

1 **PROPOSED LOCAL RULES OF CIVIL PROCEDURE**
2 **For Comment by May 31, 2006**

3
4 **NOTE: THE OLD RULES HAVE BEEN RENUMBERED TO REFLECT THE NEW UNIFORM**
5 **NUMBERING SYSTEM. ALL EXISTING RULES HAVE BEEN AMENDED, WHERE APPROPRIATE,**
6 **TO SUBSTITUTE THE WORD “TRANSMIT” FOR “MAIL” IN ORDER TO ACCOMMODATE THE**
7 **NEW ELECTRONIC FILING PROCEDURES. ALL INTERNAL RULE REFERENCES HAVE BEEN**
8 **MODIFIED CONSISTENT WITH THE NEW NUMBERING SYSTEM. ALL REFERENCES TO THE**
9 **UNITED STATES CODE AND THE FEDERAL RULES OF CIVIL PROCEDURE HAVE BEEN MADE**
10 **UNIFORM. THE RULES THAT ARE MARKED “NEW” ARE NEW RULES. THE RULES THAT**
11 **HAVE BEEN MARKED “OLD” ARE THE OLD RULES. THE RULES THAT ARE MARKED**
12 **“AMENDED” ARE OLD RULES THAT HAVE BEEN AMENDED, WITH DELETIONS INDICATED**
13 **BY ~~STRIKE THROUGH~~ AND INSERTIONS INDICATED BY UNDERSCORING.**

14
15 **[NEW] LR Civ P 3.1. Assignment of Cases.** Cases filed shall be assigned by the clerk
16 to a judge at the direction of the Chief Judge or through the use of random electronic
17 methods. The clerk shall not reveal the case assignment allocation or sequence of the
18 electronic method to anyone, unless ordered to do so by a district judge. A record of all
19 assignments made shall be kept by the clerk.

20
21 **[NEW] LR Civ P 3.2. Reassignment of Cases.** The clerk is authorized to sign orders to
22 effectuate the reassignment of cases when needed and as directed by a judge of this court.

23
24 **[NEW] LR Civ P 3.3. Assignment of Urgent Cases or Matters.** In matters requiring
25 urgent and immediate attention by a judge and for which a district judge has not yet been
26 assigned, such as a complaint and motion for temporary restraining order or injunctive relief,
27 the filing party shall contact the clerk after filing the document(s). The clerk, after
28 consulting with the Chief Judge, shall forthwith assign such urgent case or matter to an
29 available judge in the District.

1 **[NEW] LR Civ P 3.4. Local Filing Requirements.** (a) *Civil docket cover sheet.* A civil
2 docket cover sheet, in a form supplied by the clerk, must be completed and submitted with
3 any complaint commencing an action or any notice of removal from state court. Each cover
4 sheet must cite the title and section of the United States Code or relevant statute pursuant to
5 which the action or notice is filed.

6 (b) *State court docket sheet.* When any notice of removal from state court is filed,
7 the filing party must also attach to the notice of removal a copy of the docket sheet from the
8 circuit court from which the case is being removed in addition to any other documents
9 required by federal rule or statute.

10
11 **[AMENDED] LR Civ P 3.5. Proceedings Without Prepayment of Fees and Costs *In***
12 ***Forma Pauperis.*** Application to proceed without prepayment of fees and costs *in forma*
13 *pauperis* shall be made upon a form available from the clerk and on the court's website. ~~to~~
14 ~~be provided by the clerk.~~

15 In all cases initiated without payment of fees and costs, the affiant shall stipulate in
16 his or her affidavit that any recovery in the action shall be paid to the clerk, who shall pay
17 therefrom any remaining unpaid costs taxed against the plaintiff and remit the balance to the
18 plaintiff, if *pro se*, or, otherwise, to the plaintiff and his or her attorney jointly.

19
20 **[OLD] LR Civ P 4.1. Waiver of Service.** A plaintiff who intends to obtain service of
21 summons on a defendant under the provisions of FR Civ P 4(d)(2) shall, within 10 business
22 days of the filing of the complaint, dispatch the notice and request through first-class mail
23 or other reliable means to the defendant and file a copy thereof with the clerk. If a plaintiff

1 fails to dispatch and file the notice and request within the period specified, service of the
2 summons shall be effectuated by means other than by waiver of service unless otherwise
3 ordered. A plaintiff who dispatches a notice and request under the provisions of FR Civ P
4 4(d)(2) shall allow the defendant not less than 30 days nor more than 45 days from the date
5 on which the notice and request is sent, or not less than 60 days nor more than 75 days from
6 that date if the defendant is addressed outside any judicial district of the United States,
7 within which to return the waiver of service. The plaintiff shall file the waiver of service
8 with the clerk within 5 days after its return.

9
10 **[OLD] LR Civ P 4.1.1. Initiation of Civil Contempt Proceedings.** A proceeding to
11 adjudicate a person in civil contempt of court shall be commenced by the service of a notice
12 of motion or order to show cause. The affidavit upon which the notice of motion or order to
13 show cause is based shall state with particularity the misconduct complained of, the claim,
14 if any, for damages, and any evidence that is available to the moving party as to the amount
15 of damages. A reasonable attorney's fee, necessitated by the contempt proceeding, may be
16 included as an item of damage. Where the alleged contemnor has appeared by an attorney,
17 the notice of motion or order to show cause and the papers upon which it is based may be
18 served upon his or her attorney; otherwise, service shall be made personally in the manner
19 provided for by the Federal Rules of Civil Procedure for the service of a summons. If an
20 order to show cause is sought, the order, upon a showing of necessity, may include a
21 direction to the United States Marshal to arrest the alleged contemnor and hold him or her
22 on bail in an amount fixed by the order, conditioned for his or her appearance at the hearing,

1 and further conditioned that the alleged contemnor will hold himself or herself thereafter
2 amenable to all orders of the court for his or her surrender.

3
4 **[OLD] LR Civ P 4.1.2. Issues; Trial by Jury.** If the alleged contemnor puts in issue his
5 or her alleged misconduct or the damages sought, he or she shall, upon demand, be entitled
6 to have evidence taken, either before the court or before a master appointed by the court.
7 When the alleged contemnor is entitled to a trial by jury, he or she shall make written
8 demand therefor at least 3 days before the trial date; otherwise he or she will have waived
9 a trial by jury.

