UNITED STATES DISTRICT COURT
FOR THE

NORTHERN DISTRICT OF WEST VIRGINIA

LOCAL RULES

EFFECTIVE: MARCH, 2018

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES DISTRICT JUDGES

Gina M. Groh, Chief Judge, Martinsburg, West Virginia
John Preston Bailey, Judge, Wheeling, West Virginia
Frederick P. Stamp, Jr., Judge, Wheeling, West Virginia
Irene M. Keeley, Judge, Clarksburg, West Virginia

_____

UNITED STATES BANKRUPTCY JUDGE

Patrick M. Flatley, Wheeling, West Virginia

_____

UNITED STATES MAGISTRATE JUDGES

James E. Seibert, Wheeling, West Virginia
Robert W. Trumble, Martinsburg, West Virginia
Michael J. Aloi, Clarksburg, West Virginia

_____

CLERK OF DISTRICT COURT

Cheryl Dean Riley, Wheeling, West Virginia

_____

CLERK OF BANKRUPTCY COURT

Ryan W. Johnson, 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), and Local Rules of Prisoner Litigation Procedure (LR PL 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 (see www.wvnd.uscourts.gov for pertinent standing orders).

In the absence of any controlling statute, by standing order of the Court and agreement of the judicial officers, 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.) and the Bankruptcy Rules and controlling statutes, and are applied, construed and enforced to avoid inconsistency with those controlling statutes and other rules. They shall 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 the orderly, expeditious and efficient administration of justice, allow departures from these Local Rules when warranted by particular facts and circumstances.

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I. LOCAL RULES OF GENERAL PRACTICE AND PROCEDURE

LR Gen P 1.01. Courthouse Security.

(a) Entry of Federal Courthouse Buildings: All persons wishing to enter a federal building housing a United States Court within the Northern District of West Virginia (the building) must first properly clear the security screening post located in the main lobby at each facility. Court Security Officers staff the security screening post during normal business hours. The purpose for the security screening post is to ensure that no weapons, including guns, knives, explosives or other items that are deemed by a Deputy United States Marshal or Court Security Officer to be possible weapons, are brought into the building. Any person refusing to submit to an 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 (e.g., contractors, work crews and 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 United States Marshals Service and 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, the Federal Bureau of Investigation, the Drug Enforcement Agency and the Office of the United States Attorney, 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 must use an identification card issued by the employee's agency. In order to bypass the security screening post and use an employee entrance, employees will be required to display or show the identification card to the Court Security Officers. If an employee fails to present an agency 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. Any person who violates 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 that have been carried into

the building in violation of federal laws or the laws of the State of West Virginia. The United States Marshals shall retain the weapons or items until the possessor makes a proper showing that possession thereof is lawful. If the 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.

In order for a presiding judicial officer to be aware of any 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, Federal Rules of Criminal Procedure and Rules Governing Judicial Conduct.

(a) Form Provided by the Clerk of Court: 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 Provided by Counsel: The form shall be filed by counsel in the Case Management/Electronic Case Files ("CM/ECF") System.

Please also refer to LR Civ P 7.10 for further guidance regarding the filing of Corporate Disclosures in civil actions.

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 of Court, 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 and Sanctions

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. In all other instances, 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 a written demand therefor at least thirty (30) days before the trial date. If no written demand is made, the right to a trial by jury is waived.

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 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 the Case Management/Electronic Case Files ("CM/ECF") system 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. Counsel shall obtain permission prior to filing any document in excess of the page limits set by these Rules and shall provide paper copies of all such documents. Paper copies shall be provided to the assigned district judge and magistrate judge within three (3) days of electronic filing, but not less than two (2) days before any hearing on such filing. Any attachments in support of the filing must be submitted therewith.

(c) Filing in Paper: When filing in paper form—except as otherwise permitted or required by the Federal Rules, these Local Rules or court order—filers shall provide the original and two (2) copies of all filings to the Clerk's Office. The receiving Clerk's Office shall then forward the filing to the appropriate Clerk's Office, if necessary. Within twenty-one (21) days of the removal of an action from state court, counsel shall file the certified state court record in CM/ECF.

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 for International Telephony and Telegraphy of the International Telecommunication Union, in regular resolution.

(e) "Electronic Filing" means uploading a document directly from the filer's computer onto the case docket via CM/ECF.

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

(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(e), 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 these Local Rules and this Court's Administrative Procedures for Electronic Case Filing, provisions of which are incorporated by reference herein, and which may be amended from time to time.

(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)." Merely writing "s/" without providing an attorney name is insufficient.

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. In addition to satisfying all other requirements under these Local Rules, documents 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.

(c) Page Limitation: The Court will not accept any 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 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 Court.

(e) Fax Cover Sheet: The sender must provide his or her name, or the relevant entity's name, together with the person or entity's address, telephone number, fax number, document(s) being transmitted by caption and matter, and notice of the number of pages (including the cover sheet). The sender also 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 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 Fee:

(1) No later than seven (7) days after filing by fax, the filing party must pay any required fee.

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

(3) If any required fee is not received by the Court within seven (7) days after the filing by fax, the filing shall be void 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 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 of Court 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 for 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: The Clerk of Court 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: As stated in LR Gen P 5.01, absent good cause, counsel shall file electronically in CM/ECF. However, other than a complaint or petition, when necessary a party may file a document by fax transmission. The Clerk of Court 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 under the pertinent Federal Rules of Civil and Criminal Procedure.

(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. A deputy clerk from the Clerk's Office 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 properly serve a summons. Parties may serve all other case documents

electronically.

(d) Summonses Forms: Forms for summonses 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. The certificate must be attached to every filing and must specify who was served and 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(c), dissimilar to service by mail, service via electronic means does not provide an additional three (3) days to the prescribed period to respond.

(h) Service of Sealed Filing: Counsel must serve all sealed filings in CM/ECF by other traditional means (e.g. mail, hand delivery, fax).

LR Gen P 5.07. Video.

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

(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, to contemporaneously transmit 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: Absent an order to the contrary, if a party has a need to use any type of courtroom technology at a hearing or trial, including the use of document presentation equipment, video equipment, and/or audio equipment, counsel must notify the Clerk's Office of the need for the courtroom technology at least seven (7) days before the hearing or trial. Counsel shall also be responsible for testing their equipment with the courtroom technology at least three (3) days prior to the 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 personal identifiers rests solely with the parties and their counsel. The Clerk of Court 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 learning that documents have been filed that do not comply with this Local Rule, a 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. Documents Not Available to the Public.

(a) Public's Right to Access: To serve the legal presumption of openness and the public's right to access to court proceedings, pleadings filed in this Court are generally filed unsealed. However, when necessary, the Court may determine that a case or documents in a case be sealed.

(b) Judicial Conference Policy: Pursuant to Judicial Conference policy, the

following documents shall not be included in the public case file and will not be made available to the public at the courthouse or via remote electronic access:

1) unexecuted summonses or warrants of any kind (e.g. search warrants, arrest warrants);
2) pretrial bail or presentence investigation reports;
3) statement of reasons in the judgment of conviction;
4) juvenile records;
5) documents containing identifying information about jurors or potential jurors;
6) financial affidavits filed in seeking representation pursuant to the CJA;
7) *ex parte* requests for authorization of investigative, expert or other services pursuant to the CJA;
8) motions for downward departure for substantial assistance;
9) plea agreements indicating cooperation; and
10) victim statements.

c) District Policy: In addition, pursuant to district policy the following documents shall also not be included in the public case file and will not be made available to the public at the courthouse or via remote electronic access:

1) unredacted Indictments;
2) Rule 35 motions;
3) sentencing memoranda and responses thereto;
4) Prisoner Trust Fund Account Statements;
5) motions to proceed *in forma pauperis*;

6) psychiatric reports;

7) mediation statements;

8) mediator reports; and

9) Personal Identification Attachment to the revocation judgment.

(d) Motion for Leave to File Under Seal:

(1) Motion: To file any other document under seal, a party must first electronically file a motion for leave to file under seal. If the motion itself contains sensitive information, the party shall:

(i) Electronically file it under seal in CM/ECF and effect service of the motion traditionally, because the filing will be otherwise inaccessible to recipients of the NEF, 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:

If the motion for leave to file under seal is itself filed under seal per (d)(1)(i) or (d)(1)(ii) above, the filer shall attach the document for which sealing is sought as an exhibit to the motion.

