR Civ P 47.01. Trial Juries	70
(a) Examination of Prospective Jurors	70
(b) Jury Lists	71

Fees and Costs

LR Civ P 54.01. Fees and Costs	71
--------------------------------------	----

Magistrate Judges

LR Civ P 72.01. Authority of Magistrate Judges	72
(a) General	72
(b) Statutory Duties	72
(c) Habeas Corpus and Collateral Relief	72
(d) Post-Conviction Habeas Corpus Related Actions	73
(e) Miscellaneous Duties	73
(f) Method of Assignment of Matters to Magistrate Judges	75
LR Civ P 72.02. Effect of Magistrate Judge Ruling on Pending Objection	75

Hearings on Motions

LR Civ P 78.01. Hearings on Motions	75
---	----

III. LOCAL RULES OF CRIMINAL PROCEDURE 76

Applicability of General Rules

LR Cr P 1.01. Applicability 76

LR Cr P 2.01. Grand Jury 76

LR Cr P 10.01. Duties of the Magistrate Judge 77

(a) Jurisdiction 77

(b) Arraignments 77

(c) Waiver of Presence at Arraignment 77

(d) Additional Duties 77

Discovery

LR Cr P 16.01. Pretrial Discovery and Inspection 78

(a) Do Not File Discovery With the Court 78

(b) Standard Discovery Request Form 78

(c) Reciprocal Discovery 78

(d) Time for Government Response 78

(e) Reciprocal Discovery Response 78

(f) Defense Discovery Request Deemed Speedy Trial Motion 79

(g) Duty to Supplement 79

(h) Modification for Complex Cases 79

LR Cr P 16.02. Declination of Disclosure 80

LR Cr P 16.03. Additional Discovery or Inspection 80

LR Cr P 16.04. Additional Evidence 81

LR Cr P 16.05. Exculpatory Evidence 82

LR Cr P 16.06. Rule 404(b), Giglio and Roviaro Evidence	82
LR Cr P 16.07. List of Witnesses	82
LR Cr P 16.08. List of Trial Exhibits	83
LR Cr P 16.09. Protective and Modifying Orders	83
LR Cr P 16.10. Failure to Comply With Discovery	83
LR Cr P 16.11. Continuing Disclosure	84
LR Cr P 16.12. Effect of Disclosure by the Government	84
 Motions In Limine	
LR Cr P 24.01. Motions in Limine	84
 Petition for Disclosure of Presentence, Pretrial or Probation Records and	
Guideline Presentence Reports	85
LR Cr P 32.01. Disclosure of Presentence Reports (PSR)	85
(a) Disclosure	85
(b) Time	85
(c) Probation Officer Duties	85
(d) Objections	86
(e) No Objections Form	86
(f) Sentencing Memoranda	86
(g) Presentence Report After Sentencing	86
LR Cr P 32.02. Disclosure of Records or Testimony	87
 Videoconferences in Criminal Cases	
LR Cr P 43.01. Matters That May Be Conducted By	
Videoconference	88

Deadlines

LR Cr P 45.01. Deadlines 89

Motions

LR Cr P 47.01. Motions 89

(a) Pretrial Motions 89

(b) Post-Trial Motions 90

Continuance of Trial

LR Cr P 50.01. Continuances 90

Forfeiture of Collateral in Lieu of Appearance for Misdemeanor Offenses

LR Cr P 58.01. Forfeiture of Collateral 90

(a) Posting Collateral 90

(b) Petty Offense 91

(c) Arrest 91

(d) Failure to Post Collateral 91

(e) Collateral Posted 92

(f) Violation Notices 92

(g) Certification of Record of Traffic Violations 92

(h) Non-Collateral Forfeiture Cases 92

IV. LOCAL RULES OF PRISONER LITIGATION PROCEDURE 93

PART 1

General Provisions 93

 LR PL P 1. Scope 93

 LR PL P 2. Prisoner Cases Assigned to Magistrate Judges 94

 LR PL P 3. *Pro Se* Prisoner Petitioners, Applications, Motions, and Complaints
 Are to be Filed on Court-Approved Forms 94

 LR PL P 4. Filing *Pro Se* Prisoner Petitions, Applications, Motions, and
 Complaints 97

 LR PL P 5. Notice of Deficient Pleading 99

 LR PL P 6. Current Mailing Address 99

 LR PL P 7. Discovery 100

 LR PL P 8. Prisoners May Not Utilize This Court’s “Case
 Management/Electronic Case Files” System 100

 LR PL P 9. Court Personnel Cannot Provide Legal Advice 100

 LR PL P 10. Procedures for Cases Where a Prisoner is Represented By
 Counsel 101

 LR PL P 11. Motions Practice & Court Deadlines 101

 LR PL P 12. Objections to a Magistrate Judge’s Recommended
 Disposition 102

 LR PL P 13. Filing of Pleadings or Papers Not Authorized by the Rules . . . 103

 LR PL P 14. Filing Fee for Appeals 103

 LR PL P 15. Sanctions 104

LR PL P 16. Appointment of Counsel 104

PART 2

Habeas Corpus Petitions and Motions to Vacate or Modify Sentence 105

LR PL P 16. Filing Fee 105

LR PL P 17. Applications by Prisoners to Proceed *In Forma Pauperis* in Section
2254 and 2241 Petitions 105

LR PL P 18. Separate Petitions are Required for Judgments Entered by
Different Courts 106

LR PL P 19. No Responses Required Without Court Order 106

LR PL P 20. Filing a Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C.
Section 2241 107

LR PL P 21. Filing a Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C.
Section 2254 107

LR PL P 22. Filing a Motion to Vacate or Modify Sentence Pursuant to 28 U.S.C.
Section 2255 109

LR PL P 23. Appeals 110

PART 3

All Other Civil Causes of Action 111

LR PL P 24. Filing Fee for Civil Causes of Action 111

LR PL P 25. Applications by Prisoners to Proceed *In Forma Pauperis* in Civil
Actions Other Than Those Filed Pursuant to Sections 2241 and 2254 111

LR PL P 26. Place of Filing 113

LR PL P 27. Service of the Complaint 114

LR PL P 28. Consent to Trial by Magistrate Judge	115
LR PL P 29. Appeals from an Adverse Decision in a Civil Action	115
LR PL P 30. Filing a <i>Pro Se</i> State Civil Rights Complaint Pursuant to 42 U.S.C. Section 1983	116
LR PL P 31. Filing a <i>Pro Se</i> Federal Civil Rights Complaint Pursuant to <i>Bivens</i> <i>v. Six Unknown Federal Narcotic Agents</i> , 403 U.S. 388 (1971) . . .	116
LR PL P 32. Filing a <i>Pro Se</i> Complaint Pursuant to the Federal Torts Claims Act (FTCA)	117
LR PL P 33. Filing a <i>Pro Se</i> Complaint Pursuant to Any Statutory Authority Not Specifically Designated Above	117
V. <u>LOCAL RULES OF MAGISTRATE JUDGE PROCEDURE</u>	118
VI. <u>LOCAL RULES OF BANKRUPTCY PROCEDURE</u>	118

I. LOCAL RULES OF GENERAL PRACTICE AND PROCEDURE

LR Gen P 1.01. Courthouse Security.

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

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

(c) Weapons: The United States Marshal, Deputy United States Marshals and Court Security Officers may possess and oversee possession of firearms or other weapons in the building. Federal law enforcement agencies who have offices in the building, including but not limited to the United States Probation Office, Federal Bureau of Investigation, Drug Enforcement Agency, United States Attorneys, etc., shall be authorized to possess weapons on a direct route from the security screening post to their respective

offices and return. No agency personnel may carry weapons inside any courtroom without specific authorization from the United States Marshal and the presiding judge. All agencies shall provide written authorization to the United States Marshal identifying which specific employees are authorized to carry weapons in the building. All other employees are prohibited from possessing weapons within the building. State, city and local law enforcement officers are required to secure their weapons with the Court Security Officers and successfully pass through the security screening post.

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

(e) Enforcement: The United States Marshals and Court Security Officers are to coordinate enforcement of this Local Rule and to take into custody any person violating its provisions. Such persons violating the provisions of this Local Rule shall be brought before the Court without unnecessary delay. The United States Marshals or Court Security Officers shall promptly take into their custodial possession all weapons or other items that are, or could be, used as possible weapons, carried into the building in violation of federal laws or the laws of the State of West Virginia. The United States Marshals shall retain such weapons or items until the possessor makes proper showing that possession thereof is lawful. If such weapons or items are not lawfully reclaimed within thirty (30) days, they may be disposed of according to law.

LR Gen P 2.01. Disclosure Statement.

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

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

(b) Form Delivered to the Judge: The Clerk of Court shall deliver a copy of the disclosure statement to each judge acting in the action or proceeding.

Commencement of Action

LR Gen P 3.01. Proceedings *In Forma Pauperis*.

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

In all civil cases initiated without payment of fees and costs, the plaintiff shall stipulate in an affidavit that any recovery in the action shall, pursuant to the order of the

Court, be paid to the Clerk, who shall pay therefrom any remaining unpaid costs taxed against the plaintiff and remit the balance to the plaintiff or the plaintiff's attorney.

Contempt

LR Gen P 4.01. Initiation of Civil Contempt Proceedings.

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

LR Gen P 4.02. Issues; Trial By Jury.

If the alleged contemner puts in issue his or her alleged misconduct or the damages sought, he or she shall, upon demand, be entitled to have evidence taken, either before the Court or before a master appointed by the Court. When the alleged contemner is

entitled to a trial by jury, he or she shall make written demand therefor at least thirty (30) days before the trial date; otherwise he or she will waive the right to a trial by jury.

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

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

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

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

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

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

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

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

In the event the alleged contemner is found not guilty of the charges, he or she shall be discharged from the proceeding and, in the discretion of the Court, may have judgment against the complainant for his or her costs and disbursements and a reasonable attorney's fee.

Filing of Papers

LR Gen P 5.01. Filing of Papers.

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

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

(c) Filing in Paper: When filing in paper form and not filing electronically per paragraph (a) above, except as otherwise permitted or required by the Federal Rules, these Local Rules, or order, filers shall provide the original and two (2) copies of all filings to the Clerk's Office at the point of holding court in which the particular action or proceeding is docketed. In emergency situations, filers may file documents at any Clerk's Office. The receiving Clerk's Office shall then forward the filing to the appropriate Clerk's Office.

Within twenty-one (21) days of the removal of an action from state court, counsel shall file an original plus two (2) copies of the certified state court record, unless filing electronically.

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

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

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

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

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

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

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

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

(a) Filing by Fax: All points of holding court within the Northern District of West Virginia shall maintain a fax machine within the Office of the Clerk, shall accept documents

filed by fax, and may send documents by fax transmission to the extent expressly provided for in these Rules and not in conflict with statutes or other court rules. The faxed document must be a fax of the original document in its entirety, including any exhibits and attachments thereto.

(b) Electronic Filing: Pursuant to Fed. R. Civ. P. 5(d)(3) and Fed. R. Crim. P. 49, the Clerk's office will accept filings signed or verified by electronic means that are consistent with the technical standards that the Judicial Conference of the United States establishes. A document filed by electronic means in compliance with this Rule constitutes a written paper for the purpose of applying these Rules, the Federal Rules of Civil Procedure, and the Federal Rules of Criminal Procedure. All electronic filings shall be governed by this Court's Administrative Procedures for Electronic Case Filing, provisions of which are incorporated by reference, and that may be amended from time to time by the Court.