10
11 **[OLD] LR Civ P 4.1.3. Order of the Court; Confinement of Contemnor.** In the event
12 the alleged contemnor is found to be in contempt of court, an order shall be entered (1)
13 reciting the verdict or findings of fact upon which the adjudication is based; (2) setting forth
14 the amount of the damages to which the complainant is entitled; (3) fixing the fine, if any,
15 imposed by the court (with the fine to include the damages) and naming the person to whom
16 the fine shall be payable; (4) stating any other conditions necessary to purge the contempt;
17 and (5) directing the arrest of the contemnor by the United States Marshal and his or her
18 confinement until the performance of the conditions in the order and the payment of the fine,
19 or until the contemnor is otherwise lawfully discharged. Unless the order specifies otherwise,
20 the place of confinement shall be in a federally approved jail facility in the area where the
21 court is sitting. No party shall be required to pay or to advance to the marshal any expenses
22 for the upkeep of the prisoner. A certified copy of the order committing the contemnor shall
23 be sufficient warrant to the marshal for the arrest and confinement of the contemnor. The

1 aggrieved party shall also have the same remedies against the property of the contemnor as
2 if the order awarding the judgment or fine were a final judgment.

3 In the event the alleged contemnor is found not guilty of the charges, he or she shall
4 be discharged from the proceeding and, at the discretion of the court, may have judgment
5 against the complainant for his or her costs and disbursements and a reasonable attorney's
6 fee.

7
8 **[AMENDED] LR Civ P 5.1. Filing of Papers.** Except as otherwise permitted or required
9 by the Federal Rules, these local rules, or order, the original of all papers, not electronically
10 filed, that must ~~shall~~ be filed with the court shall be filed at the clerk's office at the point of
11 holding court in which the particular action or proceeding is docketed. In emergency
12 situations, due to travel conditions, time limitations or other factors, filings may be made at
13 any of the clerk's offices, in which event the papers so filed shall be forwarded by the
14 receiving clerk's office to the clerk's office at the point of holding court in which the
15 particular action or proceeding is docketed.

16
17 **[NEW] LR Civ P 5.2. Filing by Facsimile or Electronic Means.** (a) *Filing by Facsimile*
18 *Transmission.* The clerk's office will not accept any facsimile transmission for filing unless
19 ordered by the court.

20 (b) *Filing by Electronic Means.* Pursuant to Fed. R. Civ. P 5(e), the clerk's office will
21 accept pleadings or documents filed, signed or verified by electronic means that are
22 consistent with the technical standards, if any, that the Judicial Conference of the United

1 States establishes. A pleading or document filed by electronic means in compliance with
2 this Rule constitutes a written paper for the purpose of applying these Rules and the Federal
3 Rules of Civil Procedure. All electronic filings shall be governed by the court's
4 Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by
5 Electronic Means for Civil Cases, the provisions of which are incorporated by reference, and
6 which may be amended from time to time by the court.

7
8 **[AMENDED] LR Civ P 6.1. Definitions.** For the purpose of these Local Rules of Civil
9 Procedure, "judicial officer" means a district judge or, when authorized by a district judge,
10 a statute, the Federal Rules of Civil Procedure, or these Local Rules of Civil Procedure, a
11 magistrate judge. **[This rule has been amended to delete definitions of "days" and
12 "business days" as duplicative of FR Civ P 6]**

13
14 **[AMENDED] LR Civ P 7.1. Motion Practice.** (a) *Motions and supporting memoranda.*
15 All motions shall be concise, shall state the relief requested precisely, shall be filed timely
16 but not prematurely, and, except for nondispositive motions other than a motion for
17 sanctions, shall be accompanied by a supporting memorandum of not more than 20 pages
18 in length, double-spaced, and by copies of depositions (or pertinent portions thereof),
19 admissions, documents, affidavits, and other such materials upon which the motion relies.
20 All exhibits in support of a motion shall be attached to the motion, not the supporting
21 memorandum. Nothing in this rule prevents a party from filing a memorandum in support
22 of a nondispositive motion. Examples of non-dispositive motions for which a supporting
23 memorandum is not required unless ordered are motions for enlargement or extensions of

1 time under FR Civ P 6, motions to amend clerical errors in pleadings, and motions to
2 compel. A judicial officer for good cause shown may allow a supporting memorandum to
3 exceed 20 pages. A dispositive motion or a motion for sanctions unsupported by a
4 memorandum will be denied without prejudice. ~~In addition to filing and serving on opposing~~
5 ~~counsel and unrepresented parties, counsel shall deliver to the assigned judicial officer~~
6 ~~copies of each motion, supporting memorandum, and supporting documents or materials.~~
7 When electronically filing documents with the clerk's office, a paper courtesy copy to the
8 assigned judicial officer is not required except where any motion, memorandum, response,
9 or reply, together with documents in support thereof, is 50 pages or more in length, or where
10 any administrative record is 75 or more pages in length.

11 (b) *Motions to dismiss.* Motions to dismiss shall be given priority status provided
12 they are designated prominently as a motion to dismiss and filed as a separate pleading.

13 (c) *Memoranda in response to motions and reply memoranda.* Memoranda and other
14 materials in response to motions shall be filed ~~with copies delivered to the assigned judicial~~
15 ~~officer~~ and served on opposing counsel and unrepresented parties within 14 calendar days
16 from the date of service of the motion, as required by FR Civ P 5(b). Any reply memoranda
17 shall be filed ~~with copies delivered to the assigned judicial officer~~ and served on opposing
18 counsel and unrepresented parties within 7 business days from the date of service of the
19 memorandum in response to the motion. Surreply memoranda shall not be filed except by
20 leave of court. These times for serving memoranda may be modified by the judicial officer
21 to whom the motion is addressed. When electronically filing a memorandum with the clerk's
22 office, a paper courtesy copy to the assigned judicial officer is not required except where any
23 memorandum, together with documents in support thereof, is 50 pages or more in length.

1 (d) *Referral to magistrate judge.* Nondispositive discovery and pretrial motions
2 relating to discovery practice are referred to a magistrate judge unless otherwise ordered by
3 the district judge assigned to the case. All other nondispositive motions and any dispositive
4 motion may be referred to a magistrate judge by the district judge assigned to the case.