(e) 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 may then file the

document under seal in CM/ECF or bring the document to the Clerk's Office to be filed.

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

Contact with Jurors

LR Gen P 47.01. Contact with Jurors.

No party, 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 first obtaining an order from the Court allowing such communication.

Entry of Judgments

LR Gen P 58.01. Entry of Judgments and Orders.

Except for good cause shown, 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 or proposed default judgment orders prepared by counsel or unrepresented parties. 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 of Court.

Except in criminal cases, or where another procedure is prescribed by law, the Clerk of Court 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 of Clerk of Court; Points of Holding Court; and Sessions of the Court

LR Gen P 77.01. Principal Office of Clerk of Court.

The principal office of the Clerk of Court for the United States District Court for the Northern District of West Virginia 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 of Court 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:

Point of Holding Court	Address/Telephone/Fax	Counties
Clarksburg	Street address: Federal Building 500 West Pike Street Room 301 Clarksburg, WV 26301 Mailing address: P.O. Box 2857 Clarksburg, WV 26302 304-622-8513 (Fax) 304-623-4551	Braxton, Calhoun, Doddridge, Gilmer, Harrison, Marion, Monongalia, Pleasants, Preston, Ritchie and Taylor
Elkins	Street address: Federal Building 300 Third Street Elkins, WV 26241 Mailing address: P.O. Box 1518 Elkins, WV 26241 304-636-1445 (Fax) 304-636-5746	Barbour, Grant, Hardy, Lewis, Pendleton, Pocahontas, Randolph, Tucker, Upshur and Webster
Martinsburg	Street address: Federal Building 217 West King Street Martinsburg, WV 25401 Mailing address: 217 W. King St., Room 207 Martinsburg, WV 25401 304-267-8225 (Fax) 304-264-0434	Berkeley, Hampshire, Jefferson, Mineral and Morgan
Wheeling	Street address: Federal Building 1125 Chapline Street Wheeling, WV 26003 Mailing address: P.O. Box 471 Wheeling, WV 26003 304-232-0011 (Fax) 304-233-2185	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 Monday through Friday from 8:30 a.m. to 5:00 p.m.

(b) Filing Deadline: Unless otherwise ordered, to be considered timely, an electronic filing must be filed by no later than midnight, Eastern Time. A filing is deemed to be made on the date and time specified on the NEF that is automatically generated by CM/ECF.

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 of Court 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 of Court shall place the 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 of Court.

(2) Non-paper Exhibits:

(i) After being marked for identification, all non-paper exhibits admitted in evidence shall be placed in the custody of the Clerk of

Court through the conclusion of a hearing or trial. Upon conclusion of the hearing or trial, the Clerk of Court shall place the 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 of Court.

(ii) A party or attorney who retains custody of a non-paper 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 of Court during the course of the hearing or trial. Following the return of a verdict in a trial or at the conclusion of a hearing, and after the case is timely disposed of by the Court, sensitive exhibits shall be returned to the entitled party. When the government is the entitled party, the government may, at the conclusion of all 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 of Court with

alternative procedures for custody and instructions for disposition of specific exhibits.

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

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 of Court may permit temporary removal of papers by a United States District Judge, Bankruptcy Judge, Magistrate Judge or a master in matters relating to his or her 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.

(a) 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.

(b) Any attorney employed by the Office of the United States Attorney or the Office of 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.

(c) An attorney for whom a notice of suspension has been received from the West Virginia State Bar shall be prohibited from practicing before the Court until the attorney has his/her license reinstated with the West Virginia State Bar and has been readmitted before the Court. Readmission requires that the suspended attorney provide written verification of his/her reinstatement with the West Virginia State Bar. In the event of a disciplinary suspension, the suspended attorney must also pay the attorney admission fee for the U.S. District Court for the Northern District of West Virginia.

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 when that person 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 the applicant is admitted;

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

(iv) all matters before West Virginia tribunals or bodies in which the applicant is or has been involved in the preceding twenty-four (24) months;

(v) all matters before West Virginia tribunals or bodies in which any member of the applicant's firm, partnership, corporation or other operating entity is or has been involved in the preceding twenty-four (24) months;

(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 legal defense 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; and

(3) upon certification that the *pro hac vice* applicant has paid to the West Virginia State Bar the initial *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 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 the subject of the application. Service of notices and other papers upon the responsible local attorney shall be binding upon the client and the applicant. The local attorney shall be required to sign all pleadings and filings, affix his or her West Virginia State Bar identification number thereto and 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 attend the taking of depositions and other actions that occur in the case that are not actually conducted before the judge, tribunal or other body of the State of West Virginia unless, upon motion of counsel, the presiding judge permits local counsel to appear by telephone or other electronic means, and shall further be a responsible attorney in all other aspects of the case. 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, which must be 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 those Rules.

(3) Miscellaneous Cases: A visiting attorney who files a miscellaneous case that 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 that does require judicial action (e.g., a motion to compel testimony at a deposition) must comply with LR Gen P 83.02(a).

(4) Federal Government Attorneys: This section does not apply to properly licensed attorneys with the United States Department of Justice, those associated with federal executive branch agencies, and those

appointed from outside the district pursuant to the Criminal Justice Act, 18 U.S.C. §3005A and §3006A.

(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. With the exception of student loan cases, the United States Attorney, in addition to other government attorneys, must sign all papers filed and served by the United States. The United States Attorney must abide by this requirement even when the United States is associated with other government attorneys in proceedings involving the government. 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, provide written notice of their phone numbers, complete names, and addresses where all papers may be served upon them, and shall have a continuing duty to update this information in writing.

In absence of a court order, no attorney who has entered an appearance in any civil or criminal action shall withdraw the appearance or have it stricken from the record.

LR Gen P 83.04. Legal Assistance by Law Students.

(a) Appearance on Behalf of Indigent Persons: With the written consent of an indigent person and his or her attorney of record, an eligible law student may appear on

his or her behalf. 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 of Court.

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 and shall be familiar with the case and 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 a schedule 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 of Court. 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 of Court 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 (18) 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 or 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, or 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 the 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 Procedure 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, and the transmitting or sound recording of proceedings for broadcast by radio, television or other forms of media during judicial proceedings or during any recess are 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 broadcasted from the courtroom.

LR Gen P 85.02. Impoundment of Equipment.

The United States Marshal, Deputy United States Marshals and Court Security Officers may impound any camera, recording, broadcasting or 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, smartphones, tablet devices, 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. All electronic devices are to be programmed so as to not emit any audible noise while in the courtrooms. PDAs, smartphones, tablet devices, 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.

Scheduling Conflicts; Requests for Continuance

LR Gen P 88.01. Scheduling Conflicts.

In the absence of an emergency, if a party has a scheduling conflict with another court of federal jurisdiction, that party must file a motion with the Court no later than fourteen (14) days before a scheduled court appearance. In addition, in the event the scheduling conflict involves a state court, parties must work with the Court to resolve all such scheduling conflicts considering those factors set forth in West Virginia Trial Court

Rule 5.

LR Gen P 88.02. Requests for Continuance.

A party or parties requesting a continuance must first meet and confer with all other parties in an attempt to reach an agreement as to three (3) possible non-consecutive dates to which to move the deadline or hearing. If an agreement is reached, the moving party must specify the three (3) possible non-consecutive dates within the motion to continue. If the parties cannot reach an agreement, then each party must advise the Court of their suggested dates.

Departures from Local Rules

LR Gen P 89.01. Departures from Local Rules.

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.

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 request that a defendant waive service of a summons under Fed. R. Civ. P. 4(d)(1) 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 specified period, 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)(1) shall allow the defendant not less than thirty (30) days and not 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 notice is sent to the defendant 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)(1) shall allow the defendant not less than sixty (60) days and not

more than seventy-five (75) days from that date within which to return the waiver of service.

The Plaintiff shall file the executed waiver of service in CM/ECF within seven (7) days of its return.

Court Filings

LR Civ P 5.01. Discovery.