(c) Attorney Signatures: Documents filed under an attorney's login and password shall constitute that attorney's signature for purposes of the Local and Federal Rules of Civil and Criminal Procedure, including but not limited to Fed. R. Civ. P. 11. Any document requiring an attorney's signature shall be signed in the following manner "s/ (attorney name)."

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

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

(b) Form and Format: All documents conveyed via fax transmission must conform in form and format to existing standards established by applicable statutes or rules of court.

They should be printed on, or the receiver shall make any necessary photocopies on, 8½ by 11-inch, 20-pound alkaline plain paper of archival quality, and satisfy all other requirements of these rules.

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

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

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

(f) Signatures:

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

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

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

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

(i) Payment of Fees:

(1) No later than seven (7) days after filing by fax, the filing party must pay the required filing fee and provide a copy of the fax filing cover sheet.

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

(3) If any required fee is not received by the Court within seven (7) days after the filing by fax, the filing shall be voidable and no further notice need be given any party.

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

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

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

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

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

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

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

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

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

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

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

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

Service by Electronic Means

LR Gen P 5.06. General.

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

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

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

¹ Fed. R. Civ. P. 5(b)(2)(D): Service shall be accomplished by "[d]elivering a copy by any other means, including electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. If authorized by local rule, a party may make service under this subparagraph (D) through the Court's transmission facilities."

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

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

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

(g) Time to Respond Under Electronic Service: Pursuant to Fed. R. Civ. P. 6(d) and Fed. R. Crim. P. 45, service by electronic means is treated the same as service by mail for purposes of adding three (3) days to the prescribed period to respond.

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

LR Gen P 5.07. Video.

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

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

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

(1) The facility and equipment enable counsel to be present personally with the out-of-court party and to confer privately with such party outside the reach of the camera and audio microphone.

(2) The judge must be able to fully view the out-of-court party and counsel, though not necessarily at the same time. The out-of-court party and counsel must be able to fully view the judge and all attorneys present in the courtroom, though not necessarily at the same time.

(3) The facility must have the capacity, through video equipment or through fax or e-mail, for the contemporaneous transmission of documents and exhibits.

(4) Color images shall be transmitted in color.

(5) The audio and video transmission shall be of such quality, design and architecture as to allow easy public viewing of all public proceedings. The use of video technology in conducting hearings and proceedings shall in no way abridge any right that the public may have to access the courtroom.

(6) The official record of any proceeding conducted using video telecommunications shall be made in a manner prescribed by the judicial officer conducting the proceedings.

(c) Counsel Duty to Notify: If a party has a need for any type of courtroom technology for a hearing, including the document presentation equipment, video equipment, audio equipment, etc., counsel must notify the Clerk's office of the need for the courtroom technology at least seven (7) days before the respective hearing or trial.

E-Government Act

LR Gen P 5.08. E-Government Act.

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

(1) **Social Security Numbers**: if an individual's social security number must be included in a filing, use only the last four digits of that number.

(2) **Names of Minor Children**: if the involvement of a minor child must be mentioned, use only the child's initials.

(3) **Dates of Birth**: if an individual's date of birth must be included in a filing, use only the year.

(4) **Financial Account Numbers**: if financial account numbers are relevant, use only the last four digits of these numbers.

(5) **Home Address in Criminal Cases**: If a home address must be included in a document to be filed, include only the city and state.

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

(1) File a redacted, unsealed version of the document along with a reference list under seal. The reference list shall contain the complete personal data

identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list must refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as a right; or

(2) With approval of the Court, file an unredacted version of the document under seal. The Court may, however, still require the party to file a redacted copy for the public file. The unredacted version of the document or the reference list shall remain sealed and retained by the Court as part of the record.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review each filing for compliance with this Local Rule.

(c) Transcripts of Hearings: If information listed in section (a) of this Rule is elicited during testimony or other court proceedings, it will become available to the public when the official transcript is filed at the courthouse unless, and until, it is redacted. The better practice is to avoid introducing this information into the record in the first place. If a restricted item is mentioned in court, any party or attorney may ask to have it stricken from the record or partially redacted to conform to the privacy policy, or the Court may do so on its own motion.

(d) Violations of Rule: Upon discovery that documents have been filed which do not comply with this Local Rule, the judicial officer may *sua sponte* seal or restrict all or part of the case file.

Time

LR Gen P 5.09. Computing and Extending Time.

All time period computations shall be made in accordance with Fed. R. Civ. P. 6, Fed. R. Crim. P. 45, and Fed. R. App. P. 26.

Sealed Documents

LR Gen P 6.01. Sealed Documents in Public Cases.

(a) Motion for Leave to File Under Seal:

(1) Motion: To file a document under seal, a party must first electronically file a Motion for Leave to File Under Seal. If the Motion for Leave to File Under Seal itself contains sensitive information, the party shall:

(i) Electronically file it under seal in CM/ECF and because this is a sealed event that is inaccessible to recipients of the NEF, parties shall effect service of process traditionally, or

(ii) File the motion with the Clerk's office in paper. The Clerk's office will then file the motion under seal. The parties remain responsible for effecting service of process traditionally.

(2) Memorandum: Along with the motion to file under seal, the party shall file a memorandum of law that explains why sealing is required.

(3) Exhibits:

(i) If necessary, the filer may present exhibits that contain the sensitive information in an envelope marked "sealed" to the Clerk's office;

(ii) If filing the Motion for Leave to File Under Seal is itself filed under seal per (a)(1)(i) or (ii) above, the filer may attach the exhibits to the Motion for Leave to File Under Seal.

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

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

Contact with Jurors

LR Gen P 47.01. Contact with Jurors.

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

Entry of Judgments

LR Gen P 58.01. Entry of Judgments and Orders.

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

Bonds

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

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

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

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

LR Gen P 77.01. Principal Office.

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

LR Gen P 77.02. Points of Holding Court.

The Northern District of West Virginia is composed of thirty-two (32) counties. Each of these counties is assigned to one of four points of holding court. Each point of holding court is given the name of the city at the point of holding court where the Court and offices of its Clerk are located. The addresses, fax numbers and phone numbers of points of holding court offices, and counties comprising each point of holding court are as follows:

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

LR Gen P 77.03. Sessions.

(a) Court Hours: The Court is considered open and in continuous session at all points of holding court on all business days throughout the year in accordance with the provisions of 28 U.S.C. § 139, Fed. R. Civ. P. 77(a) and (c), Fed. R. Crim. P. 56, and other controlling statutes and rules. Regular business hours are 8:30 a.m. to 5:00 p.m. Monday through Friday.

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

LR Gen P 79.01. Exhibits.

(a) Custody and Disposition of Exhibits:

(1) Paper Exhibits: After being marked for identification, all paper exhibits admitted in evidence shall be placed in the custody of the Clerk until the transcript has been completed and the record has been submitted to the United States Court of Appeals for the Fourth Circuit. Sixty (60) days following submission of the record on appeal, the Clerk shall place such exhibits in the custody of the attorney or party producing them, and the attorney or party shall execute a receipt therefor to be filed by the Clerk.

(2) Nonpaper Exhibits:

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

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

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

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

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

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

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

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

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

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

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

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

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

LR Gen P 83.02. Visiting Attorneys.

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

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

- (i) the action, suit, proceeding or other matter that is the subject of the application;
- (ii) the name, address and telephone number of the registration or disciplinary agency of all state courts, the District of Columbia or of the country in which such person is admitted;
- (iii) the name and address of the member of the West Virginia State Bar who will be a responsible local attorney in the matter;
- (iv) all matters before West Virginia tribunals or bodies in which such person is or has been involved in the preceding (24) twenty-four months, unless such person is admitted to practice in West Virginia;
- (v) all matters before West Virginia tribunals or bodies in which any member of applicant's firm, partnership, corporation or other operating

entity is or has been involved in the preceding twenty-four (24) months, unless such person is admitted to practice in West Virginia;

(vi) a representation by the applicant for each state, the District of Columbia or any other country where the 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 (24) months; and

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

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

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

(b) Responsible Local Attorney: The responsible local attorney to be associated with the applicant shall be as follows:

The applicant shall be associated with an active member in good standing of the state bar, having an office for the transaction of business within the State of West Virginia, who shall be a responsible local attorney in the action, suit, proceeding or other matter that

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

(c) Exceptions to Payment of Visiting Attorney Fee:

(1) Bankruptcy Cases. The Visiting Attorney fee will apply in every bankruptcy case in which the reference to the Bankruptcy Court has been withdrawn, and in every appeal of a bankruptcy case to the District Court. Otherwise, the imposition of a Visiting Attorney fee in a bankruptcy case will be governed by the Local Rules for Bankruptcy Court.

(2) Multidistrict Litigation Cases. Pursuant to the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, a Visiting Attorney fee will not be charged in any case filed in this Court pursuant to a transfer under said Rules.

(3) Miscellaneous Cases. A Visiting Attorney who files a miscellaneous case which does not require judicial action (e.g., one filed in order to obtain a subpoena) is exempt from paying the Visiting Attorney fee, from associating with a Sponsoring Attorney, and from filing the Statement of Visiting Attorney. A Visiting Attorney who files a miscellaneous case which does require judicial action (e.g., motion to compel testimony at a deposition) must comply with LR Gen P 83.02(a).

(4) Federal Government Attorneys. Attorneys employed by the United States Department of Justice or any other Federal department or agency will not be required to pay the Visiting Attorney fee.

(5) Law Students. Law students who participate in a case in accordance with these Rules will not be charged a Visiting Attorney fee.

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

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

in accordance with the service requirements of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. Parties appearing *pro se* shall, at their first appearance, file their phone numbers, and complete names and addresses where all papers may be served upon them.

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

LR Gen P 83.04. Legal Assistance by Law Students.

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

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

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

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

Conduct and Examination of Witnesses

LR Gen P 84.01. Ethical Considerations.

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

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

LR Gen P 84.02. Bias and Prejudice.

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

preserve a neutral and fair forum for all persons. Nothing in this Local Rule, however, is intended to infringe unnecessarily or improperly upon the otherwise legitimate rights, including the right of freedom of speech, of any person, nor to impede or interfere with the advocacy of causes and positions by lawyers and litigants.

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

Attorneys and *pro se* litigants who are physically able must stand and speak clearly when addressing the Court. Except by leave of 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.

LR Gen P 84.04. Pro Se Litigants.

All persons appearing *pro se* are reminded of and expected to comply with Rule 11 of the Federal Rules of Civil Procedures and are subject to sanctions for a violation thereof. Copies of the Rules of Civil Procedure and these Local Rules are available on the District Court's website.

Photographing and Broadcasting Court Proceedings, Electronic Equipment

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

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

LR Gen P 85.02. Impoundment of Equipment.

The United States Marshal, Deputy United States Marshals or Court Security Officers may impound any camera, recording, broadcasting and other related equipment brought into the courtroom or the adjacent corridors in violation of LR Gen P 85.01. The impounded equipment shall be returned to its owner or custodian after the proceedings have concluded.