5 (e) *Action on motions.* All motions shall be decided expeditiously to facilitate
6 compliance with the deadlines established by the scheduling order. Failure of a judicial
7 officer to rule on a dispositive motion may be good cause for modification of a scheduling
8 order pursuant to LR Civ P 2.01(f)(1) upon motion of a party. District judges may impose
9 time limits on referred motions and monitor those time limits.

10 (f) *Courtroom technology.* If any courtroom technology is required for a hearing,
11 counsel must request any such technology by filing a certification that the court's technology
12 staff has been notified. The certification regarding such notification shall be filed with the
13 clerk no later than 5 business days before the scheduled commencement of the hearing.

14
15 ~~**[OLD] LR Civ P 9.1. Complaints Filed Pursuant to Social Security Act.** Complaints~~
16 ~~filed pursuant to section 205(g) of the Social Security Act, as amended, 42 U.S.C. § 405(g),~~
17 ~~shall contain, in addition to the information required by F.R. Civ. P. 8(a), the following:~~

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

21
22 ~~(b) in cases involving claims for supplemental security income benefits, the~~
23 ~~Social Security number of the plaintiff.~~
24

1 **[NEW] LR Civ P 9.1. Scope and Assignment.** (a) *Scope.* These rules apply to actions
2 in which an individual seeks district court review of a final decision of the Commissioner
3 of Social Security (Commissioner), pursuant to 42 U.S.C. § 405(g).

4 (b) *Appeals of Social Security claims.* When an appeal of a Social Security claim is
5 filed, it will be referred to the magistrate judge. The clerk will provide to each party and/or
6 attorney a “Consent to Proceed Before U.S. Magistrate Judge” form along with a notice to
7 return the completed consent form within 20 days. If the United States Attorney offers to
8 consent in all Social Security appeals by providing the clerk with a letter to that effect, it will
9 not be necessary for the Commissioner of Social Security to complete the consent form; a
10 copy of the letter will be placed in the file when the plaintiff’s consent is filed. When the
11 parties in a Social Security appeal consent to proceed before a magistrate judge, it is not
12 necessary for a district judge to sign an order of reference.

13
14 **[NEW] LR Civ P 9.2. Initiation of Action.** *Complaint.* A plaintiff shall file a complaint
15 to initiate an action to seek review of a final decision of the Commissioner pursuant to 42
16 U.S.C. § 405(g) by:

- 17 (1) completing and filing the form Complaint for Review of the Decision
18 of the Commissioner of Social Security appended to these Rules or
19
20 (2) filing a complaint that contains the following information:
21
22 (A) the street address, city, county, and state of the
23 plaintiff’s residence;
24
25 (B) the plaintiff’s Social Security number(s), date(s) of birth,
26 names of minor children (with cases involving children under age
27 eighteen, both the parent or guardian and the child claimant);
28
29 (C) the date of the decision of the Appeals Council;

1 (D) an allegation that the decision of the Commissioner is
2 not supported by substantial evidence and/or a description of
3 other error alleged by the plaintiff;

4
5 (E) a demand for the specific relief claimed; and
6

7 (F) the address, telephone, facsimile number, and email
8 address of plaintiff's attorney.
9

10 If the plaintiff is not represented by an attorney, the plaintiff shall also provide the
11 plaintiff's telephone number and facsimile number and email address, if any.
12

13
14 **[NEW] LR Civ P 9.3. Commissioner's Response.** (a) *Filing and service.* No later than
15 60 days after the plaintiff serves the summons and complaint, the Commissioner shall file
16 and serve on the plaintiff either:

17 (1) a motion and memorandum in support as described in Rule 9.5(a)(1);

18 or

19
20 (2) an answer alleging generally that the Commissioner's decision is
21 supported by substantial evidence and a certified copy of the administrative
22 transcript.
23

24 The motion or answer shall include the name, telephone number, facsimile number, and
25 email address of the Assistant United States Attorney who is responsible for the case.

26 (b) *Privacy.* Social Security cases will be available only to the court and to the
27 parties through their counsel via the court's remote electronic filing system. Social Security
28 files are still available at the courthouse in their entirety to the general public.

29 (c) *Form.* Social Security case documents are exempt from the court's civil case
30 redaction requirements.

31 (d) *Discovery.* Discovery is not permitted in these cases.

1 (e) *Material defect in administrative transcript.* If a party discovers an omission
2 from, improper submission with, or other similar defect in the administrative transcript, the
3 party may notify the court and opposing party by filing a motion to correct the transcript.
4 Upon a finding that a defect in the transcript is material, the court may enter an order
5 requiring the defendant to file a supplemental certified administrative transcript. Deadlines
6 for filing briefs will run from the date of filing of the certified administrative transcript or
7 the supplemental certified administrative transcript, whichever occurs last.

8
9 **[NEW] LR Civ P 9.4. Briefs.** (a) *Time for filing and service.* The plaintiff shall file and
10 serve a brief in support of the complaint no later than 30 days after the date of service of the
11 certified (or supplemental) administrative transcript. The Commissioner shall file and serve
12 a brief in support of the defendant’s decision no later than 30 days after the date of service
13 of the plaintiff’s brief. The plaintiff may file and serve a reply brief no later than 10
14 business days after the date of service of the Commissioner’s brief.

15 (b) *Form of briefs.* The plaintiff’s brief shall contain a statement of issues, a
16 statement of the facts, and an argument on each issue asserted. The statement of facts shall
17 cite by transcript page number to the evidence on which the plaintiff relies. The argument
18 on each issue shall identify the findings which are alleged not to be supported by substantial
19 evidence, and other errors which are alleged to have been made, with citations to the
20 pertinent transcript pages and to relevant regulations, rulings, and cases. The
21 Commissioner’s brief shall contain a statement of facts and an argument in response to each
22 issue raised by the plaintiff. Opening and responding briefs shall not exceed 20

1 double-spaced pages and the reply brief shall not exceed 10 double-spaced pages, except
2 with leave of court. Neither a table of contents nor a table of authorities is required.

3
4 **[NEW] LR Civ P 9.5. Motions to Dismiss or Remand.** (a) *Time for filing by*
5 *Commissioner.* No later than 60 days after the plaintiff serves the summons and complaint,
6 the Commissioner may file and serve either:

7 (1) a motion to dismiss pursuant to Rule 12, Fed. R. Civ. P., and
8 memorandum in support or

9
10 (2) a motion to remand to the Commissioner for further action pursuant
11 to either sentence four or sentence six of 42 U.S.C. § 405(g).