(a) Discovery Not Filed; Certificate of Service Filed: Parties shall not file in CM/ECF any 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 by the Court 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 the disputed documents with any motion. If the moving or nonmoving party relies on discovery documents during proceedings concerning a motion under Fed. R. Civ. P. 56, that party shall file copies of the pertinent portions of any such documents together with the motion or brief in 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 the matters to PDF format and email them to all non-*pro se* parties. Service by electronic means constitutes service of the discovery materials and has the same legal force and effect as if served in paper. If the recipient counsel's email system rejects the mailing of documentary discovery, the sender may serve such documents, by agreement of the parties after confirming that the recipient has the appropriate technology available, through the regular mail by CD-ROM, DVD or other removable media, or the sender 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 PDF 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 stipulating parties or their counsel, and promptly filed. With electronic filings, each party or attorney may sign in "s/ signature" form, consistent with the Court's Administrative Procedures for Electronic Filing.

LR Civ P 7.02. Motion Practice.

(a) Motions and Supporting Memoranda: All motions shall be concise, state the relief requested precisely, be filed timely, but not prematurely, and, except for nondispositive motions other than a motion for sanctions, be accompanied by a supporting memorandum of not more than twenty-five (25) pages, double-spaced, and shall be further accompanied by copies of depositions (or the pertinent portions thereof), admissions, documents, affidavits and other such materials upon which the motion relies. A judicial officer, for good cause shown on motion made to the Court, may allow a supporting memorandum to exceed twenty-five (25) pages. The proposed supporting memoranda must be attached to the motion during the e-filing process. A dispositive motion or a motion for sanctions that is unsupported by a memorandum may 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, but no text, may 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 non-proportionally 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 non-proportionally spaced type.

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

(iii) Page Limitations: Responsive memoranda may not exceed twenty-five (25) pages and are subject to the restrictions set forth in

LR Civ P 7.02(a) regarding paper size, font size and line spacing. A judicial officer, for good cause shown on motion made to the Court, may allow a memorandum in response to exceed twenty-five (25) pages. The proposed memoranda in response must be attached to the motion during the e-filing process.

(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 CM/ECF, 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 CM/ECF, the filer must provide any non-CM/ECF filer with the document according to these Rules. CM/ECF filers need not, however, provide paper copies to other CM/ECF filers, as the document will be served electronically.

(iii) Page Limitations: Reply memoranda may not exceed fifteen (15) pages, subject to the restrictions set forth in LR Civ P 7.02(a) regarding paper size, font size and line spacing. A judicial officer, for good cause shown on motion made to the Court, may allow a

reply memorandum to exceed fifteen (15) pages. The proposed reply memoranda must be attached to the motion during the e-filing process.

(3) Surreply and Surrebuttal: Except by leave of court, parties shall not file surreply or surrebuttal memoranda. The proposed surreply or surrebuttal must be attached to the motion during the e-filing process.

(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, the filing party must file a courtesy copy of the memorandum with the Court if the memorandum, together with documents in support thereof, is twenty-five (25) pages or more, or where any administrative record is seventy-five (75) pages or more in length. Courtesy copies should be delivered to the Clerk's Office at the appropriate courthouse. Courtesy copies should not be delivered directly to chambers.

(c) Referral to Magistrate Judges: All nondispositive motions and any dispositive motion may be referred to a magistrate judge by the presiding district judge.

(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, upon motion of a party, constitute good cause for modification of a scheduling order pursuant to LR Civ P 16.01(f)(1).

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

LR Civ P 7.10. Disclosure Statement.

In order for a presiding judicial officer to be aware of any 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, Federal Rules of Criminal Procedure and Rules Governing Judicial Conduct.

(a) Form Provided by the Clerk of Court: The Clerk of Court shall provide a form on the Court Internet Site (www.wvnd.uscourts.gov) 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 Filed by Counsel: The form shall be filed by counsel in CM/ECF.

LR Civ P 7.20. Disclosure Statement in a Diversity Action.

In diversity actions, any party that is a limited liability corporation (LLC), a limited liability partnership (LLP), a master limited partnership (MLP), or a partnership must, in the disclosure statement required by Fed. R. Civ. P. 7.1, list those states from which the owners/members/partners of the LLC, LLP, MLP, or partnership are citizens. If any owner/member/partner of the LLC, LLP, MLP, or partnership is another LLC, LLP, MLP, or partnership, then the disclosure statement must also list those states from which the owners/members/partners of the LLC, LLP, MLP, or partnership are citizens.

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 file social security transcripts electronically in CM/ECF. The United States Attorney shall provide a paper copy of the social security transcript to the appropriate magistrate judge, who shall provide it to the presiding district judge upon request. The Clerk's Office 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. 72 , 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.

(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. The defendant shall 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 are filed, the defendant shall file a memorandum in opposition and serve copies upon the 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. 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, 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, objection, or response.

(f) Extension of Time: The Court will grant an extension of time only upon a 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. If the Court, in response to a party's motion, grants an extension of time for a pleading or memorandum to be filed, 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 by the Court, 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 may, unless the Court determines otherwise, convene a scheduling conference as soon as practicable.

A judicial officer may 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 Court shall enter an order which shall be served on all counsel then of record and mailed to each then unrepresented party for whom an address is available from the record. The order 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 Court shall enter an order which shall be served on 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:

(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;

(5) confer and attempt to agree on discovery of ESI pursuant to LR Civ P 26.06; and

(6) 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

after the meeting.

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 may convene a scheduling meeting 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 meeting , the Court 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 must be resolved before 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 sixty (60) days after the appearance of a defendant or within ninety (90) days after the complaint has been served on a defendant, whichever is earlier, 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 that term is 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 the 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), but not the disclosures required by Fed. R. Civ. P. 26(a)(3).

(f) Modification of Scheduling Order:

(1) Time limits in the scheduling order, including limits concerning the joinder of other parties, amendment of pleadings, filing of motions and completion of discovery, and dates concerning pretrial conferences and trial, may be modified for cause by order. A party or parties requesting a continuance must first meet and confer with all of the other parties in an attempt to reach an agreement as to three (3) possible non-consecutive dates to which to move the deadline or hearing. If an agreement is reached, the moving party must specify these three (3) possible non-consecutive dates within the motion to continue. If the parties cannot reach an agreement, then each party must advise the Court of their suggested dates.

(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 stipulating parties or their counsel, filed promptly and do not affect the trial date or other dates and deadlines specified in subparagraph (1).

(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), 26(f) and 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 the 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. The judicial officer may require the parties to meet or confer in advance of a pretrial conference.

(b) Pretrial Conference Order: 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 the 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 the 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 attorney who will conduct the trial for each party and by any unrepresented party" as provided in Fed. R. Civ. P. 16(e).

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).

(d) Final Settlement Conference: Unless otherwise ordered, a final settlement conference may 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 previously authorized by the Court, shall be immediately available by telephone.

(e) 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 Stipulations, Agreements, and Admissions at Conferences Before Judicial Officers.

At least one of the attorneys for each party and all unrepresented parties participating in any conference before a judicial officer shall have authority to make decisions as to stipulations, agreements, 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 upon a mediator, then they 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 must 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. Any party may submit a written mediation statement, even if the mediator does not require submission of written mediation statements. 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 mediation. 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 benefit 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 mediate in good faith.

Mediation shall be regarded as a confidential settlement negotiation, subject to

Rule 408 of the Federal Rules of Evidence. A mediator shall keep confidential from opposing parties any 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 mediated dispute.

(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 all 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 or not the mediation resulted 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 settlement of the case, the 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 make an official record of 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 fourteen (14) 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, parties shall file in CM/ECF only the certificate of service for any such disclosures.

(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 disclosures required by Fed. R. Civ. P. 26(a)(2)(A), (B) and (C) must be made to all other parties or their counsel at least ninety (90) days before the date set for trial or for the case to be ready for trial and

(2) 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) or (C), the disclosures must be made no later than thirty (30) days after the other party's disclosure.

The written report 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. In accordance with LR Civ P 5.01, parties shall file on CM/ECF only the certificate of service for any such disclosures.

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 trial.