LR Gen P 85.03. Electronic Equipment in the Courthouse.

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

Court Library**LR Gen P 87.01. Court Library.**

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

Scheduling Conflicts; Requests for Continuance

LR Gen P 88.01. Scheduling Conflicts with State Court.

Parties must inform the Court no later than fourteen (14) days before a scheduled event if the scheduled event conflicts with a scheduled event in West Virginia State Court, the Northern District of West Virginia, or the Southern District of West Virginia. Parties must work with the Court to resolve all such scheduling conflicts pursuant to the provisions of West Virginia Trial Court Rule 5.

LR Gen P 88.02. Requests for Continuance.

A party or parties requesting a continuance must contact all other parties to determine three (3) possible dates to which to move the deadline or hearing. The moving party must specify these three possible dates within the motion to continue.

II. LOCAL RULES OF CIVIL PROCEDURE

Applicability of General Rules

LR Civ P 1.01. Applicability.

In all civil 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 Civil Procedure apply equally to all parties.

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 fourteen (14) days of filing the complaint, mail a copy of the notice and request via first-class mail or other reliable means to the defendant and file the original thereof.

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

A plaintiff who mails a notice and request under the provisions of Fed. R. Civ. P. 4(d)(2) shall allow the defendant not less than thirty (30) days nor more than forty-five (45) 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 (60) days nor more than seventy-five (75) 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 seven (7) days after its return.

Court Filings

LR Civ P 5.01. Discovery.

(a) Discovery Not Filed; Certificate of Service Filed: Parties shall not file disclosures pursuant to Fed. R. Civ. P. 26(a)(1), (2) and (3), depositions upon oral examination or written questions and any notice thereof, notices of receipt of depositions, interrogatories, requests pursuant to Fed. R. Civ. P. 34, requests for admissions, or answers and responses thereto, or any other discovery materials, unless expressly ordered or required under these Local Rules of Civil Procedure. Parties shall file only certificates of service of discovery materials.

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

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

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

Filings

LR Civ P 7.01. Stipulations.

Unless otherwise ordered, stipulations under the Federal Rules of Civil Procedure and these Local Rules of Civil Procedure must be in writing, signed by the parties making them or their counsel, and promptly filed. With electronic filings, each party or attorney may

sign via the s/ signature consistent with section 15 of this Court's Administrative Procedures for Electronic Filing.

LR Civ P 7.02. Motion Practice.

(a) Motions and Supporting Memoranda: All motions shall be concise, shall state the relief requested precisely, shall be filed timely but not prematurely, and, except for nondispositive motions other than a motion for sanctions, shall be accompanied by a supporting memorandum of not more than twenty-five (25) pages, double-spaced, and by copies of depositions (or pertinent portions thereof), admissions, documents, affidavits, and other such materials upon which the motion relies. A judicial officer for good cause shown may allow a supporting memorandum to exceed twenty-five (25) pages. A dispositive motion or a motion for sanctions unsupported by a memorandum will be denied without prejudice. The memorandum must be submitted on 8½ by 11-inch paper. Margins must be one-inch on all four sides. Page numbers may be placed in the margins, but no text can be placed in the margins. The memorandum must be in either Times New Roman, Courier New, or Arial font. The font size must be twelve (12) point proportionally spaced type or eleven (11) point nonproportionally spaced type. Footnotes and indented quotations may be single-spaced and footnote text shall be no smaller than eleven (11) point proportionally spaced or ten (10) point nonproportionally spaced type.

Parties may file a memorandum in support of a nondispositive motion, but are not required to do so. 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 (2) copies. Motions for summary judgment shall include or be accompanied by a short and plain statement of facts.

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

(1) Memoranda in Response: Except for responses to motions for summary judgment, responses to motions shall be filed and served within fourteen (14) days from the date of service of the motion. Responses to motions for summary judgment shall be filed and served within 21 days from the date of service of the motion.

(i) Traditional Filing: When not filing electronically in *CM/ECF*, parties shall file the original and two (2) copies of the memoranda and other materials and serve paper copies on opposing counsel and unrepresented parties.

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

(iii) The memoranda in response may not exceed twenty-five (25) pages and are subject to the restrictions set forth in LR Civ P 7.02(a) regarding paper, font size, and line spacing.

(2) Memoranda in Reply: Except for replies to responses to motions for summary judgment, replies shall be filed and served within seven (7) days from the date of service of the response to the motion. Replies to responses to motions for summary judgment shall be filed and served within fourteen (14) days from the date of service of the response to the motion.

(i) Traditional Filing: When filing in paper and not filing in *CMJECF*, parties shall file the original and two (2) copies of the reply

memoranda and serve paper copies on opposing counsel and unrepresented parties.

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

(iii) Reply Memoranda: The reply memoranda may not exceed fifteen (15) pages, subject to the restrictions set forth in LR Civ P 7.02(a) regarding paper and font size and line spacing.

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

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

(5) Courtesy Copy: When electronically filing a memorandum with the Clerk's office, the filing party must file a courtesy copy of the memorandum to the Court if the memorandum, together with documents in support thereof, is fifty (50) or more pages, or where any administrative record is seventy-five (75) pages or more in length.

(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.

Social Security Cases

LR Civ P 9.01. Complaints Filed Pursuant to Social Security Act.

(a) Electronic Filing: Absent a showing of good cause, litigants shall file and notice all documents in social security reviews, except case opening documents, electronically. The United States Attorney shall either file social security transcripts electronically in CM/ECF or provide them to the Clerk's office in electronic format, either via email, Compact Disc, or other electronic format suitable for filing in CM/ECF. The United States Attorney shall provide a paper copy of the social security transcript to the respective magistrate judge, who shall provide it to the district judge upon request. The Clerk's staff will not make copies of the social security transcript.

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

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

(c) Internet Access: Unless the Court orders otherwise, in an action for benefits under the Social Security Act, access to the electronic file is authorized as follows:

- (1) the parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record; and

(2) any other person may have electronic access, whether remotely or at the courthouse, only to:

(i) the docket maintained by the Court; and

(ii) an opinion, order, judgment, or other disposition of the Court, but not any other part of the case file or the administrative record.

LR Civ P 9.02. Social Security Appeals.

(a) Referral: Upon receipt of a properly completed complaint and either (1) the full filing fee or (2) an Application for Leave to Proceed Without Prepayment of Fees, pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 73, actions filed pursuant to 42 U.S.C. § 405(g) will be referred to the designated United States Magistrate Judge who 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 nondispositive motions, including, without limitation, conducting a hearing on the motions, if necessary, and entering into the record a written order setting forth the disposition of the motions or recommendation for disposition, as the case may be.

(b) Answer: Within sixty (60) days after the date of service of the complaint, the defendant shall file an answer and a complete copy of the record of the administrative proceedings and serve a copy of the same on plaintiff.

(c) Plaintiff's Motion for Summary Judgment and Memorandum in Support: Within thirty (30) days after the defendant has filed an answer and a complete copy of the administrative record, the plaintiff shall file a Motion for Summary Judgment and Memorandum in Support setting forth his or her claim(s) for relief. The plaintiff shall serve copies of his or her Motion for Summary Judgment and Memorandum in Support upon the United States Attorney's Office.

(d) Defendant's Memorandum in Opposition: Within thirty (30) days after the plaintiff's Motion for Summary Judgment and Memorandum in Support is filed, the defendant shall file a Memorandum in Opposition 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 Motion and Memorandum in Support.

(e) Page Limits: The memoranda shall not exceed a total of fifteen (15) 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 memorandum.** The Court will grant an extension only on the showing of good cause. If a party desires an extension of time within which to respond, the moving party must file a motion for extension before the date upon which the memorandum is due. The memorandum shall be deemed submitted as of the date on which the defendant's memorandum is filed.

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

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

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

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.

Amended Pleadings

LR Civ P 15.01. Motions to Amend.

Any party filing a motion to amend a pleading that requires leave of court to file, shall attach to that motion a signed copy of the proposed amended pleading. However, the amended pleading shall not be filed until the Court grants the particular motion.

Conferences

LR Civ P 16.01. Scheduling Conferences.

(a) Convening Scheduling Conferences; Transferred Actions: Except in actions exempted by paragraph (g) of this Rule or by standing order, a judicial officer shall, unless the Court determines otherwise, convene a scheduling conference as soon as practicable,

but in any event, within eighty (80) days after the appearance of a defendant and within one hundred ten (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 seven (7) 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 (60) 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 seven (7) 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 (21) days before the date set for the scheduling conference, the parties shall meet in person or by telephone to discuss and report on all Fed. R. Civ. P. 16 and 26(f) matters and to:

- (1) consider, consistent with paragraph (d) of this Rule, whether the case is complex and appropriate for monitoring in an individualized and case-specific manner through one or more case-management conferences and, if applicable, to propose for the Court's consideration three alternative dates and times for the first conference;

- (2) agree, if possible, upon the disputed facts that have been alleged with particularity in the pleadings;
- (3) consider consenting to trial by a magistrate judge;
- (4) consider alternative dispute resolution processes such as that in LR Civ P 16.05; and
- (5) prepare an agenda of matters to be discussed at the scheduling conference.

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

(c) Written Report of Meeting; Canceled Scheduling 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 (14) days before the date set for the scheduling conference.

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

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

(d) Conducting Scheduling Conferences: Except in a case in which a scheduling conference has not been scheduled pursuant to order by a judicial officer or has been canceled pursuant to paragraph (c) of this Rule, a judicial officer shall convene a scheduling conference in person, by telephone, or by video conference, within the mandatory time frame specified in paragraph (a) of this Rule regardless of whether the parties have met pursuant to paragraph (b) of this Rule or filed a written report pursuant to paragraph (c) of this Rule. At the scheduling conference, the judicial officer shall consider any written report filed by the parties and discuss time limits and other matters counsel were obligated to consider in their meeting and that may be addressed in the scheduling order.

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

- (1) the complexity of the issues, the number of parties, the difficulty of the legal questions and the uniqueness of proof problems;
- (2) the amount of time reasonably needed by the parties and their attorneys to prepare the case for trial;

(3) the judicial and other resources required and available for the preparation and disposition of the case;

(4) whether the case belongs to those categories of cases that:

(i) involve little or no discovery,

(ii) ordinarily require little or no additional judicial intervention, or

(iii) 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 (90) days after the appearance of a defendant and within one hundred twenty (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) (i) Time Limits: Time limits in the scheduling order for the joinder of other parties, amendment of pleadings, filing of motions, and completion of discovery, and dates for conferences before trial, a final pretrial conference, and trial may be modified for cause by order.

(ii) Requests for Continuance: A party or parties requesting a continuance must contact all of the other parties to determine three

(iii) possible dates to which to move the deadline or hearing. The moving party must specify these three (3) possible dates within the motion to continue.

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

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

(g) Categories of Actions Exempted: In addition to those actions and proceedings identified in Fed. R. Civ. P. 81 to which the Federal Rules of Civil Procedure do not apply, the following categories of actions are exempted from the requirements of Fed. R. Civ. P.