12
13 (b) *Time for filing by plaintiff.* After the Commissioner has filed and served an
14 answer and certified administrative transcript, the plaintiff may file and serve a motion to
15 remand under sentence six of 42 U.S.C. § 405(g) and a memorandum in support of such
16 motion, based on presentation of new and material evidence.

17 (c) *Briefs.* The time periods for filing and serving responses and replies to motions
18 to dismiss or to remand are the same as for briefs.

19
20 **[NEW] LR Civ P 9.6. Petition or Motion for Attorney's Fees.** The time limits set forth
21 in FR Civ P 54(d) do not apply to petitions or motions for attorney's fees in Social Security
22 cases. If the plaintiff seeks attorney's fees pursuant to the Equal Access to Justice Act, a
23 motion for such fees shall be filed within 90 days of the entry of final judgment, pursuant
24 to 28 U.S.C. § 2412(d) and served on the United States Attorney. If the plaintiff seeks
25 attorney's fees pursuant to 42 U.S.C. § 406(b), such motion for fees shall be filed promptly
26 after the plaintiff receives notice of the amount of past-due benefits, shall be itemized, shall

1 be limited to the time expended in the representation of the plaintiff in federal court, and
2 shall be served on the United States Attorney.

3
4 **[NEW] LR Civ P 9.7. Electronic Filing.** Electronic filing of documents is preferred. A
5 paper copy of the certified administrative transcript (and certified supplemental
6 administrative transcript, if any), however, shall be provided by the Commissioner to the
7 chambers of the magistrate judge assigned to the action when the answer is filed.

8
9 **[NEW] LR Civ P 9.8. Oral Argument.** The court will generally decide Social Security
10 appeals on the pleadings and briefs, without oral argument. A judicial officer may hear oral
11 argument, either *sua sponte* or at the request of either party.

12
13 **[NEW] LR Civ P 9.9. Other Local Rules in Conflict.** These Rules governing Social
14 Security appeals take precedence over other Local Rules in conflict with them.

15
16 **[OLD] LR Civ P 11.1. Verification of Pleadings.** Attorneys for parties in proceedings
17 in this court shall not verify pleadings or other papers except where required by statute or
18 rule. The court may grant exceptions to this rule for good cause. Violations of this rule will
19 not void or impair any pleading, document or paper to the detriment of the parties.

20
21 **[OLD] LR Civ P 11.2. Stipulations.** Unless otherwise ordered, stipulations under the
22 Federal Rules of Civil Procedure and these Local Rules of Civil Procedure must be in

1 writing, signed by the parties making them or their counsel, and promptly filed with the
2 clerk.

3
4 **[NEW] LR Civ P 11.3. E-Government Act.** All pleadings shall comply with the
5 guidelines for E-Government Act privacy and public access which are available on the
6 court's website.

7
8 **[OLD] LR Civ P 12.1. Extensions of Answer Date.** Unless otherwise ordered, the time
9 to answer or otherwise respond to a complaint may be extended by stipulation. For purposes
10 of LR Civ P ~~2.01(a)~~ 16.2 only, the stipulation shall constitute an appearance by any
11 defendant who is a party to it. An extension by stipulation will not affect other deadlines
12 established by the Federal Rules of Civil Procedure, these Local Rules of Civil Procedure,
13 or the court.

14
15 **[AMENDED] LR Civ P 16.1. Scheduling Conferences.** (a) *Convening of scheduling*
16 *conferences; removed and transferred actions.* Except in actions exempted by ~~paragraph (g)~~
17 ~~of this rule or by paragraph (g) of this rule or as otherwise ordered by standing order,~~ a
18 judicial officer shall convene a scheduling conference as soon as practicable, but in any
19 event within 80 days after the appearance of a defendant and within 110 days after the
20 complaint has been served on a defendant.

21 By entry of an Order and Notice, a judicial officer shall establish the date, time, and
22 place of the scheduling conference, and inform the parties of their right to consent to proceed
23 before a magistrate judge under FR Civ P 73.1(b). As soon as practicable, but in no event

1 later than 5 business days after the appearance of a defendant, the clerk shall ~~mail~~transmit
2 a notice of the conference to all counsel then of record and to each then unrepresented party
3 for whom an address is available from the record. The notice shall also establish the date by
4 which a meeting of the parties must be held pursuant to FR Civ P 26(f) and paragraph (b)
5 of this rule, and the date by which a written report on the meeting of the parties must be
6 submitted to the court pursuant to FR Civ P 26(f) and paragraph (c) of this rule.

7 In a case removed or transferred to this court, a judicial officer shall convene a
8 scheduling conference as soon as practicable, but in no event later than 60 days after removal
9 or transfer. The notice required under this paragraph shall be ~~mailed~~ transmitted to all parties
10 or their attorneys no later than 5 business days after the case is removed or transferred.

11 (b) *Obligation of the parties to meet.* The parties shall, as soon as practicable and in
12 any event at least 21 days before the date set for the scheduling conference, meet in person
13 or by telephone to discuss and report on all FR Civ P 16 and 26(f) matters, and to:

14 (1) consider, consistent with paragraph (d) of this rule, whether the case
15 is complex and appropriate for monitoring in an individualized and case-
16 specific manner through one or more case-management conferences, and, if
17 it is, to propose for the court's consideration 3 alternative dates and times for
18 the first conference;

19
20 (2) agree, if they can, upon the disputed facts that have been alleged with
21 particularity in the pleadings;

22
23 (3) consider consenting to trial by a magistrate judge; and

24
25 (4) consider alternative dispute resolution processes such as the one in
26 LR Civ P 16.6. ~~and~~

27
28 ~~(5) prepare an agenda of matters to be discussed at the scheduling~~
29 ~~conference.5.01; and~~

30
31 ~~(6) prepare an agenda of matters to be discussed at the scheduling~~
32 ~~conference.~~

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

5 (c) *Written report on the meeting of the parties; cancellation of scheduling*
6 *conference.* Counsel and all unrepresented parties who were present or represented at the
7 meeting are jointly responsible for submitting to the court, no later than 14 days before the
8 date set for the scheduling conference, a written report on their meeting. The written report
9 submitted by the parties shall follow a form available from the clerk and on the court's
10 website.