(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 timelines detailed in LR Civ P 26.01(b).

(4) In no event may a health care provider or other person relying on

scientific, technical or other specialized knowledge be considered a lay witness 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) Twenty-five (25) written interrogatories, including all discrete subparts, per party; and

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

(d) Further Discovery: After exhausting the opportunities for discovery pursuant to paragraph (c) of this Rule and any stipulation of the parties or order of the Court, any requests that the parties may make for additional depositions, interrogatories or requests for admissions must 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 any unrepresented parties who oppose the additional 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, but shall not preclude:

(1) the definition of other terms specific to a 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 given in response to subsequent requests concerning that person's identity;

(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 the documents 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). Any claim of privilege and any objection must comply with Fed. R. Civ. P. 26(b)(5).

(2) Claims of Privilege:

(i) Where a claim of privilege is asserted by a party who objects to any means of discovery or disclosure, including but not limited to a deposition, and when an answer is not provided on the basis of such assertion, a party may lodge an objection on that issue.

(A) A party's attorney asserting a privilege shall identify the nature of the privilege that is being claimed, including attorney work product, if applicable. If the privilege is governed by state law, the attorney shall identify the state's pertinent privilege rule. The attorney must certify that he or she has reviewed each document for which a privilege is

asserted.

(B) The following information shall be provided in an 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 purposes of a subpoena duces tecum, including, where appropriate, the author of the document, the addressees of the document, any other recipients shown in the document and, where not readily apparent, the relationship of the author, addressees and recipients to each other;

(2) For oral communications:

(a) the name of the person who made the communication and the names of persons present while the communication was made

and, where not readily apparent, the relationship of the person who made the communication to the other persons who were present;

(b) the date and place of the communication; and

(c) the general subject matter of the communication.

(ii) Where a claim of privilege is asserted during a deposition, and when information is not provided on the basis of such an assertion, the information set forth herein in paragraph (a) 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 when information is not provided on the basis of such an assertion, the information set forth herein in paragraph (a) 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 in order to assert a privilege, the requesting party must promptly return the specified material or information and any copies thereof, pending any ruling by the Court regarding the asserted 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 Fed. R. Civ. P. 26(c), and (2) good cause exists for restricting dissemination of the information on the ground that

harm would result from 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 LR Gen P 6.01 and the Court's Administrative Procedures for Electronic Case Filing, shall include the proposed document to be filed under seal as an attachment to the motion, and shall be 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 the United States Court of Appeals for the Fourth Circuit.

LR Civ P 26.06. Discovery of Electronically Stored Information.

(a) Duty to Investigate: Prior to a Fed. R. Civ. P. 26(f) conference, counsel shall:

(1) Investigate the client's Electronically Stored Information ("ESI"),

including, but not limited to, email, mobile device data, social media and website posts, electronic documents, databases, metadata, and computer-based and other digital systems, in order to understand how such ESI is stored; how it has been or can be preserved, accessed, retrieved, and produced; and any other issues to be discussed at the Fed. R. Civ. P. 26(f) conference, and

(2) Identify a person or persons with knowledge about the client's ESI, with the ability to facilitate, through counsel, preservation and discovery of ESI.

(b) Designation of Resource Person: In order to facilitate communication and cooperation between the parties and the Court, each party shall, if deemed necessary by agreement or by the Court, designate a single resource person through whom all issues relating to the preservation and production of ESI should be addressed.

(c) Preparation for Conference: Prior to the Fed. R. Civ. P. 26(f) conference, the parties should refer to both the "Checklist for Rule 26(f) Conference Regarding Electronically Stored Information" set forth as Appendix LRCivP26.06A - CHECKLIST to these Local Rules, and the "Guidelines for the Discovery of Electronically Stored Information" set forth as Appendix LRCivP26.06B-GUIDELINES to these Local Rules.

(d) Duty to Confer: At the Fed. R. Civ. P. 26(f) conference, and upon a later request for discovery of ESI, counsel shall meet and attempt to agree on the discovery of ESI.

(e) Scheduling Conference: Prior to the scheduling conference, the parties

shall complete and file their Rule 26(f) Meeting Report, as applicable. At the discretion of the Court, the parties may be required to submit a proposed stipulated order regarding discovery of ESI. The parties may also choose to file an order under Fed. R. Evid. 502(d).

Interrogatories to Parties

LR Civ P 33.01. Interrogatories.

(a) Form of Response: Each answer, statement or objection to an interrogatory must 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 that are in its custody or that are 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 a specific transcript where the information 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 and the pages of a specific transcript where the information may be found, and the party shall make a copy of 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 to a request for production of documents must 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 Fed. R. Civ. P. 34, or within any extension of time, is waived.

(2) No part of a document request shall be left unanswered merely because an objection was made 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 must 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. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions.

(a) Failure to Preserve Electronically Stored Information: If electronically stored information that should have been preserved in the anticipation or conduct of

litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the Court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(i) presume that the lost information was unfavorable to the party;

(ii) instruct the jury that it may or must presume the information was unfavorable to the party; or

(iii) dismiss the action or enter a default judgment.

(b) Sanctions: Counsel and parties are subject to sanctions for the types of failures and lack of preparation specified in Fed. R. Civ. P. 16(f) regarding pretrial conferences and 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(f), 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) Each discovery request or disclosure requirement, provided verbatim,

and any response thereto to which 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, presented 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 a motion was caused by excusable neglect or by some action of the nonmoving party. In any event, if the moving party seeks a continuance or a modification of the scheduling order, the moving party must demonstrate that good cause exists to grant any such request.

(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 resolved 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 after notice is given 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 of Court 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) Proposed Juror Questionnaires: Parties must submit for the judicial officer's review and approval any proposed juror questionnaire at least sixty (60) days prior to the trial date.

(c) 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 Amended Jury Plan, approved and made effective February 27, 2009, and as it may be modified. Jury lists prepared by the Clerk of Court shall be made available to counsel and unrepresented parties as provided in the Amended Jury 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. §§ 1911–1932 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 and file a bill of costs within thirty (30) days after entry of the final judgment on Form AO 133 (Bill of Costs), which may be supplied by the Clerk of Court or found on the Court's website (www.wvnd.uscourts.gov). The

bill of costs shall contain an itemized schedule of the costs documenting each separate cost and a statement signed by counsel for the prevailing party that the schedule is correct and the charges were actually and necessarily incurred. The adverse party shall file specific objections, if any, 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. 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.

The Federal Code at 28 U.S.C. §§ 631–639, sets forth provisions relating to the appointment, tenure, location, jurisdiction and powers of United States 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 petitions or related motions, filed pursuant to 28 U.S.C. §§ 2241, 2254, and 2255, and related actions;

(2) Prisoner challenges filed pursuant to 42 U.S.C. § 1983, 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) Resolve 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, oversee 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. All disclosure deadlines and pretrial dates set forth herein are subject to modification by court order to allow for compliance with the Speedy Trial Act and trial dates set by the district judges.

LR Cr P 2.01. Grand Jury.

Pursuant to the Amended Jury Plan agreed to and entered on February 27, 2009, grand jurors are empaneled 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.

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 this 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 defendants who fail 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 Fed. R. Crim. P. 11. 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 shall serve discovery on other parties to the criminal action and will file with the Court only the Certificate of Service.

(b) Standard Discovery Request Form: Pursuant to Fed. R. Crim. P. 16(a), counsel for the defendant may request standard discovery at arraignment or upon filing of an information or indictment.

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

(d) Time for Government Response: The government must provide the standard discovery under Fed. R. Crim. P. 16(a) within seven (7) days of the standard discovery request.

(e) Reciprocal Discovery Response: The defendant must provide all reciprocal discovery due to the government within seven (7) 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, *et seq*.

(g) Duty to Supplement: All duties of disclosure and discovery under 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 or upon motion by any party, and for good cause shown, may designate a case as complex.

(2) In all cases designated as complex, not later than seven (7) days following such designation, the parties shall 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, *et seq*.