16(b), 26(a)(1)-(4) and 26(f), and of the Local Rules of Civil Procedure relating thereto unless otherwise ordered:

- (1) habeas corpus cases and motions attacking a federal sentence;
- (2) procedures and hearings involving recalcitrant witnesses before federal courts or grand juries pursuant to 28 U.S.C. § 1826;
- (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) in which the plaintiff is unrepresented by counsel;
- (7) condemnation actions;
- (8) bankruptcy proceedings appealed to this Court;
- (9) collection and forfeiture cases in which the United States is plaintiff and the defendant is unrepresented by counsel;
- (10) Freedom of Information Act proceedings;
- (11) post-judgment enforcement proceedings and debtor examinations;
- (12) enforcement or vacation of arbitration awards;
- (13) civil forfeiture actions;
- (14) student loan collection cases;
- (15) actions that present purely legal issues, require no resolution of factual issues, and that may be submitted on the pleadings, motions and memoranda of law;

(16) certain cases involving the assertion of a right under the Constitution of the United States or a federal statute, if good cause for exemption is shown; and

(17) 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:
 - (i) identify and limit the discovery available to avoid unnecessary, unduly burdensome or expensive discovery;
 - (ii) sequence discovery into two (2) or more stages; and
 - (iii) 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 seven (7) days before the case-management conference.

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

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

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

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

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

LR Civ P 16.04. Final Conferences; Pretrial Order.

(a) Obligation of Counsel to Meet; Pretrial Disclosures: Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, counsel and unrepresented

parties shall meet no later than twenty-one (21) 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 seven (7) days prior to the final pretrial conference, a proposed pretrial order setting forth:

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

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

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

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

The agenda of the final pretrial conference shall include consideration of those matters in the proposed pretrial order and any other appropriate matters, 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.

LR Civ P 16.06. Mediation.

(a) Cases to Mediate: The judicial officer may order mediation *sua sponte* or at the request of any party. The Northern District of West Virginia also supports the voluntary use

of alternate dispute resolution and will endeavor to facilitate mediation or similar proceedings when the presiding judicial officer finds a request to do so appropriate and timely. The parties are free to engage in mediation without court involvement so long as it does not interfere with court-ordered deadlines.

(b) Selection of Mediator; Notice of Nomination: The parties are expected to agree upon a mediator, the amount of the mediator's fee, and the responsibility for payment. If the parties are unable to agree on a mediator, then the parties shall promptly notify the presiding judicial officer, who shall appoint a mediator, set the amount of the mediator's fee, and assign responsibility for payment. The parties may request that a judicial officer (who is not the presiding judicial officer) conduct the mediation. Such requests are particularly appropriate in complex cases or in cases in which a party is financially unable to bear its proportionate share of the mediation expense. Except with consent of the parties, a magistrate judge who has conducted a mediation shall not thereafter handle discovery disputes or other substantive matters in the case.

(c) 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 mediation in good faith.

(d) Mediation Statements: The mediator may require the submission of written mediation statements. If the mediator does not require submission of written mediation statements, any party may submit a written mediation statement. Mediation statements submitted in writing to the mediator are confidential.

(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) Impartiality of Mediator: A mediator shall not serve in a case in which the mediator's impartiality might reasonably be questioned. Possible conflicts of interest shall be promptly disclosed by the mediator to counsel and pro se parties.

(g) 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.

(h) Mediation Report. Unless a different time period is set by the judicial officer, within seven (7) days of the conclusion of mediation, the mediator shall file with the Clerk's Office a Mediation Report Form, whether the mediation did or did not result in settlement.

This form can be found at the Court's web page at www.wvnd.uscourts.gov under the "Forms" link. This form shall be filed with the Clerk's Office where the case is pending. It is the responsibility of the parties to ensure compliance with this Rule.

(i) Settlement Proceedings: In the event mediation of a pending civil matter by a judicial officer who is not the presiding judicial officer in the case, results in a complete settlement of the case the mediation judicial officer is authorized, in addition to filing the obligatory mediation statement, to forthwith convene a Court proceeding with the parties, parties representatives, and counsel present, to spread on the record the terms of the settlement agreement reached; to call upon the parties, parties representatives and counsel present to confirm the terms of the settlement; and to authorize the entry of an appropriate order of dismissal by the presiding judicial officer.

Discovery

LR Civ P 26.01. Control of Discovery.

(a) Initial Disclosures Under Fed. R. Civ. P. 26(a)(1): Unless otherwise ordered or stipulated by the parties, the disclosures required under Fed. R. Civ. P. 26(a)(1) shall be made no later than thirty (30) 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, file only the certificate of service.

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

- (1) the party bearing the burden of proof on an issue shall make the disclosures required by Fed. R. Civ. P. 26(a)(2)(A) and (B) to all other parties or their counsel no later than sixty (60) 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 (40) days prior to the discovery completion date; and

(3) all parties shall provide, no later than twenty (20) 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)(B).

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

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

(1) To the extent that such opinions are explicitly stated in records prepared by such witnesses and have been produced in the course of discovery, identify each such person as an expert witness who is anticipated to testify at the trial of the case;

(2) To the extent that such opinions are not explicitly stated in records prepared by such witnesses or have not been produced in the course of

discovery, identify each witness and state the subject matter on which the expert will testify, the substance of the facts and opinions to which the expert will testify, and a summary of the grounds for each opinion or, in the alternative, provide a report, prepared by the witness, that comports with the provisions of Fed. R. Civ. P. 26(a)(2)(B).

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

(4) In no event may a health care provider or other person relying on scientific, technical, or other specialized knowledge be considered a lay expert under Fed. R. Evid. 701.

(c) Discovery Event Limitations: Unless otherwise ordered or stipulated, and except as to complex cases governed by LR Civ P 16.02., discovery under Fed. R. Civ. P. 26(b)(2)(A) shall be limited as follows:

(1) Ten (10) depositions upon oral examination or written questions by each plaintiff;

(2) Ten (10) depositions upon oral examination or written questions by each defendant;

(3) Ten (10) depositions upon oral examination or written questions by each third-party defendant;

(4) Forty (40) written interrogatories, including all discrete subparts, per party; and

(5) Forty (40) requests for admission per party.

(d) Further Discovery: After the opportunities for discovery pursuant to paragraph (c), stipulation of the parties or order have been exhausted, any requests that the parties

may make for additional depositions, interrogatories, or requests for admissions shall be made by discovery motion.

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

LR Civ P 26.02. Uniform Definitions in Discovery Requests.

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

- (1) the definition of other terms specific to the particular case;
- (2) the use of abbreviations; or
- (3) a narrower definition of a term defined in paragraph (c).

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

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

- (1) “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise);
- (2) “document” is synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a). A draft or non-identical copy is a separate document;
- (3) “identify” when referring to a person means to give, to the extent known, the person’s full name and present or last known address. Once a person has been identified in accordance with this subparagraph, only the name of

that person need be listed in response to subsequent discovery requesting the identification of that person;

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

- (i) type of document,
- (ii) general subject matter,
- (iii) author(s), addressee(s), and recipient(s), and
- (iv) 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. Parties are encouraged, but not required, to provide copies of documents in electronic format.

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. Objections shall comply with Fed. R. Civ. P. 26(g) and any claim of privilege or objection shall comply with Fed. R. Civ. P. 26(b)(5).

(2) Claims of Privilege:

(i) 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:

(A) The attorney asserting the privilege shall identify the nature of the privilege (including work product) that is being claimed and, if the privilege is governed by state law, indicate the state's privilege rule being invoked and certify the attorney had reviewed each document for which privilege is asserted; and

(B) The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

(1) For documents:

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

(2) For oral communications:

- (a) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication;
- (b) the date and place of communication; and
- (c) the general subject matter of the communication.

(ii) 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:

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

(B) to the extent that the information is not readily available at the deposition, in writing within fourteen (14) days after the deposition session at which the privilege is asserted, unless otherwise ordered by the Court.

(iii) 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.

(iv) 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 fourteen (14) days or a shorter time ordered by the Court after the producing party 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.

LR Civ P 26.05. Protective Orders and Sealed Documents.

(a) Protective Orders: If a party, or parties jointly, seek entry of a protective order to shield information from dissemination, the movant or movants must demonstrate with specificity that (1) the information qualifies for protection under F. R. Civ. P. 26(c), and (2) good cause exists for restricting dissemination on the ground that harm would result from its disclosure.

(b) Sealed Documents:

(1) General. The rule requiring public inspection of Court documents is necessary to allow interested parties to judge the Court's work product in the cases assigned to it. The rule may be abrogated only in exceptional circumstances.

(2) Submission. Unless otherwise authorized by law, a motion to seal shall be filed electronically pursuant to the Administrative Procedures for Electronic Case Filing and accompanied by a memorandum of law which contains:

- (A) the reasons why sealing is necessary, including the reasons why alternatives to sealing, such as redaction, are inadequate;
- (B) the requested duration of the proposed seal; and

(C) a discussion of the propriety of sealing, giving due regard to the parameters of the common law and First Amendment rights of access as interpreted by the Supreme Court and our Court of Appeals.

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 (14) 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 (14) 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 Requests After Objections: When it is ordered that document requests to which objections were made must be answered, the answers shall be served within twenty-one (21) days of the order, unless the Court directs or the parties stipulate otherwise.

Requests for Admissions

LR Civ P 36.01. Admissions.

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

(b) Statements in Response After Objections: When it is ordered that a request for admission to which objections were made is proper, the matter shall be deemed admitted unless, within fourteen (14) 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; and

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

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

(ii) the manner by which they conferred, and

(iii) the date and time of the conference.

(b) Waiver: A motion to compel, or other motion in aid of discovery, is deemed waived if it is not filed within thirty (30) days after the discovery response or disclosure requirement sought was due, which date is determined in accordance with a rule or by mutual agreement among the parties, unless such failure to file the motion was caused by excusable neglect or by some action of the non-moving party. In any event, the moving party must show good cause to delay the trial or modify the scheduling order.

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

Dismissal of Actions

LR Civ P 41.01. Dismissal of Actions.

When it is apparent in any pending civil action that the principal issues have been adjudicated or have become moot, or that the parties have shown no interest in further prosecution, the judicial officer may give notice to all counsel and unrepresented parties that the action will be dismissed thirty (30) 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 transmit a 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 the basis for a 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 February 27, 2009, 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 (30) days after entry of the final judgment on Form AO 133 -- Bill of Costs -- supplied by the Clerk. The bill of costs shall contain an itemized schedule of the costs documenting each separate cost and a statement signed by counsel for the prevailing party that the schedule is correct and the charges were actually and necessarily incurred. When not filing in CM/ECF, the party shall file the original and two (2) copies of the bill of costs and serve a copy on counsel for the adverse party or on the unrepresented adverse party. The adverse party, when not filing in CM/ECF, shall file an original and two (2) copies of specific objections to the bill of costs within fourteen (14) days of service with a copy served on counsel for the prevailing party or on the unrepresented prevailing party. When filing in CM/ECF, the filer must provide any

non-CM/ECF filer with the document according to this Rule. CM/ECF filers need not, however, provide paper copies to other CM/ECF filers, as the document will be served electronically.

Magistrate Judges

LR Civ P 72.01. Authority of Magistrate Judges.