11 In the report on the meeting, any matters on which the parties differ shall be set forth
12 separately and explained. The parties' proposed pretrial schedule and plan of discovery and
13 disclosures shall advise the court of their best estimates of the time needed to accomplish
14 specified pretrial steps.

15 The parties' report on their meeting shall be considered by the judicial officer as
16 advisory only. If, after the date fixed for filing the written report, the judicial officer
17 determines that the scheduling conference is not necessary, it may be cancelled and the
18 scheduling order may be entered.

19 (d) *Conduct of scheduling conferences.* Except in a case in which a scheduling
20 conference has been cancelled pursuant to paragraph (c) of this rule, a judicial officer shall
21 convene a scheduling conference, which may be held by telephone, within the mandatory
22 time frame specified in paragraph (a) of this rule regardless of whether the parties have met

1 pursuant to paragraph (b) of this rule or filed a written report pursuant to paragraph (c) of
2 this rule.

3 At the scheduling conference, the judicial officer shall consider any written report
4 submitted by the parties and discuss with them time limits and other matters they were
5 obligated to consider in their meeting and that may be addressed in the scheduling order.

6 At or following the scheduling conference if one is held, or as soon as practicable
7 after the date fixed for filing the written report if the scheduling conference is cancelled, the
8 judicial officer shall determine whether the case is complex or otherwise appropriate for
9 careful and deliberate monitoring in an individualized and case-specific manner. The judicial
10 officer shall consider assigning in the scheduling order any case so categorized to a case-
11 management conference or series of conferences under LR Civ P 2.02. If the case is so
12 assigned, the scheduling order, notwithstanding paragraph (e) of this rule, may be limited
13 to establishing time limits and addressing other matters that should not await the first case-
14 management conference. The factors to be considered by the judicial officer in determining
15 whether the case is complex include:

16 (1) the complexity of the issues, the number of parties, the difficulty of
17 the legal questions and the uniqueness of proof problems;

18
19 (2) the amount of time reasonably needed by the parties and their
20 attorneys to prepare the case for trial;

21
22 (3) the judicial and other resources required and available for the
23 preparation and disposition of the case;

24
25 (4) whether the case belongs to those categories of cases that involve
26 little or no discovery,

27
28 (i) ordinarily require little or no additional judicial
29 intervention, or
30

1 (ii) generally fall into identifiable and easily managed
2 patterns;

3
4 (5) the extent to which individualized and case-specific treatment will
5 promote the goal of reducing cost and delay; and

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

9
10 (e) *Scheduling orders*. Following the scheduling conference, if one is held, or as soon
11 as practicable after the date fixed for filing the written report if the scheduling conference
12 is cancelled, but in any event within 90 days after the appearance of a defendant and within
13 120 days after the complaint has been served on a defendant, the judicial officer shall enter
14 a scheduling order pursuant to FR Civ P 16(b). ~~The order shall advise the parties that the~~
15 ~~term “complete discovery” as used in FR Civ P 16(b) means that all discovery, objections,~~
16 ~~motions to compel and all other motions and replies relating to discovery must be filed in~~
17 ~~time for the parties objecting or responding to have opportunity under the Federal Rules of~~
18 ~~Civil Procedure to make responses. Unless otherwise ordered, the term “all discovery” as~~
19 ~~used in the preceding definition of “complete discovery” includes the disclosures required~~
20 ~~by FR Civ P 26(a)(1) and (2), but not the disclosures required by FR Civ P 26(a)(3), and~~
21 ~~includes discovery under FR Civ P 26(a)(5).~~

22 ~~The order shall advise the parties that the term “complete discovery” as used in FR~~
23 ~~Civ P 16(b) means that all discovery, objections, motions to compel and all other motions~~
24 ~~and replies relating to discovery must be filed in time for the parties objecting or responding~~
25 ~~to have opportunity under the Federal Rules of Civil Procedure to make responses.~~

26 ~~Unless otherwise ordered, the term “all discovery” as used in the preceding definition~~
27 ~~of “complete discovery” includes the disclosures required by FR Civ P 26(a)(1) and (2), but~~

1 ~~not the disclosures required by FR Civ P 26(a)(3), and includes discovery under FR Civ P~~
2 ~~26(a)(5).~~

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

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

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

16 (g) *Categories of actions exempted.* In addition to those actions and proceedings
17 identified in FR Civ P 81 to which the Federal Rules of Civil Procedure do not apply, the
18 following categories of actions are exempted from the requirements of FR Civ P 16(b),
19 26(a)(1)-(4) and 26(f), and of the Local Rules of Civil Procedure relating thereto unless
20 otherwise ordered:

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

22
23 (2) procedures and hearings involving recalcitrant witnesses before
24 federal courts or grand juries pursuant to 28 U.S.C. § 1826;
25

- 1 (3) actions for injunctive relief;
- 2
- 3 (4) review of administrative rulings;
- 4
- 5 (5) Social Security cases;
- 6
- 7 (6) prisoner petitions pursuant to 42 U.S.C. § 1983 and “Bivens-type”
- 8 actions in which plaintiff is unrepresented by counsel;
- 9
- 10 (7) condemnation actions;
- 11
- 12 (8) bankruptcy proceedings appealed to this court;
- 13
- 14 (9) collection and forfeiture cases in which the United States is plaintiff
- 15 and the defendant is unrepresented by counsel;
- 16
- 17 (10) Freedom of Information Act proceedings;
- 18
- 19 (11) certain cases involving the assertion of a right under the Constitution
- 20 of the United States or a federal statute, if good cause for exemption is
- 21 shown;
- 22
- 23 (12) post-judgment enforcement proceedings and debtor examinations;
- 24
- 25 (13) enforcement or vacation of arbitration awards;
- 26
- 27 (14) civil forfeiture actions;
- 28
- 29 (15) student loan collection cases;
- 30
- 31 (16) actions which present purely legal issues, require no resolution of
- 32 factual issues, and which may be submitted on the pleadings, motions and
- 33 memoranda of law; and
- 34
- 35 (17) such other categories of actions as may be exempted by standing
- 36 order.
- 37

38 **[OLD] LR Civ P 16.2. Case-Management Conferences in Complex Cases.** (a) *Conduct*
39 *of case-management conferences.* Case-management conferences shall be presided over by
40 a judicial officer who, in furtherance of the scheduling order required by LR Civ P
41 ~~16.12-01(e)~~, may:

- 1 (1) explore the possibility of settlement;
- 2
- 3 (2) identify the principal issues in contention;
- 4
- 5 (3) prepare a specific discovery schedule and plan that may
- 6
- 7 (i) identify and limit the discovery available to avoid
- 8 unnecessary, unduly burdensome or expensive discovery, and
- 9
- 10 (ii) sequence discovery into two or more stages, and
- 11 include time limits for the completion of discovery;
- 12
- 13 (4) establish deadlines for filing motions and a schedule for their
- 14 disposition;
- 15
- 16 (5) consider the bifurcation of issues for trial as set forth in FR Civ P
- 17 42(b); and
- 18
- 19 (6) explore any other matter appropriate for the management of the case.
- 20

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

- 24 (1) an agenda of matters that any party believes should be addressed at
- 25 the case-management conference; and
- 26
- 27 (2) a report of whether the case is progressing within the allotted time
- 28 limits and in accord with specified pretrial steps.
- 29

30 This statement is to be filed no later than 3 business days before the case-management
31 conference.

32 (c) *Number of case-management conferences and conference orders.* The judicial
33 officer may convene as many case-management conferences as appropriate. After a case-
34 management conference, the judicial officer shall enter an order reciting the action taken.
35 The order shall control the subsequent course of the action and may be modified in the same
36 manner as a scheduling order under LR Civ P 16.1(f)2:01(f).

1 **[OLD] LR Civ P 16.3. Pretrial Conferences in Non-Complex Cases.** *(a) Convening of*
2 *pretrial conferences.* In addition to any scheduling conference and the final pretrial
3 conference, the judicial officer to whom the case is assigned for trial may convene as many
4 pretrial conferences as the judicial officer determines will reduce cost and delay in the
5 ultimate disposition of the case and may require the parties to meet or confer in advance of
6 a pretrial conference.

7 *(b) Pretrial conference orders.* After a pretrial conference, the judicial officer shall
8 enter an order reciting the action taken. The order shall control the subsequent course of the
9 action and may be modified in the same manner as a scheduling order under LR Civ P
10 16.1(f)~~2:01(f)~~.

11
12 **[OLD] LR Civ P 16.4. Authority Regarding Settlement, Stipulations and Admissions**
13 **at Conferences.** At least one of the attorneys for each party and all unrepresented parties
14 participating in any conference before trial shall have authority to make decisions as to
15 settlement, stipulations and admissions on all matters that the participants reasonably
16 anticipate may be discussed.

17
18 **[OLD] LR Civ P 16.5. Sanctions.** Counsel and parties are subject to sanctions for failures
19 and lack of preparation specified in FR Civ P 16(f) respecting pretrial conferences or orders
20 and are subject to the payment of reasonable expenses, including attorneys fees, as provided
21 in FR Civ P 37(g) for failure to participate in good faith in the development and submission
22 of a proposed discovery plan as required by FR Civ P 26(f) and LR Civ 16.1.

1 **[NEW] LR Civ P 16.6. Mediation.** *(a) Cases to be mediated.* The judicial officer may
2 order mediation *sua sponte* or at the request of any party. When so ordered, the following
3 provisions of this local rule shall control. The Southern District of West Virginia also
4 supports the voluntary use of alternative dispute resolution and will endeavor to facilitate
5 mediation or similar proceedings when the presiding judicial officer finds a request to do so
6 appropriate and timely. The parties are free to engage in mediation without court
7 involvement so long as it does not interfere with court-ordered deadlines.

8
9 *(b) Motion for exception to mandatory mediation.* An attorney or a *pro se* party may
10 file a motion for leave not to engage in mediation. The presiding judicial officer may grant
11 the motion for good cause shown.

12
13 **[NEW] LR Civ P 16.6.1. Timing of Mediation.** Mediation shall take place at any time
14 ordered by the court. The parties may consult with each other and agree upon a mutually
15 convenient date, time, and place for the mediation and ask the court to approve such
16 arrangements.

17
18 **[NEW] LR Civ P 16.6.2. Selection of Mediator; Notice of Nomination.** The parties are
19 expected to agree upon a mediator, the amount of the mediator's fee, and the responsibility
20 for payment. Not later than 7 days before the date set for mediation, or as otherwise directed
21 by the court, the parties shall file a notice of nomination with the clerk, setting forth the
22 name, address, telephone number, facsimile number, and email address of the nominated
23 mediator. The form "Notice of Nomination," available from the clerk and on the court's

1 website, shall be used. If the parties are unable to agree on a mediator, then the parties shall
2 promptly notify the presiding judicial officer, who shall without delay appoint a mediator,
3 set the amount of the mediator's fee, and assign responsibility for payment. The parties may
4 request that a judicial officer (who is not the presiding judicial officer) conduct the
5 mediation. Such requests are particularly appropriate in complex cases or in cases in which
6 a party is financially unable to bear its proportionate share of the mediation expense.

7
8 **[NEW] LR Civ P 16.6.3. Appointment of Mediator.** Upon the filing of a Notice of
9 Nomination, or upon selection of a mediator by the presiding judicial officer, an Order
10 Appointing Mediator will be entered, using the form available from the clerk and on the
11 court's website.

12
13 **[NEW] LR Civ P 16.6.4. Attendance at Mediation.** Unless the court directs otherwise,
14 the following persons shall attend the entire mediation in person: (a) all lead trial counsel;
15 and (b) any party who is prosecuting a claim (i.e., the plaintiff(s) and any defendant who has
16 made a counterclaim, cross-claim, or third-party complaint). Unless the court directs
17 otherwise, any other party or his/her/its representative who is knowledgeable about the facts
18 of the case, and who has full authority to negotiate on behalf of the party and to approve or
19 recommend a settlement, shall attend the entire mediation in person or, with prior approval
20 of the judicial officer, by telephone or other electronic means such as video-conference.

21
22 **[NEW] LR Civ P 16.6.5. Mediation Statements; Confidentiality.** The mediator may
23 require the submission of written mediation statements. If the mediator does not require

1 submission of written mediation statements, any party may submit a written mediation
2 statement. Mediation statements submitted in writing to the mediator are confidential. Oral
3 statements made during the mediation are confidential.