(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, *et seq*., 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, be directed to the defendant's counsel, 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, the 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 the 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 the 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. The motion shall contain:

(a) a statement that the prescribed conference was held;

(b) the date of the conference;

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

(d) a statement that an agreement could not be reached concerning the discovery or inspection that is the subject of the 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 or statutory obligation, that party shall promptly notify the other party, or opposing counsel, 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 its 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 notice of any evidence under Federal Rule of Evidence 404(b), Giglio material and notice of 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 counsel of record (via CM/ECF or other acceptable means), a list of probable and possible witnesses (identified as such). The witness list should not include whether the defendant will testify. The 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. Expert witnesses and records custodians shall be expressly identified. "Witnesses," as used in this paragraph, mean probable and possible witnesses, including experts and records custodians, which the parties intend to call in their cases-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 (via CM/ECF or other acceptable means), a list of exhibits to be offered during trial. In addition, counsel for each party shall number the listed exhibits with evidence tags available from the Clerk of Court and shall exchange a complete set of marked exhibits with opposing counsel (except for large or voluminous items or 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 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 the 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 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 Court's attention that a party has failed to comply with LR Cr P 16, the Court may order the party to permit the discovery or inspection, grant a continuance, prohibit the party from introducing evidence not disclosed or enter any 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. Up to and including the end of trial, all parties shall immediately produce any information which has been subsequently acquired.

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 that he or she is refusing and not seeking such disclosures pursuant to Fed. R. Crim. P. 16.

Motions in Limine

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

Ten (10) days before the pretrial conference, all motions in limine (which must be limited to matters actually in dispute), jury instructions and voir dire 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, jury instructions and voir dire (which must be limited to matters actually in dispute) shall be filed by counsel, with service on opposing counsel, seven (7) days before trial. Pursuant to Fed. R. Cr. P. 47, any responses are due 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

(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 sentencing.

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

(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. In the alternative, the Court may set a date when the presentence report will be initially disclosed, after which time 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 thereto, and shall provide a copy to opposing counsel. Counsel shall not, however, file objections to the presentence report 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 may present the document for filing to the Clerk's Office in person, via mail, or fax, to be filed under seal. In the alternative, counsel may file the sentencing memorandum in CM/ECF using the "Sentencing Memorandum" event, which is a sealed event. Regardless of the means of transport, the sentencing memorandum must be received by the deadline.

(g) Presentence Report After Sentencing: When a term of imprisonment is imposed during a trial or hearing on revocation of supervision, the probation officer shall forward the presentence report to the United States Marshals Service and the Clerk of Court, but shall not, under any circumstance, file the presentence report on the docket via CM/ECF. The Clerk of Court shall file the presentence report on CM/ECF under

seal to assure its confidentiality. Immediately upon receiving the presentence report, the United States Marshals Service shall forward it, along with 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 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 of 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 obtaining a court order directing the disclosure of those records. The probation officer shall immediately provide the Court with notice of the disclosure.

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 Deputy Chief Probation Officer shall request an order from the sentencing judge . 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 16.07, 16.08 and 47.01 are deadlines for hand delivery, delivery by fax or electronic delivery via CM/ECF. If the items required to be served on opposing counsel are served by mail, the deadline for mailing shall be three (3) days earlier than the deadline for hand delivery, delivery by fax, or electronic delivery via CM/ECF.

All deadlines contained in this Rule may be shortened or lengthened *sua sponte* or 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, but is not limited to, the safety or security of witnesses or protection of the identity of informants.

Motions

LR Cr P 47.01. Motions.

(a) Pretrial Motions: Unless otherwise ordered, all motions, including motions for a bill of particulars under Fed. R. Crim. P. 7(f), shall be filed 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 pretrial motions and accompanying memoranda shall contain the reason and legal support for granting the motion. Within seven (7) days of service, the opposing party shall file a response to all such motions with legal support or memoranda. All pretrial motions, responses and memoranda shall be filed with the Court and served upon all other counsel of record and any person appearing *pro se*.

Pretrial motions, responses and memoranda shall cite reasons and provide points of authority and legal support, either in the body or in a separate brief, when their complexity requires more than a short statement of authorities.

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

Continuance of Trial

LR Cr P 50.01. Continuances.

The Court will grant a continuance of a trial date, hearing or deadline only for good cause. When a party requests a continuance, that party must first meet and confer with all other parties in an attempt to reach an agreement as to three (3) possible non-consecutive dates to which the trial date, hearing or deadline may be continued. If an agreement is reached, the moving party must specify the three (3) possible non-consecutive dates within the motion to continue. If the parties cannot reach an agreement, then each party must advise the Court of their suggested dates.

If no agreement to continue can be reached and the party requesting the continuance is relying on the Speedy Trial Act, that party must provide the provision of the Speedy Trial Act in its 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 an 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 Court will distribute copies of the 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 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, immediately taking the person charged 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 Court shall establish a procedure for the processing of violation notices, citations and collateral. The procedure may include use of automated facilities located in other United States District Courts.

(g) Certification of Record of Traffic Violations: Either the Clerk of Court or United States Magistrate Judge shall certify the record of any traffic violation conviction, 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, or on behalf of, prisoners in the United States District Court for the Northern District of West Virginia:

(a) Petitions for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (common law habeas corpus);

(b) Petitions for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (state prisoner attacking conviction or sentence);

(c) Motions to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (federal prisoner attacking conviction or sentence);

(d) State civil rights complaints pursuant to 42 U.S.C. § 1983 (prisoner alleging a constitutional deprivation under color of state law);

(e) Federal civil rights complaints filed pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) (prisoner alleging a constitutional deprivation under color of federal law);

(f) Complaints filed pursuant to the Federal Tort Claims Act; and

(g) 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, or on behalf of, prisoners are assigned to the magistrate judges. The magistrate judges are authorized to consider the record and do all things proper to recommend the disposition of any dispositive motions filed in these actions and to decide any nondispositive motions, including, without limitation, conducting a hearing 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.

LR PL P 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.

LR PL P 3.2 Applications to Proceed *In Forma Pauperis*.

(a) 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 from 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.

(b) Eligibility: A prisoner shall be entitled to proceed *in forma pauperis* if the prisoner's financial affidavit or certified trust account statement, or both, demonstrates that the prisoner is unable to pay or prepay for 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.

(c) Rescission 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 who was granted leave becomes capable of paying the full filing fee, is found to have willfully misstated information in the Application or for any other lawful ground.

(d) Requirements for *In Forma Pauperis* Applicants: The specific procedures required for prisoners seeking leave to proceed *in forma pauperis* in habeas actions 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 are set forth below in LR PL P 25.

LR PL P 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 of Court, P.O. Box 471, Wheeling, WV 26003, ATTENTION: INMATE LITIGATION CLERK. The following items must be included with the request:

(a) A letter requesting a copy of the Local Rules of Prisoner Litigation and

(b) 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 the Clerk of the United States District Court.

LR PL P 3.4. Use of the Court-Approved Forms.

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

(b) 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.

(c) 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 additional 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 that section.

(d) **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.

(e) Additional pages shall be printed or typed on standard white 8 ½ by 11 inch-size, 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.

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

All petitions, motions, applications and complaints that do not comply with this Rule, and are not corrected after notice, will be stricken by the Court.

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

(a) Points of Holding Court: The four active points of holding Court for the Northern District of West Virginia and the addresses for each of the Clerk's Offices are as follows:

(1) **Wheeling Point of Holding Court:**

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

(2) **Clarksburg Point of Holding Court:**

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

(3) **Elkins Point of Holding Court:**

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

(4) **Martinsburg Point of Holding Court:**

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

(b) Mailing Petitions, Motions, Applications and Complaints to the Clerk of Court: Prisoners shall file a petition, motion, application or complaint by mailing the completed forms in a sealed envelope to the Clerk of Court at any point of holding court. Every envelope containing any type of inmate filing shall be marked: **"ATTENTION: INMATE LITIGATION CLERK."**

(c) 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 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 name(s) and address(es) of counsel for the defendant(s) or respondent(s) 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 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, monitoring the progress of their cases and prosecuting or defending their actions diligently. Notification of a prisoner's change of address must be accomplished by filing a Notice with the Clerk of Court 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 Court of an address change will result in 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 CM/ECF System.