(a) General: A magistrate judge is a judicial officer of the district court. A magistrate judge of this district is designated to perform, and may be assigned, any duty allowed by law to be performed by a magistrate judge. Performance of a duty by a magistrate judge will be governed by the applicable provisions of federal statutes and rules, the general procedural rules of this Court, and the requirements specified in any order or reference from a district judge. In performing a duty, a magistrate judge may determine preliminary matters; require parties, attorneys, and witnesses to appear; require briefs, proofs, and argument; and conduct any hearing, conference, or other proceeding the magistrate judge deems appropriate.

(b) Statutory Duties: Magistrate judges are authorized or specially designated to perform the duties prescribed by 28 U.S.C. § 636, and such other duties as may be assigned by the Court or a district judge which are not inconsistent with the Constitution and laws of the United States.

(c) Habeas Corpus and Collateral Relief: Magistrate judges are authorized to perform the duties imposed upon district judges by Rules for Proceedings Under 28 U.S.C. § 2254 and Rules for Proceedings Under 28 U.S.C. § 2255, in accordance with Rule 10 of those Rules and 28 U.S.C. § 636.

(d) Post-Conviction Habeas Corpus and Related Actions: The following matters are referred to magistrate judges:

- (1) Post-conviction habeas corpus, filed pursuant to 28 U.S.C. §§ 2241, 2254, 2255, and 18 U.S.C. § 3582(c), and related actions;
- (2) Prisoner challenges to conditions of confinement, filed pursuant to 42 U.S.C. § 1983, and ***Bivens***, and related actions;
- (3) Appeals of administrative decisions under the Social Security Act, and related actions, including motions or petitions for attorney's fees arising out of such appeals;
- (4) Discovery disputes and pretrial motions relating to discovery practice;
- (5) Applications to proceed without prepayment of fees and costs; and
- (6) Actions filed by persons who are proceeding *pro se*, whether or not they are in custody, until such person is represented by retained counsel.

(e) Miscellaneous Duties: Magistrate judges are authorized to:

- (1) exercise general supervision of civil calendars, conduct calendar and status calls, conduct hearings to resolve discovery disputes, and determine motions to expedite or postpone the trial of cases for the district judges;
- (2) analyze civil cases to determine an appropriate schedule; report findings to the assigned district judge; and, in complex and other selected cases, conduct conferences at which a schedule for the completion of various stages of the litigation will be established, the possibility of early settlement will be evaluated, and alternative dispute resolution mechanisms will be considered;

- (3) conduct pretrial conferences, scheduling conferences, mediations, settlement conferences, omnibus hearings, and related pretrial proceedings;
- (4) with the consent of the parties, conduct voir dire and preside over the selection of petit juries;
- (5) accept petit jury verdicts in the absence of the district judge;
- (6) issue subpoenas, writs of habeas corpus ad testificandum, or other orders necessary to obtain the presence of parties, witnesses, or evidence for court proceedings;
- (7) rule on applications for disclosure of tax returns and tax return information, pursuant to 26 U.S.C. § 6103(i)(1);
- (8) order the exoneration or forfeiture of bonds;
- (9) conduct proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, pursuant to 46 U.S.C. §§ 4311(d) and 12309(c);
- (10) determine post-judgment discovery motions and conduct examinations of judgment debtors pursuant to Fed. R. Civ. P. 69;
- (11) supervise proceedings conducted pursuant to letters rogatory as set forth in 28 U.S.C. § 1782(a);
- (12) issue orders of withdrawal of funds from the Court registry pursuant to 28 U.S.C. § 2042;
- (13) issue orders or warrants authorizing acts necessary in the performance of the duties of administrative and regulatory agencies and departments of the United States;

(14) conduct extradition proceedings in accordance with 18 U.S.C. § 3184;
and

(15) serve with designated committees or other judicial officers, participate in promulgation of local rules and procedures, administration of the forfeiture of collateral system, and other functions of court governance as approved by the Chief Judge.

(f) Method of Assignment of Matters to Magistrate Judges: The method for assignment of duties to a magistrate judge shall be by Standing Order or case-specific order unless otherwise provided for in these Local Rules, the Federal Rules of Civil Procedure, the Rules for Proceedings Under 28 U.S.C. § 2254, and the Rules for Proceedings Under 28 U.S.C. § 2255. Individual district judges may, in their discretion, assign or request magistrate judges to perform such other duties as are not inconsistent with the Constitution and the laws of the United States.

LR Civ P 72.02. Effect of Magistrate Judge Ruling Pending Objection.

When an objection to a magistrate judge's ruling on a non-dispositive pretrial motion is filed pursuant to Fed. R. Civ. P. 72(a), the ruling remains in full force and effect unless and until it is stayed by the magistrate judge or by a district judge.

Hearings on Motions

LR Civ P 78.01. Hearings on Motions.

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

III. LOCAL RULES OF CRIMINAL PROCEDURE

Applicability of General Rules

LR Cr P 1.01. Applicability.

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

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

LR Cr P 2.01. Grand Jury.

Pursuant to the Amended Jury Selection Plan agreed to and entered on February 27, 2009, the Court empaneled grand jurors in each of the four active points of holding court within the district, i.e. Clarksburg, Elkins, Martinsburg and Wheeling. The jurors drawn from those counties assigned to the four active points of holding court typically review evidence to determine whether to issue indictments for crimes allegedly committed in their respective counties.

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

LR Cr P 10.01. Duties of the Magistrate Judge.

(a) Jurisdiction: The United States Magistrate Judges in this judicial district are hereby specially designated and, with the consent of the parties, shall have jurisdiction to try persons accused of, and sentence persons convicted of misdemeanors committed within the judicial district in accordance with the provisions of 18 U.S.C. § 3401, Fed. R. Crim. P. 58 and 28 U.S.C. § 636.

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

(c) Waiver of Presence at Arraignment: Defendants may waive the right to be present at their arraignment. Waivers must be submitted in writing and signed by the defendant not later than four (4) days before the arraignment to permit the Court or the government sufficient time to order the defendant’s appearance if required. No hearing shall be necessary to determine the providence or voluntariness of the defendant’s written, signed waiver of the right to appear at the arraignment.

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

(4th Cir. 2003). If a defendant does not consent to a magistrate judge taking the plea, the magistrate judge may conduct the proceeding and make a recommendation to the district judge.

Discovery

LR Cr P 16.01. Pretrial Discovery and Inspection.

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

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

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

(d) Time for Government Response: Unless the parties agree otherwise, or the Court so orders, within fourteen (14) days of the Standard Discovery Request, the government must provide the requested material to counsel for the defendant and file with the Clerk a written response to each of defendant's requests.

(e) Reciprocal Discovery Response: Defendant must provide all reciprocal discovery due the government within fourteen (14) days of receiving discovery materials from the government.

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

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

(h) Modification for Complex Cases:

(1) At any time after arraignment, the Court on its own motion or upon motion by any party, and for good cause shown, may designate a case as complex.

(2) In all cases designated as complex, the parties shall, not later than seven (7) days following such designation, confer to develop a Proposed Complex Case Schedule addressing the following:

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

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

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

- (iv) proposed dates for the filing of pretrial motions; and
- (v) stipulations with regard to the exclusion of time for speedy trial purposes under 18 U.S.C. § 3161.

(3) The parties shall file the Proposed Complex Case Schedule no later than seven (7) days after conferring under this section.

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

LR Cr P 16.02. Declination of Disclosure.

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

LR Cr P 16.03. Additional Discovery or Inspection.

If additional discovery or inspection is sought, defendant's attorney shall confer with the appropriate Assistant United States Attorney within fourteen (14) days of the

arraignment (or such later time as may be set by the Court for the filing of pretrial motions) to satisfy these requests in a cooperative atmosphere without recourse to the Court. The request may be oral or written, and the United States Attorney shall respond in like manner.

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

- (a) a statement that the prescribed conference was held;
- (b) the date of said conference;
- (c) the name of the Assistant United States Attorney with whom the conference was held;
- (d) a statement that agreement could not be reached concerning the discovery or inspection that is the subject of defendant's motion; and
- (e) the pertinent facts and law bearing upon the issues raised by the motion, as required by LR Cr P 47.01.

LR Cr P 16.04. Additional Evidence.

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

LR Cr P 16.05. Exculpatory Evidence.

Exculpatory evidence as defined in *Brady v. Maryland*, 373 U.S. 83 (1963), as amplified by *United States v. Bagley*, 473 U.S. 667 (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 upon discovery in writing setting forth the material in detail.

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

No later than fourteen (14) days before trial, the government shall disclose all Notice of Federal Rule of Evidence 404(b) evidence, *Giglio* material and any *Roviaro* witness not previously turned over in discovery. See *Giglio v. United States*, 405 U.S. 150 (1972); *Roviaro v. United States*, 353 U.S. 53 (1957).

LR Cr P 16.07. List of Witnesses.

No later than fourteen (14) days before trial, counsel for each party shall file, with service on opposing counsel (electronic service in CM/ECF is sufficient under this Rule), a list of probable witnesses and possible witnesses (identified as such), but not whether or not the defendant shall be a witness. Parties shall include in the list the full name and address of each witness and a brief statement of the subject matter to be covered by each witness, and shall expressly identify expert witnesses and record custodians as such. "Witnesses," as used in this paragraph, means probable and possible witnesses, including experts and record custodians, to be called in each party's case-in-chief.

LR Cr P 16.08. List of Trial Exhibits.

No later than fourteen (14) days before trial, counsel for each party shall file, with service on opposing counsel (electronic service in CM/ECF is sufficient under this Rule), a list of exhibits to be offered at trial. In addition, counsel for each party shall number the listed exhibits with evidence tags available from the Clerk and shall exchange a complete set of marked exhibits with opposing counsel (except for large or voluminous items or other exhibits that cannot be reproduced easily).

LR Cr P 16.09. Protective and Modifying Orders.

Upon a sufficient showing, the Court may at any time order that the discovery, inspection or disclosure be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party, the Court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the Court alone. Upon written request, either party may be entitled to an evidentiary hearing on this issue. If the Court enters an order granting relief following such an *ex parte* showing, the entire text of the party's statement shall be sealed and preserved in the records of the Court to be made available to the appellate court in the event of an appeal.

LR Cr P 16.10. Failure to Comply With Discovery.

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

The Court may specify the time, place and manner of making the discovery, inspection or disclosure and may prescribe such terms and conditions as are just.

LR Cr P 16.11. Continuing Disclosure.

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

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

Any disclosure filed by the government shall be considered as relief sought by the defendant and granted by the Court unless the defendant files a pleading within five (5) days of arraignment stating he or she is refusing and is not seeking such disclosures pursuant to Fed. R. Crim. P. 16.

Motions in Limine

LR Cr P 24.01. Motions in Limine.

Seven (7) days before the pretrial conference, all motions in limine (which must be limited to matters actually in dispute) shall be filed by counsel with service on opposing counsel, and responses filed at least one (1) day before the pretrial conference. If no pretrial conference is conducted, then all motions in limine (which must be limited to matters actually in dispute) shall be filed by counsel, with service on opposing counsel, seven (7) days before trial, and responses filed at least one (1) day before trial.

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

LR Cr P 32.01. Disclosure of Presentence Reports (PSR).

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

(b) Time: The Court may modify the time requirements of Fed. R. Crim. P. 32(e)(2) for good cause, but may not reduce the thirty-five (35) day period from the initial disclosure of the presentence report until the sentencing hearing without the consent of the defendant.