4
5 **[NEW] LR Civ P 16.6.6. Impartiality of Mediator.** A mediator shall not serve in a case
6 in which the mediator’s impartiality might reasonably be questioned. Possible conflicts of
7 interest shall be promptly disclosed by the mediator to counsel and *pro se* parties.

8
9 **[NEW] LR Civ P 16.6.7. Compensation of Mediator.** Mediators will be compensated
10 at the rate established when the mediator was selected, with payment as agreed by the parties
11 or ordered by the presiding judicial officer.

12
13 **[NEW] LR Civ P 16.6.8. Notification to Judicial Officer; Report of Mediator.**
14 Immediately upon the completion of mediation resulting in the settlement of all or part of
15 a case, the parties shall notify the chambers of the presiding judicial officers. Within 5
16 business days of the close of mediation, the mediator will file with the clerk a report which
17 states that all or part of the case was settled (specifying which part of the case settled) or that
18 it was not settled. If all or part of the case was settled, the parties shall, at the mediation,
19 place in writing the terms of the settlement, and all participants shall sign the terms of the
20 settlement, with the mediator retaining the original. Within 30 calendar days of the
21 mediation, the parties shall submit to the chambers of the presiding judicial officer, an
22 agreed order of dismissal as to all or part of the case that was settled.

1 **[AMENDED] LR Civ P 16.7. Final Pretrial and Settlement Conferences; Pretrial**
2 **Order.** (a) *Obligation of counsel to meet; pretrial disclosures under FR Civ P 26(a)(3).*

3 Unless otherwise ordered by the judicial officer to whom the case is assigned for trial,
4 counsel and unrepresented parties shall meet no later than 21 days before the date of the final
5 pretrial conference to conduct settlement negotiations. Lead counsel for the plaintiff first
6 named in the complaint shall take the initiative in scheduling the meeting. If the action is not
7 settled, and if there is no order or stipulation to the contrary, counsel and unrepresented
8 parties shall make all FR Civ P 26(a)(3) disclosures at the meeting. The parties shall prepare
9 a proposed pretrial order for submission to the judicial officer. Counsel and unrepresented
10 parties must be prepared at the final pretrial conference to certify that they tried in their
11 meeting to settle the case.

12 (b) *Proposed pretrial order.* Unless otherwise ordered by the judicial officer to
13 whom the case is assigned for trial, counsel and unrepresented parties shall file, no later than
14 3 business days prior to the final pretrial conference, a proposed pretrial order setting forth:

- 15 (1) the pre-trial disclosures required by FR Civ P 26(a)(3) and any
16 objections thereto;
17
18 (2) contested issues of law requiring a ruling before trial;
19
20 (3) a realistic and brief statement by counsel for plaintiff(s) and third-
21 party plaintiff(s) of essential elements which must be proved to establish any
22 meritorious claim remaining for adjudication and the damages or relief
23 sought, accompanied by supporting legal authorities; and by counsel for
24 defendant(s) and third-party defendant(s) of essential elements which must
25 be proved to establish any meritorious defense(s), accompanied by
26 supporting legal authorities. Corresponding statements must also be included
27 for counterclaims and cross-claims;
28
29 (4) in all cases, for each party, a brief summary of the material facts and
30 theories of liability or defense;
31

1 (5) in all cases, for each party, a single listing of the contested issues of
2 fact; and a single listing of the contested issues of law, together with case and
3 statutory citations;

4
5 (6) stipulations;

6
7 (7) suggestions for the avoidance of unnecessary proof and cumulative
8 evidence;

9
10 (8) suggestions concerning any need for adopting special procedures for
11 managing potentially difficult or protracted aspects of the trial that may
12 involve complex issues, multiple parties, difficult legal questions or unusual
13 proof problems;

14
15 (9) a list of special voir dire questions, if any, that counsel request be
16 asked of the jury panel;

17
18 (10) a statement setting forth a realistic estimate of the number of trial
19 days required; ~~and~~

20
21 (11) any courtroom technology requested for use at trial and a certification
22 that the court's technology staff has been notified regarding such use no later
23 than 5 business days before the scheduled commencement of trial; and

24
25 ~~(11)~~(12) any other matters relevant for pretrial discussion or disposition,
26 including those set forth in FR Civ P 16.

27
28 (c) *Final pretrial conference.* The judicial officer to whom the case is assigned for
29 trial shall preside at the final pretrial conference. The final pretrial conference shall be
30 attended by unrepresented parties and by lead trial counsel for each represented party rather
31 than “by at least one of the attorneys who will conduct the trial for each of the parties” as
32 provided in FR Civ P 16(d). Individuals with full authority to settle the case for each party
33 shall be present in person or immediately available by telephone. The agenda of the final
34 pretrial conference shall include consideration of those matters in the proposed pretrial order
35 and any other appropriate matter, including those set forth in FR Civ P 16(c) and (d).

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

3 (e) *Final settlement conference.* Unless otherwise ordered, a final settlement
4 conference shall be held in each case. The conference shall be conducted by the judicial
5 officer and attended by unrepresented parties and lead trial counsel for each represented
6 party. Individuals with full authority to settle the case for each party shall be present in
7 person or otherwise available as the court permits.

8 (f) *Settlement before trial.* All fees and juror costs shall be imposed upon the parties
9 unless counsel have notified the court and the clerk's office of any settlement not later than
10 3:00 p.m. of the last business day before trial. The costs shall be assessed equally against the
11 parties and their counsel unless otherwise ordered.

12
13 **[AMENDED] LR Civ P 26.12. Control of Discovery.** (a) *Initial disclosures under FR*
14 *Civ P 26(a)(1).* Unless otherwise ordered or stipulated by the parties, the disclosures
15 required under FR Civ P 26(a)(1) shall be made no later than 30 days after the meeting
16 required under FR Civ P 26(f) and ~~LR Civ P 2.01(b).~~

17 (b) *Disclosures under FR Civ P 26(a)(2) regarding experts.* Unless otherwise ordered
18 or stipulated by the parties, the making, sequence, and timing of disclosures under FR Civ
19 P 26(a)(2) will be as follows:

20 (1) the party bearing the burden of proof on an issue shall make the
21 disclosures required by FR Civ P 26(a)(2)(A) and (B) for that issue to all
22 other parties or their counsel no later than 60 days prior to the discovery
23 completion date;

24
25 (2) the party not bearing the burden of proof on an issue shall make the
26 disclosures required by FR Civ P 26(a)(2)(A) and (B) for that issue to all

1 other parties or their counsel no later than 30 ~~40~~ days prior to the discovery
2 completion date; and

3
4 (3) all parties shall provide no later than 10 ~~20~~ days prior to the discovery
5 completion date the disclosures required by FR Civ P 26(a)(2)(A) and (B) if
6 the evidence is intended solely to contradict or rebut evidence on the same
7 issue identified by another party under FR Civ P 26(a)(2)(B).
8

9 The disclosures described in FR Civ P 26(a)(2)(B) shall not be required of physicians and
10 other medical providers who examined or treated a party or party's decedent unless the
11 examination was for the sole purpose of providing expert testimony in the case.