Unless and until the administrative rules are changed, *pro se* litigants are

prohibited from using CM/ECF in the Northern District of West Virginia. Accordingly, all filings by *pro se* prisoners must be submitted on Court-approved forms or as otherwise provided in these Local Rules.

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.

(a) Use of Court-Approved Forms: In cases where a prisoner is represented by a licensed practicing attorney who is 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.

(b) Required Information: Whether or not a Court-approved form is utilized by a licensed practicing attorney when filing a motion, petition, application or complaint on behalf of an incarcerated individual pursuant to these Local Rules, all information required by such forms must be included.

Failure to comply with the Local Rules may be grounds for dismissal.

LR PL P 11. Motions Practice and Court Deadlines.

(a) 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 and a supporting memorandum of law. The memorandum of law submitted in support of a dispositive motion **shall not exceed twenty-five (25) pages.**

(b) Unless otherwise ordered by the Court, 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. Memoranda filed in response to a motion **shall not exceed twenty-five (25) pages.**

(c) 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. Memoranda filed in reply to a response **shall not exceed fifteen (15) pages.**

(d) Surreply and surrebuttal memoranda may not be filed.

(e) The Court, for good cause shown, may modify any of the time limitations set forth in these Rules or by Court order.

Failure to comply with the page limitations set forth in these Rules will, upon Court order, result in the entire document being stricken from the docket.

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

(a) 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 judge's recommended disposition.

(b) The written objections shall identify each portion of the magistrate judge's recommended disposition that is being challenged and shall specify the basis for each objection.

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

(d) 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 the 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. In the event that a prisoner believes he or she cannot afford the 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

from the preceding six months.

LR PL P 15. Sanctions.

Pro se prisoner litigants are subject to sanctions that include, but are 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 in 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

(28 U.S.C. §§ 2241, 2254 and 2255)

LR PL P 16. Filing Fee.

No filing fee is required for filing a petition under 28 U.S.C. § 2255.

However, a petition filed under 28 U.S.C. § 2241 or 2254 must be accompanied by the required filing fee .

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

In the event that a prisoner believes he or she cannot afford the 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 from 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 of Court 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 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 United States Treasury check. Cash and 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 § 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 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. § 2241.

(a) Proceeding Under 28 U.S.C. § 2241: A petition for a writ of habeas corpus pursuant to § 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.

(b) Use of Court-Approved Forms: To properly file a petition for a § 2241 writ of habeas corpus, *pro se* prisoners must use the Court-approved form titled "Application for Habeas Corpus Pursuant to 28 U.S.C. Section 2241" and must answer every question and complete the form in its entirety.

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

(a) Proceeding Under 28 U.S.C. § 2254: A petition for a writ of habeas corpus pursuant to § 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 ground that it violates the Constitution, federal statutes or treaties of the United States.

(b) Use of Court-Approved Form: To properly file a Petition for a **§ 2254** writ of habeas corpus, *pro se* prisoners must use the Court-approved form titled: "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.

(c) Place of filing: A state prisoner may file a petition for a writ of habeas corpus pursuant to § 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.

(d) Successive Applications for Writ of Habeas Corpus Pursuant to § 2254 or § 2255: Before a second or successive petition or 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 28 U.S.C. § 2255.

(a) Proceeding Under 28 U.S.C. § 2255: A Motion to vacate, set aside or correct a sentence may be filed pursuant to § 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.

(b) Use of Court-Approved Forms: To properly file a § 2255 motion, *pro se* prisoners must use the Court-approved form titled "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.

(c) Place of Filing: A § 2255 motion will be filed at the point of holding court where the sentence was imposed.

(d) Filing Fee: No filing fee is required for a motion filed under 28 U.S.C. § 2255. Therefore, an Application to Proceed Without Prepayment of Fees and Affidavit

is not necessary.

LR PL P 23. Appeals.

(a) Appealing the Denial of a 28 U.S.C. § 2241 Petition: A **federal** prisoner who desires to appeal the denial of a § 2241 petition must file a Notice of Appeal in the District Court within **sixty (60) calendar days** from the date of the adverse ruling.

A **state** prisoner who desires to appeal the denial of a § 2241 petition must file a Notice of Appeal in the District Court within **thirty (30) calendar days** from the date of the adverse ruling.

(b) Appealing the Denial of a 28 U.S.C. § 2254 Petition: To appeal the denial of a § 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" in the District Court in order to proceed with an appeal. If the District Court denies a certificate of appealability, then the prisoner may reapply for the certificate from the United States Court of Appeals for the Fourth Circuit.

(c) Appealing the Denial of a 28 U.S.C. § 2255 Petition: To appeal the denial of a § 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 Federal Rule of Appellate Procedure 22, prisoners must also file an application for a "certificate of appealability" in the District Court in order to proceed with an appeal. If the District Court denies a certificate of appealability, then the prisoner

may reapply for a certificate from the United States Court of Appeals for the Fourth Circuit.

Part 3 - All Other Civil Causes of Action

(Including, but not limited to, civil rights complaints filed by state prisoners pursuant to 42 U.S.C. § 1983 or Bivens, and complaints filed by federal prisoners pursuant to the Federal Tort Claims Act ("FTCA").)

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**.**

LR PL P 25. Applications by Prisoners to Proceed *In Forma Pauperis* in Civil Actions Other Than Those Filed Pursuant to 28 U.S.C. § 2241 or 2254.

(a) Application to Proceed Without Prepayment of Fees: In the event that a prisoner believes he or she cannot afford the 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 from 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 of Court 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 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 the 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 United States 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 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 frivolous, malicious or based upon a 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).

(b) 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.

(c) 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 28 U.S.C. §§ 1825 and 1915.

LR PL P 27. Service of the Complaint.

(a) Service Without Prepayment of Fees: If the prisoner has been granted leave to proceed without prepayment of fees, the Clerk of Court, 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.

(b) 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.**

(c) 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.

(d) 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 of Court 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 28 U.S.C. § 636.

Within **thirty (30) calendar days** of the filing of the responsive pleading, each party shall advise the Clerk of Court in writing whether or not it will consent to having the United States Magistrate Judge assigned to 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.

(a) Appeal of Adverse Decision Against an Individual Defendant: To appeal an adverse decision in a civil action against an individual defendant (or defendants) a prisoner must file a Notice of Appeal in the District Court within **thirty (30) calendar**

days from the date of the adverse ruling.

(b) Appeal of Adverse Decision Against a Federal Defendant: 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. § 1983.

(a) Proceeding Under 42 U.S.C. § 1983: Generally, a complaint pursuant to § 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 § 1983 for the same reasons.

(b) Use of Court-Approved Forms: To properly file a complaint pursuant to § 1983, *pro se* prisoners must use the Court-approved form titled "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 Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

(a) 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.

(b) Use of Court-Approved Forms: To properly file a complaint pursuant to Bivens, *pro se* prisoners must use the Court-approved form titled "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").

(a) 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.

(b) Use of Court-Approved Forms: To properly file a complaint pursuant to the FTCA, *pro se* prisoners must use the Court-approved form titled "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 a civil action other than those described above, *pro se* prisoners must use the Court-approved form titled "*Pro Se* Prisoner Civil Complaint" and must answer every question and complete the form in its entirety.

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

Appendix L.R. Civ. P. 26.06A – CHECKLIST

United States District Court
for the Northern District of West Virginia

CHECKLIST FOR RULE 26(f) MEETING REGARDING ELECTRONICALLY STORED INFORMATION

In cases where electronically stored information will be exchanged between the parties, the Court encourages the parties to engage in on-going discussions and use the following Checklist to guide those discussions. These discussions should be framed in the context of the specific claims and defenses involved. The usefulness of particular topic on the checklist, and the timing of discussion about these topics, may depend on the nature and complexity of the matter. Parties may obtain discovery of such materials, and on such terms, as permitted by the Federal Rules of Civil Procedure, the Local Rules, and the applicable orders of the court.