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

(1) when a copy of the report is physically delivered to the defendant, the defendant's counsel, and the attorney for the government;

(2) three (3) days after a copy of the presentence report is mailed to the defendant, counsel for the defendant, and the attorney for the government;

or

(3) three (3) days after a copy of the presentence report is electronically sent in a secure manner to the defendant, counsel for the defendant, and the attorney for the government.

(d) Objections: Within fourteen (14) days after receiving the presentence report, counsel may provide to the probation officer written objections to the PSR, and shall provide a copy to opposing counsel. Counsel shall not, however, file objections to the PSR electronically in CM/ECF or with the Clerk's office in any manner.

(e) No Objections Form: Counsel shall not file the "no objections" form with the Court. If counsel provides a "no objections" form to the probation office, counsel must also provide a copy to opposing counsel. Nonetheless, counsel shall not file the form with the Court either electronically or in paper.

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

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

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

LR Cr P 32.02. Disclosure of Records or Testimony.

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

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

When a demand for a disclosure of presentence records, pretrial services records, probation records or testimony is made to a probation officer by subpoena or other judicial

process, the Chief Probation Officer or his designee shall request an order regarding a response. The probation officer shall make no disclosure until an order is entered.

Videoconference in Criminal Cases

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

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

- (a) Initial appearances pursuant to Fed. R. Crim. P. 5(a) with the consent of the defendant;
- (b) Arraignment pursuant to Fed. R. Crim. P. 10 with the consent of the defendant;
- (c) Hearings to determine whether probable cause exists to revoke pretrial release with the consent of the defendant;
- (d) Hearings to determine whether probable cause exists to revoke supervised release with the consent of the defendant;
- (e) Any postconviction proceedings under 28 U.S.C. §§ 2254 or 2255 or any prisoner case under 42 U.S.C. § 1983;
- (f) The taking of a plea of guilty to a misdemeanor charge;
- (g) Detention hearings with the consent of the defendant;
- (h) Returns by the grand jury;
- (i) Removal hearings;
- (j) Final Pretrial Conferences; and
- (k) 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 47.01 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 three (3) 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 fourteen (14) 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 fourteen (14) 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 memoranda shall contain the reasons and legal support for granting such motion.

Within fourteen (14) days of service thereof, the opposing party shall file a response to all such motions with legal support or memoranda.

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

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

(b) Post-trial Motions. Within fourteen (14) days from the return of the verdict by the jury or the Court, all post-trial motions shall be filed unless the Court extends the time upon written application. Within fourteen (14) days following the filing of post-trial motions, the non-moving party shall file a response.

Continuance of Trial

LR Cr P 50.01. Continuances.

The Court will grant a continuance for trial date, other hearings and deadlines only for just cause. When a party or parties request(s) a continuance, the moving party or parties must contact all other parties to determine three (3) possible dates to which to continue the deadline or hearing. The moving party must specify these three (3) possible dates within the motion to continue.

Forfeiture of Collateral in Lieu of Appearance for Certain Misdemeanor Offenses

LR Cr P 58.01. Forfeiture of Collateral.

(a) Posting Collateral: Pursuant to Fed. R. Crim. P. 58(d)(1), a person charged with certain petty offenses as defined in 18 U.S.C. § 19 and described in a schedule of collateral offenses that will be published and announced by court order may, in lieu of appearance, post collateral in the amount indicated for the offense, waive appearance

before a United States Magistrate Judge, and consent to forfeiture of collateral. The schedule of collateral offenses will also describe certain petty offenses that require a mandatory appearance before a United States Magistrate Judge. The current schedule of collateral offenses will be reflected by the latest order appearing on the court docket. The Clerk of the Court will distribute copies of such order to all offices, agencies and individuals involved in the forfeiture of collateral program and shall make copies available upon request.

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

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

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

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

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

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

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

- (1) Offenses denominated in the schedule of collateral offenses for which appearance is mandatory;
- (2) Offenses resulting in an accident with personal injury or property damage in excess of \$500.00; or
- (3) Subsequent offenses not arising from the same facts or sequence of events that resulted in the original charges.

IV. LOCAL RULES OF PRISONER LITIGATION PROCEDURE

All litigation brought in the Northern District of West Virginia by, or on behalf of, incarcerated individuals shall be governed by the Rules and Procedures set forth herein.

PART 1

GENERAL PROVISIONS

LR PL P 1. SCOPE.

These Rules shall govern the procedure for the filing of the following actions by prisoners in the United States District Court for the Northern District of West Virginia:

- 1.1 Petitions for writ of habeas corpus pursuant to Title 28 U.S.C. Section 2241 (common law habeas corpus);
- 1.2 Petitions for writ of habeas corpus pursuant to Title 28 U.S.C. Section 2254 (state prisoner attacking conviction or sentence);
- 1.3 Motions to Vacate, Set Aside, or Correct Sentence pursuant to Title 28 U.S.C. Section 2255 (federal prisoner attacking conviction or sentence);
- 1.4 State civil rights complaints pursuant to Title 42 U.S.C. Section 1983 (prisoner alleging a Constitutional deprivation under color of STATE law);
- 1.5 Federal civil rights complaints filed pursuant to the authority of ***Bivens v. Six Unknown Federal Narcotics Agents***, 403 U.S. 388 (1971) (prisoner alleging a Constitutional deprivation under color of FEDERAL law);
- 1.6 Complaints filed pursuant to the Federal Tort Claims Act; and
- 1.7 Any other civil action filed in the Northern District of West Virginia by an incarcerated person, or on behalf of an incarcerated person.

These Rules are intended to supplement the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, the “Rules Governing Section 2254 Cases in the United States District Courts” (“Section 2254 Rules”), and the “Rules Governing Section 2255 Proceedings in the United States Districts Courts” (“Section 2255 Rules”) promulgated by the United States Supreme Court.

Except to the extent that they are inconsistent with these Local Rules of Prisoner Litigation Procedure, the LR Gen P and LR Civ P are applicable to these proceedings.

LR PL P 2. PRISONER CASES ASSIGNED TO MAGISTRATE JUDGES.

All petitions, applications, complaints, and motions to vacate or modify sentences filed by prisoners are assigned to the Magistrate Judges. The Magistrate Judges are authorized to consider the record and do all things proper to recommend disposition of any dispositive motions filed in such actions and to decide 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.

LR PL P 3. *PRO SE* PRISONER PETITIONS, APPLICATIONS, MOTIONS, AND COMPLAINTS ARE TO BE FILED ON COURT-APPROVED FORMS.

3.1 Generally

All *pro se* prisoner petitions, applications, complaints, and motions to vacate or modify sentences must be submitted on the designated forms approved by this Court and signed by the prisoner under penalty of perjury.

3.2 Applications to Proceed *In Forma Pauperis*

3.2.1 **Application and Required Documentation.** In the event that a prisoner believes he or she cannot afford the filing fee for an action covered by these Rules, he or she must file an Application to Proceed Without Prepayment of Fees and Affidavit, on the form provided by the Court, requesting permission to proceed *in forma pauperis*. A certified Prisoner Trust Account Report, signed by an authorized official from the institution where the prisoner is confined must also be filed, together with ledger sheets for the preceding six months. In addition, a Consent to Collection of Fees from Trust Account must be filed in all cases other than habeas petitions.

3.2.2 **Eligibility.** A prisoner shall be entitled to proceed *in forma pauperis* if the prisoner's financial affidavit and/or certified trust account statement demonstrates that the prisoner is unable to pay or prepay the costs of the action and the court determines that the prisoner has not deliberately depleted his or her assets in order to become eligible for *in forma pauperis* status.

3.2.3 **Recision of Leave to Proceed *In Forma Pauperis*.** The Court may, either on its own, or on the motion of any party, review and rescind, wholly, or in part, leave to proceed *in forma pauperis* if the prisoner to whom leave was granted becomes capable of paying the full filing fee, or is found to have wilfully misstated information in the Application or for any other lawful ground.

3.2.4 **Requirements for *In Forma Pauperis* Applicants.** The specific procedures required for prisoners seeking leave to proceed *in forma pauperis* in habeas proceedings are set forth below in LR PL P 17. The specific procedures required for

prisoners seeking leave to proceed *in forma pauperis* in all other civil actions proceedings are set forth below in LR PL P 25.

3.3 Obtaining Copies of the Local Rules of Prisoner Litigation

A prisoner who wishes to obtain a copy of the Local Rules of Prisoner Litigation may do so by sending a written request to: OFFICE OF THE CLERK, P.O. BOX 471, WHEELING, WV 26003, ATTENTION: INMATE LITIGATION CLERK. The following items must be included:

3.3.1 A letter requesting a copy of the Local Rules of Prisoner Litigation; and

3.3.2 A large (at least 8 ½ by 11 inch) self-addressed envelope.

Subsequent requests by any prisoner for additional copies of the Local Rules of Prisoner Litigation must be accompanied by a check in the amount of \$5.00, made payable to Clerk, U.S. District Court.

3.4 Use of the Court-Approved Forms

3.4.1 *Pro se* petitions, applications, complaints, and motions to vacate or modify sentences shall be in English and be typed or legibly printed on the Court-approved forms.

3.4.2 Prisoners shall follow the instructions provided with the forms and complete the forms **using only one side of the page**. Every section of the form must be fully completed and all information required by the form must be included.

3.4.3 After completing the Court-approved form, the prisoner may attach additional pages containing additional information as permitted by the instructions on the form. The information contained in any such pages must specifically relate to the information provided in a designated section of the Court-approved form, must be

permitted by the instructions and must be identified as supplementing the information contained in any section.

3.4.4 **No more than five (5) typewritten pages or ten (10) legibly printed pages** may be attached to any Court-approved form unless accompanied by a Motion for Leave to file excess pages.

3.4.5 Additional pages shall be printed or typed on standard white 8 ½ by 11 inch size paper, lined notebook, or legal pad paper. **Only one side of the page shall be used.** Each page shall be numbered consecutively. The printing or typewriting shall be no smaller than the standard elite type, and shall contain numbered paragraphs which correspond to the numbered paragraphs on the Court-approved form. The typing or printing on each page shall be double-spaced. Exhibits submitted for filing shall be on 8 ½ by 11 inch paper.

3.4.6 Every *pro se* petition, motion, application, or complaint must be signed by the prisoner under penalty of perjury.

3.4.7 Petitions, motions, applications, and complaints which do not comply with this Rule and which are not corrected after notice will be stricken by the Court.

LR PL P 4. FILING *PRO SE* PRISONER PETITIONS, APPLICATIONS, MOTIONS, AND COMPLAINTS.

4.1 Points of Holding Court

The four active points of holding Court for the Northern District of West Virginia, the counties assigned to each of them, and the addresses for each of the Clerk's offices are as follows:

4.1.1 **Wheeling Point of Holding Court**

Assigned Counties: Ohio, Brooke, Hancock, Marshall, Wetzel, and Tyler

Address: Clerk, U.S. District Court, P.O. Box 471, Wheeling, WV 26003

4.1.2 **Clarksburg Point of Holding Court**

Assigned Counties: Harrison, Doddridge, Gilmer, Marion, Monongalia, Taylor, Ritchie, Calhoun, Braxton, Pleasants, and Preston

Address: Clerk, U.S. District Court, P.O. Box 2857, Clarksburg, WV 26302

4.1.3 **Elkins Point of Holding Court**

Assigned Counties: Randolph, Barbour, Grant, Hardy, Pendleton, Tucker, Upshur, Webster, Pocahontas, and Lewis

Address: Clerk, U.S. District Court, P.O. Box 1518, Elkins, WV 26241

4.1.4 **Martinsburg Point of Holding Court**

Assigned Counties: Jefferson, Hampshire, Morgan, Berkeley, and Mineral

Address: Clerk, U.S. District Court, 217 W. King St., Room 207, Martinsburg, WV 25401

4.2 **Mailing Petitions, Motions, Applications, and Complaints to the Clerk**

Prisoners shall file a petition, motion, application or complaint by mailing the completed forms in a sealed envelope to the Clerk of Court at the appropriate point of holding court.

Every envelope containing any type of inmate filing shall be marked: “**ATTENTION: INMATE LITIGATION CLERK.**”

4.3 Proof of Service

All documents, except the initial petition or complaint, presented for filing by prisoners shall contain proof of service in the form of a statement of the date and the manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on, or be affixed to the documents filed, and shall be designated by title as **Certificate of Service** in the following format:

“I, (your name here), appearing pro se, hereby certify that I have served the foregoing (title of the document being served) upon the defendant(s) or respondent (choose one) by depositing true and exact copies of the same in the United States mail, postage prepaid, upon the following counsel of record on (insert date).” Then list the names and addresses of counsel for the Defendant(s) or Respondent and sign your name.

LR PL P 5. NOTICE OF DEFICIENT PLEADING.

If a pleading received by the Court does not comply with the requirements of these Rules, it will be stricken from the docket by the Court and returned to the prisoner.

LR PL P 6. CURRENT MAILING ADDRESS.

All *pro se* prisoner litigants are responsible for promptly informing the Court of any change in their addresses, for monitoring the progress of their cases, and for prosecuting or defending their actions diligently. Notification of a prisoner’s change of address must be accomplished by filing a Notice with the Clerk and serving that Notice upon all other

parties within ten (10) days of the change of address. The envelope containing the Notice shall state on its face: “**ATTN: CHANGE OF ADDRESS.**”

Failure to notify the Clerk of an address change will result in the dismissal of the prisoner’s case.

LR PL P 7. DISCOVERY.

No discovery pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure shall be conducted with respect to petitions, motions, applications, and complaints filed under these provisions without leave of the Court.

LR PL P 8. PRISONERS MAY NOT UTILIZE THIS COURT’S “CASE MANAGEMENT/ELECTRONIC CASE FILES” SYSTEM.

Unless and until the administrative rules are changed, *pro se* litigants are prohibited from using the Case Management/Electronic Case Files (“CM/ECF”) System of electronic filing in the Northern District of West Virginia. Accordingly, until *pro se* litigants are permitted to use CM/ECF, all filings by *pro se* prisoners must be submitted on approved paper.

LR PL P 9. COURT PERSONNEL CANNOT PROVIDE LEGAL ADVICE.

Court personnel are forbidden from interpreting any rules of procedure or giving any legal advice. This includes offering interpretations of rules; recommending a course of action; predicting a decision a judicial officer might make on any given matter; or interpreting the meaning or effect of any Court Order or judgment.

Prisoners are prohibited from having oral or written communications with the Court or Court personnel on matters in a pending case, other than to request copies of documents.

LR PL P 10. PROCEDURES FOR CASES WHERE A PRISONER IS REPRESENTED BY COUNSEL.

10.1 Use of Court-Approved Forms

In cases where a prisoner is represented by a duly licensed practicing attorney, admitted to practice in the Northern District of West Virginia, use of the Court-approved forms is strongly encouraged, but is not mandatory for the filing of a motion, petition, application or complaint under these Rules.

10.2 Required Information

Whether a Court-approved form is utilized by a duly licensed practicing attorney filing a motion, petition, application, or complaint on behalf of an incarcerated individual pursuant to these Rules, all information required by such forms must be included.

10.3 Failure to comply with the Local Rules may also be grounds for dismissal under this Rule.

LR PL P 11. MOTIONS PRACTICE & COURT DEADLINES.

11.1 A party named as a Respondent or Defendant by a *pro se* prisoner litigant may comply with the Court's Order to answer or show cause why a petition, application, complaint, or motion to vacate or modify sentence, should not be granted, by filing a dispositive motion, exhibits thereto, and a supporting Memorandum of Law. The

Memorandum of Law submitted in support of a dispositive motion **shall not exceed 25 pages.**

11.2 Memoranda and other materials in Response to a dispositive motion by the opposing party, shall be filed within **twenty-one (21) calendar days** from the date of service of the Motion, unless otherwise ordered by the Court. Memoranda filed in Response to a motion **shall not exceed 25 pages.**

11.3 Memoranda in Reply to a Response filed by the opposing party, shall be filed within **fourteen (14) calendar days** from the date of service of the Memorandum in Response to the Motion. Memoranda filed in Reply to a Response **shall not exceed 15 pages.**

11.4 Surreply and Surrebuttal Memoranda may not be filed.

11.5 The Court, for good cause shown, may modify any of the time limitations set forth in these Rules, or by Court Order.

11.6 **Failure to comply with the page limitations set forth in these Rules will result in the entire document being stricken from the docket and returned to the prisoner upon Court Order.**

LR PL P 12. OBJECTIONS TO A MAGISTRATE JUDGE'S RECOMMENDED DISPOSITION.

12.1 Any party may object to a Magistrate Judge's recommended disposition by filing and serving written objections within **fourteen (14) calendar days** after being served with a copy of the Magistrate's recommended disposition.

12.2 The written objections shall identify each portion of the Magistrate's recommended disposition which is being challenged and shall specify the basis for each such objection.

12.3 Any party may respond to another party's objections within **fourteen (14) calendar days** after being served with a copy thereof.

12.4 Objections to a Magistrate Judge's recommended disposition, or any Response to the opposing party's objections, **shall not exceed ten (10) typewritten pages or twenty (20) handwritten pages, including exhibits**, unless accompanied by a Motion for Leave to exceed page limitation.

LR PL P 13. FILING OF PLEADINGS OR PAPERS NOT AUTHORIZED BY THE RULES.

Prisoners shall not file pleadings or papers not authorized by these Rules. Pleadings or papers not authorized by these Rules will be stricken from the docket by the Court and returned to the prisoner.

LR PL P 14. FILING FEE FOR APPEALS.

A Notice of Appeal must be accompanied by the required **filing fee of \$455.00**, or, in the event that a prisoner believes he or she cannot afford the \$455.00 fee, he or she must file a **new** Application to Proceed Without Prepayment of Fees and Affidavit, on the form provided by the Court requesting permission to proceed on appeal *in forma pauperis*. A **new** certified Prisoner Trust Account Report, signed by an authorized official from the

institution where the prisoner is confined must also be filed, together with ledger sheets for the preceding six months.

LR PL P 15. SANCTIONS.

Pro se prisoner litigants are subject to sanctions including, but not limited to, those available to the Court under Rule 11 of the Federal Rules of Civil Procedure for the submission of false, improper or frivolous filings to the Court.

LR PL P 16. APPOINTMENT OF COUNSEL.

Pro se prisoners, who file civil actions, **including habeas petitions**, do not have an absolute right to appointed counsel. The Court may, in its discretion, appoint an attorney to represent a *pro se* prisoner at any point in the proceedings if it finds that a particular need or exceptional circumstance exists.

PART 2

HABEAS CORPUS PETITIONS AND

MOTIONS TO VACATE OR MODIFY SENTENCE

(Title 28, Sections 2241, 2254, and 2255)

LR PL P 16. FILING FEE.

No filing fee is required for filing a petition under Section 2255.

A petition filed under Title 28 U.S.C. Section 2241 or Section 2254 must be accompanied by the required filing fee of \$5.00.

LR PL P 17. APPLICATIONS BY PRISONERS TO PROCEED *IN FORMA PAUPERIS* IN SECTION 2254 AND 2241 PETITIONS.

In the event that a prisoner believes he or she cannot afford the \$5.00 fee, he or she must file an Application to Proceed Without Prepayment of Fees and Affidavit, on the form provided by the Court requesting permission to proceed *in forma pauperis*. A certified Prisoner Trust Account Report, signed by an authorized official from the institution where the prisoner is confined must also be filed, together with ledger sheets for the preceding six months.

Failure to send the fee with the petition or submit the necessary Application with supporting Prisoner Trust Account Report and ledger sheets, will result in the Clerk sending the petitioner a deficiency notice. Failure to comply with the deficiency notice within **twenty-one (21) calendar days** of entry will result in the petition being dismissed without prejudice.

In the event that the Magistrate Judge assigned to the case determines that the petitioner has the ability to pay the \$5.00 fee, an order will be entered requiring the petitioner to pay the fee within **twenty-eight (28) calendar days**. Failure to comply with the order will result in the case being dismissed without prejudice.

All payments by or on behalf of prisoners must be by money order or U.S. Treasury check. Cash or personal checks will not be accepted.

LR PL P 18. SEPARATE PETITIONS ARE REQUIRED FOR JUDGMENTS ENTERED BY DIFFERENT COURTS.

A petition or motion filed pursuant to Sections 2241, 2254, or 2255 shall be limited to a challenge against **one judgment**, except that a claim may be asserted against more than one judgment if the trial or proceeding in which the judgments were entered were heard or tried in **one Court at the same time in consolidated proceedings**. Prisoners seeking to challenge judgments entered by different courts or by the same court at a separate time must file separate petitions as to each such Court and judgment.

LR PL P 19. NO RESPONSES REQUIRED WITHOUT COURT ORDER.

The named Respondent need not respond unless or until directed to do so by the Court.

LR PL P 20. FILING A PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. SECTION 2241.

20.1 Proceeding Under **Section 2241**

A petition for a writ of habeas corpus pursuant to Section 2241 may be filed by a prisoner being held in **federal or state custody** who wishes to challenge the manner in which his or her sentence is being executed.

20.2 Use of Court-Approved Forms

To properly file a Petition for a **Section 2241** writ of habeas corpus, *pro se* prisoners must use the Court-approved form entitled: "Application for Habeas Corpus Pursuant to 28 U.S.C. Section 2241" and must answer every question and complete the form in its entirety.

20.3 Place of Filing

A petition for a writ of habeas corpus pursuant to **Section 2241** must be filed at the point of holding court which includes the county where the prisoner is confined.

LR PL P 21. FILING A PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. SECTION 2254.

21.1 Proceeding Under **Section 2254**

A petition for a writ of habeas corpus pursuant to **Section 2254** may be filed by a prisoner in **state** custody who wishes to challenge the validity of his or her **state** conviction or sentence on the grounds that it violates the Constitution, federal statutes, or treaties of the United States.

21.2 Use of Court-Approved Forms

To properly file a Petition for a **Section 2254** writ of habeas corpus, *pro se* prisoners must use the Court-approved form entitled: "Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody" and must answer every question and complete the form in its entirety.