I. Preservation

- ☐ The ranges of creation, last modified, last accessed, or receipt dates for any known ESI to be preserved.
- ☐ The description of data from sources that are not reasonable accessible and that will not be reviewed for responsiveness or produced, but that will be preserved pursuant to Federal Rule of Civil Procedure 26(b)(2)(B).
- ☐ The description of data (including source and volume) from sources that (a) the party believes could contain relevant information but (b) has determined, under the proportionality factors, should not be preserved.
- ☐ Whether or not to continue any interdiction of any document destruction program, such as ongoing erasures of e-mails, voicemails, and other electronically-recorded material and/or ongoing preservation requirements (i.e. “evergreen”).
- ☐ The names and/or general job titles or descriptions of custodians for whom ESI will be preserved (e.g. “HR head,” “scientist,” “marketing manager,” etc.).
- ☐ The number of custodians for whom ESI will be preserved.
- ☐ The lists of systems, if any, that contain ESI not associated with individual custodians and that will be preserved, such as enterprises databases, legacy data, and human resource records.
- ☐ Any disputes related to scope or manner of preservation.
- ☐ Any non-party to consult regarding ESI, including entities over which a party has control.

II. Resource Person

- ☐ The identity of each party’s e-discovery resource person(s).

III. Informal Discovery About Locations of Data and Types of Systems

- ☐ Identification of systems from which discovery will be prioritized (e.g. email, structured databases, database types, and unstructured data).
- ☐ Description of systems in which potentially discoverable information is stored.
- ☐ Location of systems in which potentially discoverable information is stored.
- ☐ How potentially discoverable information is stored.
- ☐ How discoverable information can be collected from systems and media in which it is stored.
- ☐ Whether there are known relevant file paths or data locations.

IV. Proportionality and Costs

- ☐ The amount and nature of the claims being made by either party.
- ☐ The nature and scope of burdens associated with the proposed reservation and discovery of ESI.
- ☐ The likely benefit of the proposed discovery.
- ☐ Costs that the parties will share to reduce overall discovery expenses, such as the use of a common electronic discovery vendor or a shared document repository, or other cost-saving measures.
- ☐ Limits on the scope of preservation or other cost-saving measures.
- ☐ Whether there is potentially discoverable ESI that will not be preserved consistent with proportionality concerns.

V. Search

- ☐ The search method(s), including specific words or phrases or other methodology (cluster technology/predictive coding), that will be used to identify discovery ESI and filter our ESI that is not subject to discovery.
- ☐ The quality control method(s) the producing party will use to evaluate whether a production is missing relevant ESI or contains substantial amounts of irrelevant ESI.

VI. Phasing

- ☐ Whether it is appropriate to conduct discovery of ESI in a phased or iterative approach (e.g. by issue, timeframe, custodians, databases, liability v. damages).
- ☐ Sources of ESI most likely to contain discoverable information and that will be included in the first phases of Fed. R. Civ. P. 34 document discovery (i.e. known relevant file paths, email between specific parties during a given period of time).
- ☐ Sources of ESI less likely to contain discoverable information from which discovery will be postponed or avoided.
- ☐ Custodians (byname or role) most likely to have discoverable information and whole ESI will be included in the first phases of document discovery.
- ☐ Custodians (byname or role) less likely to have discoverable information and from whom discovery of ESI will be postponed or avoided.
- ☐ The time period during which discoverable information was most likely to

have been created or received.
- ☐ The issues that are relevant to pay party's claim or defense.

VII. Production
- ☐ The formats in which structured ESI (database, collaboration sites, etc.) will be produced.
- ☐ The formats in which unstructured ESI (email, presentations, word processing. Etc.) will be produced.
- ☐ The extent, if any, to which metadata will be produced and the fields of metadata to be produced.
- ☐ The production format(s) that ensure(s) that any inherent searchability of ESI is not degraded when produced.

VIII. Privilege
- ☐ How any production of privileged information or trial preparation material will be handled.
- ☐ Whether the parties can agree upon alternative ways to identify documents withheld on the grounds of privilege or protection of trial preparation materials to reduce the burdens of such identification.
- ☐ Whether the parties will enter into a Fed. R. Evid. 502(d) Stipulation and Order that addresses inadvertent or agreed production, and if so, the form and content of such order.

IX. E-Discovery Special Maters and/or E-Mediators
- ☐ Would it be helpful to the parties for the court to appoint an E-Discovery Special Master and/or E-Mediator?

X. Expedited or Limited Discovery
- ☐ Are the parties willing to engage in limited discovery or an expedited discovery schedule?

Appendix L.R. Civ. P. 26.06B – GUIDELINES

United States District Court
for the Northern District of West Virginia

GUIDELINES FOR THE DISCOVERY OF ELECTRONICALLY STORED INFORMATION

GENERAL GUIDELINES

Guideline 1.01 (Purpose)

Discovery often now includes the review and production of electronic information. The discovery of electronically stored information ("ESI") provides many benefits such as the ability to search, organize, and target the ESI using the text and associated data. At the same time, the Court is aware that the discovery of ESI is a potential source of cost, burden, and delay. These Guidelines should assist the parties as they engage in electronic discovery. The purpose of these guidelines is to encourage reasonable electronic discovery with the goal of limiting the cost, burden, and time spent, while ensuring that information subject to discovery is preserved and produced to allow for fair adjudication of the merits. At all times, the discovery of ESI should be handled consistently with Fed. R. Civ. 1 to "secure the just, speedy, and inexpensive determination of every action and proceeding."

These guidelines also promote, when ripe, the early resolution of disputes regarding the discovery of ESI without Court intervention. These guidelines are a supplement to LRCivP 26.06.

Guideline 1.02 (Cooperation)

The court expects cooperation on issues relating to the preservation, collection, search, review, and production of ESI. The court notes that an attorney's representation of a client is not compromised by conducting discovery in a cooperative manner. Cooperation is reasonably limiting ESI discovery requests on the one hand, and in reasonably responding to ESI discovery requests on the other hand, tends to reduce litigation costs and delay. The court emphasizes the particular importance of cooperative exchanges of information at the earliest possible stage of discovery, including during the parties' Fed. R. Civ. P. 26(f) conference.

Guideline 1.03 (Discovery Proportionality)

The proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) and 26(g)(1)(iii) should be applied to the discovery plan and its elements, including the preservation, collection, search, review, and production of ESI between parties.[1] To assure

[1] Fed. R. Civ. P. 45(c)(2)(B) outlines a different standard with regard to non-parties through its direction to courts to protect, through measures that include fee-shifting, such non-parties from significant discovery

reasonableness and proportionality in discovery, parties should consider factors that include the importance of the issues at stake in the litigation, the burden or expense of the proposed discovery compared to its likely benefit, the amount in controversy, the parties' resources, the parties' relative access to relevant information, and the importance of the discovery in adjudicating the merits of the case. To further the application of the proportionality standard, discovery requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as practicable.

Guideline 2.01 (Preservation)

(a) At the outset of a case, or sooner if feasible, counsel for the parties should discuss preservation. Such discussions should continue to occur periodically as the case and issues evolve.

(b) In determining what ESI to preserve, parties should apply the proportionality standard referenced in Guideline 1.03. The parties should strive to define a scope of preservation that is proportionate and reasonable and not disproportionately broad, expensive, or burdensome.

(c) The parties should be directed in their discussions concerning preservation by the Checklist for Rule 26(f) Meeting Regarding Electronically Stored Information set forth in Appendix L.R. Civ. P. 26.06A-CHECKLIST to the Local Rules. At the discretion of the court, or at the request of a party or the parties, a court order concerning preservation may be submitted for court approval providing a framework for applicable provisions.

Guideline 2.02 (Rule 26(f) Initial Planning Meeting)

At the required Rule 26(f) Initial Planning Meeting, when a case involves electronic discovery, the topics that the parties should consider discussing include:

a) Preservation;
b) Systems that contain discoverable ESI;
c) Search and production;
d) Phase of discovery;
e) Protective orders (including application of Fed. R. Evid. 502); and
f) Opportunities to reduce costs and increase efficiency.