21.3 Place of filing

A state prisoner may file a petition for a writ of habeas corpus pursuant to **Section 2254** in either the judicial district in which the prisoner is presently confined, or the judicial district where the prisoner was sentenced. It is the practice of this Court, in cases where the Northern District of West Virginia is the district of confinement, to transfer habeas petitions challenging state convictions to the district in which the prisoner was sentenced.

21.4 Successive Applications for Writ of Habeas Corpus Pursuant to **Section 2254** or **Section 2255**

Before a second or successive petition/application may be filed in this Court, a prisoner shall file a "Motion Under 28 U.S.C. § 2244 for Order Authorizing District Court to Consider Second or Successive Application for Relief Under 28 U.S.C. §§ 2254 or 2255" in the United States Court of Appeals for the Fourth Circuit. This Court may not consider a second or successive application without an order from the United States Court of Appeals for the Fourth Circuit authorizing it to do so.

LR PL P 22. FILING A MOTION TO VACATE OR MODIFY SENTENCE PURSUANT TO SECTION 2255.

22.1 Proceeding Under **Section 2255**

A Motion to Vacate, set aside, or correct a sentence may be filed pursuant to Section 2255 **only** by a prisoner in custody, who wishes to attack or challenge a **federal** sentence or conviction imposed by the United States District Court for the Northern District of West Virginia.

22.2 Use of Court-Approved Forms

To properly file a Motion, *pro se* prisoners must use the Court-approved form entitled: "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" and must answer every question and complete the form in its entirety.

22.3 Place of Filing

A **Section 2255** motion must be filed at the point of holding court where the sentence was imposed.

22.4 Filing Fee

No filing fee is required for a motion filed under Title 28 U.S.C. Section 2255. Therefore, an Application to Proceed Without Prepayment of Fees and Affidavit is not necessary.

LR PL P 23. APPEALS.

23.1 **Appealing the Denial of a Section 2241 Petition**

23.1.1 To appeal the denial of a Section 2241 petition, a **federal** prisoner must file a Notice of Appeal in the District Court within **sixty (60) calendar days** from the date of the adverse ruling.

23.1.2 To appeal the denial of a Section 2241 petition, a **state** prisoner must file a Notice of Appeal in the District Court within **thirty (30) calendar days** from the date of the adverse ruling.

23.2 **Appealing the Denial of a Section 2254 Petition**

To appeal the denial of a Section 2254 petition, a prisoner must file a Notice of Appeal in the District Court within **thirty (30) calendar days** from the date of the adverse ruling. Pursuant to Title 28 U.S.C. § 2253 and FRAP 22, prisoners must also file an application for a “certificate of appealability” (“COA”) in the District Court in order to proceed with an appeal. If the District Court denies a COA, then the prisoner may reapply for a COA from the United States Court of Appeals for the Fourth Circuit.

23.3 **Appealing the Denial of a Section 2255 Petition**

To appeal the denial of a Section 2255 petition, a prisoner must file a Notice of Appeal in the District Court within **sixty (60) calendar days** from the date of the adverse ruling. Pursuant to Title 28 U.S.C. § 2253 and FRAP 22, prisoners must also file an application for a “certificate of appealability” (“COA”) in the District Court in order to proceed with an appeal. If the District Court denies a COA, then the prisoner may reapply for a COA from the United States Court of Appeals for the Fourth Circuit.

PART 3

ALL OTHER CIVIL CAUSES OF ACTION

(Civil Rights Complaints filed by state prisoners pursuant to Section 1983;

Civil Rights Complaints filed by federal prisoners pursuant to *Bivens*;

Complaints filed by federal prisoners pursuant to the Federal Tort Claims Act

(FTCA); and all other civil causes of action)

LR PL P 24. FILING FEE FOR CIVIL CAUSES OF ACTION.

Civil complaints filed under this section must be accompanied by the required **filing fee of \$350.00.**

LR PL P 25. APPLICATIONS BY PRISONERS TO PROCEED *IN FORMA PAUPERIS* IN CIVIL ACTIONS OTHER THAN THOSE FILED PURSUANT TO SECTIONS 2241 AND 2254.

25.1 Application to Proceed Without Prepayment of Fees

In the event that a prisoner believes he or she cannot afford the \$350.00 fee, he or she must file an Application to Proceed Without Prepayment of Fees and Affidavit, on the form provided by the Court requesting permission to proceed *in forma pauperis*. A certified Prisoner Trust Account Report, signed by an authorized official from the institution where the prisoner is confined must also be filed, together with ledger sheets for the preceding six months, and a Consent to Collection of Fees from Trust Account.

Failure to send the fee with the complaint or submit the necessary Application with supporting Prisoner Trust Account Report and ledger sheets, will result in the Clerk sending the prisoner a deficiency notice. Failure to comply with the deficiency notice within **twenty-one (21) calendar days** of entry will result in the complaint being dismissed without prejudice.

In the event that the Magistrate Judge assigned to the case determines that the prisoner has the ability to pay the \$350.00 fee, a Report and Recommendation will be entered recommending that the Application be denied. If upon review of the Application, the Magistrate Judge finds that it should be granted, an Order will be entered setting forth the specific terms and conditions for payment of the filing fee. In the event that an initial partial filing fee is ordered, failure to pay said fee within **twenty-eight (28) days** of the entry of the order will result in the case being dismissed without prejudice.

Subsequent payments shall be made **until the filing fee is paid in full.**

All payments by or on behalf of prisoners must be by money order or U.S. Treasury check. Cash and personal checks will not be accepted.

Regardless of whether the complaint is eventually dismissed upon Order of the Court, or the prisoner voluntarily withdraws the complaint, the entire \$350.00 fee will be collected through the prisoner's trust account. **UNDER NO CIRCUMSTANCES WILL ANY FEE OR PARTIAL FEE BE REFUNDED.**

If, while incarcerated, a prisoner has had three or more civil actions or appeals in federal court dismissed as (1) frivolous, (2) malicious, or (3) for failure to state a

claim upon which relief may be granted, a new civil action or appeal of a judgment in a civil action cannot be filed *in forma pauperis*. See 28 U.S.C. § 1915(g).

25.2 Objections

Objections to any filing fee ordered by the Court shall be filed with the Clerk's office within **fourteen (14) days** of the Order and shall specifically demonstrate a factual basis for the prisoner's alleged lack of ability to pay the filing fee.

25.3 Litigation Expenses

The granting of *in forma pauperis* status waives only the costs of filing and serving the complaint. It does not waive the prisoner's responsibility to pay the expenses of litigation which are not waived by Title 28 U.S.C. Sections 1825 and 1915.

LR PL P 26. PLACE OF FILING.

26.1 Section 1983, *Bivens* or the FTCA

A complaint filed pursuant to Section 1983, *Bivens* or the FTCA shall be filed at the point of holding court which includes the county where the events complained of occurred.

26.2 All Other Civil Actions

All other civil actions shall be filed at the point of holding court specified by the jurisdictional and venue requirements of the specific statute under which the prisoner is proceeding.

LR PL P 27. SERVICE OF THE COMPLAINT.

27.1 Service Without Prepayment of Fees

If the prisoner has been granted leave to proceed without prepayment of fees, the Clerk, upon Order of the Court, 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.

27.24 Service After Prepayment of Fees

In cases where the prisoner 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, **after payment of the fees has been made in full.**

27.3 Service on Federal Defendants

In cases where there are individually named federal defendants, the United States Attorney General and the United States Attorney for the Northern District of West Virginia **must also be served** with a copy of the complaint.

27.4 Service on the Federal Government and Federal Agencies

In cases where the United States or federal agencies are the named defendants, the United States Attorney General, the United States Attorney for the Northern District of West Virginia, and the head of the named federal agency **must all be served** with a copy of the complaint.

LR PL P 28. CONSENT 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, notifying them that they may consent to have a Magistrate Judge conduct any or all proceedings in the case and order the entry of a final judgment, pursuant to Title 28 U.S.C. § 636.

Within **thirty (30) calendar 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. Consent may be given by completing and returning Form AO 85 – Notice, Consent, and Order of Reference - Exercise of Jurisdiction by a United States Magistrate Judge to the Clerk's office.

LR PL P 29. APPEALS FROM AN ADVERSE DECISION IN A CIVIL ACTION.

29.1 Appeal of Adverse Decision Against Individual Defendant(s)

To appeal an adverse decision in a civil action against individual defendant(s), a prisoner must file a Notice of Appeal in the District Court within **thirty (30) calendar days** from the date of the adverse ruling.

29.2 Appeal of Adverse Decision Against Federal Defendant(s)

To appeal an adverse decision in a civil action against the federal government or a government agency, a prisoner must file a Notice of Appeal in the District Court within **sixty (60) calendar days** from the date of the adverse ruling.

LR PL P 30. FILING A *PRO SE* STATE CIVIL RIGHTS COMPLAINT PURSUANT TO 42 U.S.C. SECTION 1983.

30.1 Proceeding Under **Section 1983**

Generally, a complaint pursuant to Section 1983 may be filed by a **state** prisoner, against a person or persons acting under the authority of **state law** who violates the prisoner's Constitutional or federal statutory rights or to challenge prison conditions that violate the prisoner's Constitutional or federal statutory rights. In addition, a current federal prisoner, who was in the custody of state authorities, may also file a complaint pursuant to Section 1983 for the same reasons.

30.2 Use of Court-Approved Forms

To properly file a complaint pursuant to **Section 1983**, *pro se* prisoners must use the Court-approved form entitled "State Civil Rights Complaint Pursuant to 42 U.S.C. § 1983" and must answer every question and complete the form in its entirety.

LR PL P 31. FILING A *PRO SE* FEDERAL CIVIL RIGHTS COMPLAINT PURSUANT TO *BIVENS v. SIX UNKNOWN FEDERAL NARCOTICS AGENTS*, 403 U.S. 388 (1971).

31.1 Proceeding Under **Bivens**

A **Bivens** complaint may be filed by a **federal** prisoner, against a person or persons acting in his or her individual capacity, under color of federal authority, for violations of a prisoner's Constitutional rights.

31.2 Use of Court-Approved Forms

To properly file a complaint pursuant to ***Bivens***, *pro se* prisoners must use the Court-approved form entitled: “Federal Civil Rights Complaint (***Bivens*** Action)” and must answer every question and complete the form in its entirety.

LR PL P 32. FILING A *PRO SE* COMPLAINT PURSUANT TO THE FEDERAL TORT CLAIMS ACT (“FTCA”).

32.1 Proceeding Under the FTCA

An FTCA complaint may be filed by a prisoner against the United States for claims for property damage, personal injury or death, caused by the negligent or wrongful acts or omissions of an **employee of the federal government** while acting within the scope of his or her office of employment.

32.2 Use of Court-Approved Forms

To properly file a complaint pursuant to the FTCA, *pro se* prisoners must use the Court-approved form entitled: “Complaint Pursuant to the Federal Torts Claims Act (FTCA)” and must answer every question and complete the form in its entirety.

LR PL P 33. FILING A *PRO SE* COMPLAINT PURSUANT TO ANY STATUTORY AUTHORITY NOT SPECIFICALLY DESIGNATED ABOVE.

To properly file any civil action **other than those described above**, *pro se* prisoners must use the Court-approved form entitled: “*Pro Se Prisoner Civil Complaint*” and must answer every question and complete the form in its entirety.

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>**