In order to be meaningful, the meeting should involve direct communications between counsel (preferably, in person and/or by telephone) and be as sufficiently detailed on these topics as is appropriate in light of the specific claims and defenses at issue in the case. Some or all of the details set forth in L. R. Civ. P. 26.06 and the Checklist for Rule 26(f) Meeting Regarding Electronically Stored Information set forth in Appendix L.R.Civ. P. 26.06A-CHECKLIST to the Local Rules may be useful to discuss, especially in cases where the discovery of ESI is likely to be a significant cost or burden. The

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expenses.

court encourages the parties to address any agreements or disagreements related to the above matters in the Rule 26(f) Meeting Report. At the direction of the court, the parties may be required to submit a draft of a Stipulated Order re: Discovery of Electronically Stored Information for Standard Litigation such as the model order set forth in Appendix LRCivP26.06C-MODEL ORDER to the Local Rules.

Guideline 2.03 (Information Discovery Regarding ESI)

Consistent with Guideline 1.02, the court strongly encourages an informal discussion about the discovery of ESI (rather than deposition) at the earliest reasonable stage of the discovery process. Counsel, or others knowledgeable about the parties' electronic systems, including how potentially relevant data is stored and retrieved, should be involved or made available as necessary. Such a discussion will help the parties be more efficient in framing and responding to ESI discovery issues, reduce costs, and assist the parties and the court in the event of a dispute involving ESI issues.

Guideline 2.04 (Disputes Regarding ESI Issues)

Disputes regarding ESI that counsel for the parties are unable to resolve shall be presented the court at the earliest possible opportunity, such as at the initial Scheduling Conference. The court may require additional discussions, if appropriate. The court may appoint and/or the parties may seek the appointment of an E-Discovery Special Master or E-Discovery Mediator to assist the court in resolving ESI disputes.

EDUCATION GUIDELINES

Guideline 3.01 (Judicial Expectations of Counsel)

It is expected that counsel for the parties, including all counsel who have appeared, as well as all others responsible for making representations to the court or opposing counsel (whether or not they make an appearance), will be familiar with the following in each litigation matter:

a) The electronic discovery provisions of the Federal Rules of Civil Procedure, including Rules 26, 33, 34, 37, and 45, and Federal Rules of Evidence 502 (including applicable Advisory Committee Reports); and
b) L. R. Civ. P. 26.06, these Guidelines and the court's Checklist for Rule 26(f) Meeting Regarding ESI set forth in Appendix L.R.Civ.P. 26.06A-CHECKLIST and Stipulated E-Discovery Order for Standard Litigation set forth in Appendix L.R.Civ.P. 26.06C-MODEL ORDER to the Local Rules.

Appendix L.R. Civ. P. 26.06C – MODEL ORDER

United States District Court
Northern District of West Virginia

Plaintiff(s),

v. Case No.

Defendant(s).

MODEL STIPULATED ORDER RE: DISCOVERY OF ELECTRONICALLY STORED INFORMATION FOR STANDARD LITIGATION

1. PURPOSE
This order will govern discovery of electronically stored information ("ESI") (including scanned hard-copy documents) in this case as a supplement to the Federal Rules of Civil Procedures, this court's Guidelines for the Discovery of Electronically Stored Information, and any other applicable orders and rules.

2. COOPERATION
The parties are aware of the importance the court places on cooperation and commit to cooperate in good faith throughout the matter consistent with this court's Guidelines for the Discovery of ESI.

3. RESOURCE PERSON
The parties have identified to each other the resource persons who are and will be knowledgeable about and responsible for discussing their respective ESI. Each ESI resource person will be, or have access to those who are, knowledgeable about the technical aspects of ESI, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the resource persons, as needed, to confer about ESI and to help resolve

disputes without court intervention. The resource person is not necessarily the person who would be designated to testify related to a person or entity's preservation efforts, document retention policies, collection efforts, or other related matters.

4. PRESERVATION

The parties have discussed their preservation obligations and needs and agree that preservation of potentially relevant ESI (e.g. email, texts, voicemail, spreadsheets, databases, etc.) will be reasonable and proportionate. To reduce the costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

a) Only ESI accessed, modified, created or received between the dates _____ and _____ relating to the above-captioned matter will be preserved[1];

b) Based upon their investigation to date, the parties have exchanged a list of the types of ESI they believe should be preserved and the custodians, or general job titles or descriptions of custodians, for whom they believe ESI should be preserved. The parties shall add or remove custodians as reasonably necessary;

c) The parties have agreed/will agree on the number of custodians per party for whom ESI will be preserved;

d) The following data sources are not reasonably accessible, and the parties agree not to preserve the following: [e.g. backup media created before _____, ESI in foreign jurisdictions, data in slack space, digital voicemail, instant messaging, automatically saved versions of ESI];

[1] The parties may estimate or agree to the volume of data to be produced (i.e. number of documents, files or GB of data).

e) The following data sources will be preserved but not searched, reviewed, or produced: [e.g. backup media of [named] system, systems no longer in use that cannot be accessed, etc.];

f) In addition to the agreements above, the parties agree that data from the following sources (a) could contain relevant information but (b) under the proportionality factors, should not be preserved: [e.g. databases that by their nature change as new information is added to them, accessed and modified dates, etc.]:

g) In terms of preservation, the parties agree/disagree that there is no need for forensic images of servers, databases, computers, cell phones, etc. [except for the following data sources:_____][2].

5. SEARCH AND IDENTIFICATION

The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is likely not subject to discovery. The parties are permitted to use reasonable search methods to narrow down the ESI to be reviewed for production in discovery (e.g. search terms, technology assisted review, deduplication, elimination of correspondence with attorneys, client self-collection efforts, etc.). However, the parties must be prepared to discuss the reasonableness of such efforts.

6. PRODUCTION FORMATS

The parties agree to produce ESI in (check all that apply): ☐ TIFF, ☐ native, ☐ PDF, and/or ☐ paper, or a combination thereof (check all that apply) file formats.[3] If

[2] To the extent the parties disagree, cost-shifting may occur to the extent a party is required to expend resources on imaging which the court determines to be unnecessary or not proportional.

[3] To the extent production is not in native format, the parties should consider an agreement on metadata fields to

particular ESI warrants a different format, the parties will cooperate to arrange for the mutually acceptable production of such ESI.[4]

7. PHASING

When the parties require some discovery prior to ADR/mediation, the parties agree to phase the production of ESI. The initial production will be from the following sources and custodians: _____

_____.

This agreement will not limit the parties' discovery if ADR/mediation is unsuccessful. However, the parties will continue to explore appropriate and proportional phasing of discovery throughout the discovery process.

When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties agree to phase the production of ESI and the initial production will be from the following sources and custodians: _____

_____.[5]

Following the initial production, the parties will continue to prioritize the order of subsequent productions.

8. ESI PROTECTED FROM DISCOVERY OR PUBLIC DISCLOSURE

a) Pursuant to Fed. R. Evid. 502(b) and (d), the production of ESI which is privileged or is protected trial preparation material is not a waiver of privilege or protection from discovery in this case or in any other federal, state, arbitration or

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be produced.

[4] By way of example, the parties could agree to produce excel ESI in native format while providing other ESI in TIFF format with conventional production numbering (PI 00001) and load files.

[5] A phased or iterative approach may be used to conduct ESI (e.g. by issue, timeframe, custodians, databases, issue, liability, or damages).

other proceeding so long as it was: [the parties may include their stipulated agreement, if any as to waiver of privilege, in this order or in a separate order].[6]

b) The parties may agree upon a "quick peek" process, without waiver of privilege or protection as trial preparation material, pursuant to Fed. R. Civ. P. 26(b)(5).

c) Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log.

d) Communications may be identified on a privilege log by category, rather than individually, if agreed upon by the parties or ordered by the Court.

9. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the parties or by the court for good cause shown.

IT IS SO STIPULATED, through counsel of record.

Dated: _____

Counsel for Plaintiff(s)

Dated: _____

Counsel for Defendant(s)

IT IS SO ORDERED that the foregoing Agreement is approved.

Dated: _____

United States District/Magistrate Judge

[6] This paragraph 8 can be modified to limit or entirely eliminate the situations in which a producing party (or non-party) can be found to have failed to take (i) reasonable steps to prevent the disclosure of privileged or trial preparation material ESI, and/or (ii) prompt and reasonable steps to rectify this error, as provided under Fed. R. Evid. 502(b)(2)-(3). This paragraph can also be modified to address different types of produced materials to different standards than those outlined in Fed. R. Evid. 502(b).