12 ~~(c) Discovery event limitations. Unless otherwise ordered or stipulated, discovery~~
13 ~~under FR Civ P 26(a)(5) shall be limited as follows: 10 depositions upon oral examination~~
14 ~~or written questions by all plaintiffs; 10 depositions upon oral examination or written~~
15 ~~questions by all defendants; 10 depositions upon oral examination or written questions by~~
16 ~~all third-party defendants; 25 written interrogatories, including all discrete subparts, by any~~
17 ~~party upon any other party; and 25 requests for admission by any party upon any other party.~~

18 **[The old paragraph (c) has been deleted as duplicative of the Federal Rules of Civil**
19 **Procedure].**

20 ~~(c) Discovery event limitations. Unless otherwise ordered or stipulated, discovery~~
21 ~~under FR Civ P 26(a)(5) shall be limited as follows: 10 depositions upon oral examination~~
22 ~~or written questions by all plaintiffs; 10 depositions upon oral examination or written~~
23 ~~questions by all defendants; 10 depositions upon oral examination or written questions by~~
24 ~~all third-party defendants; 25 written interrogatories, including all discrete subparts, by any~~
25 ~~party upon any other party; and 25 requests for admission by any party upon any other party.~~

26 ~~(cd) Further discovery. After the opportunities for discovery pursuant to the Federal~~
27 ~~Rules of Civil Procedure paragraph (c), stipulation of the parties, or order have been~~

1 exhausted, any requests that the parties may make for additional depositions, interrogatories,
2 or requests for admissions shall be by discovery motion.

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

7
8 **[OLD] LR Civ P 26.32. Uniform Definitions in Discovery Requests.** *(a) Incorporation*
9 *by reference and limitations.* The full text of the definitions set forth in paragraph (c) of this
10 rule is incorporated by reference into all discovery requests under FR Civ P 26(a)(5), but
11 shall not preclude

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

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

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

- 18 (1) “communication” means the transmittal of information (in the form
19 of facts, ideas, inquiries, or otherwise);
- 20
21 (2) “document” is synonymous in meaning and equal in scope to the
22 usage of this term in FR Civ P 34(a). A draft or non-identical copy is a
23 separate document;
- 24
25 (3) “identify” when referring to a person means to give, to the extent
26 known, the person’s full name and present or last known address. Once a
27 person has been identified in accordance with this subparagraph, only the

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

3
4 (4) “identify” when referring to documents means to give, to the extent
5 known, the

6
7 (i). type of document,

8
9 (ii). general subject matter,

10
11 (iii) author(s), addressee(s), and recipient(s), and

12
13 (iv) date the document was prepared;

14
15 (5) “plaintiff,” “defendant,” a party’s full or abbreviated name, or a
16 pronoun referring to a party, mean the party, and, where applicable, its
17 officers, directors, employees, and partners. This definition does not impose
18 a discovery obligation on any person who is not a party to the case;

19
20 (6) “person” means any natural person or any business, legal or
21 governmental entity or association; and

22
23 (7) “concerning” means referring to, describing, evidencing, or
24 constituting.

25
26
27 **[AMENDED] LR Civ P 26.43. Court Filings and Costs.** *(a) Non-filing of discovery*
28 *materials other than certificates of service.* Disclosures pursuant to FR Civ P 26(a)(1), (2)
29 and (3), depositions upon oral examination or written questions and any notice thereof,
30 notices of receipt of depositions, interrogatories, requests pursuant to FR Civ P 34, requests
31 for admissions, and answers and responses thereto shall not be filed unless ordered or
32 required under these Local Rules of Civil Procedure. Certificates of service of discovery
33 materials shall be filed. Unless otherwise stipulated or ordered, the party taking a deposition
34 or obtaining any material through discovery is responsible for its custody, preservation and
35 delivery to the court if needed or ordered, and the responsibility shall not terminate upon
36 dismissal of any party while the action is still pending. The custodial responsibility of the

1 dismissed party may be discharged by stipulation of the parties to transfer the custody of the
2 discovered material to one or more of the remaining parties. If for any reason a party or
3 concerned citizen believes that any of the named documents should be filed, an ex parte
4 request may be made that the document be filed, stating the reasons therefor. The court may
5 also order filing sua sponte. If relief is sought under FR Civ P 26(c) or 37, copies of the
6 relevant portions of disputed documents shall be filed with any motion. If the moving party
7 under FR Civ P 56 or the opponent relies on discovery documents, copies of the pertinent
8 parts shall be filed with the motion or opposition.

9 (b) *Inspection of documents and copying expense.* (1) Inspection of documents.
10 Except as otherwise provided in an order pursuant to FR Civ P 26(c), all parties to an action
11 shall be entitled to inspect documents produced by another party pursuant to FR Civ P 33(d)
12 or 34 at the location where they are produced.

13 (2) Copies of documents. Except as otherwise provided in an order pursuant to FR
14 Civ P 26(c), upon request of any party, and upon that party's agreement to pay the
15 reasonable copying costs at the time of delivery, a party who produces documents pursuant
16 to FR Civ P 33(d) or 34 shall provide copies of all or any specified part of the documents.
17 No party shall be entitled to obtain copies of documents produced by another party pursuant
18 to FR Civ P 33(d) or 34 without paying the reasonable copying costs. Parties are
19 encouraged, but not required, to provide copies of documents in electronic format.

20
21 **[NEW] LR Civ P 26.45 Protective Orders and Sealed Documents.** (a) *Protective*
22 *Orders.* If a party, or parties jointly, seek entry of a protective order to shield information
23 from dissemination, the movant or movants must demonstrate with specificity that (1) the

1 information qualifies for protection under Rule 26(c), and (2), good cause exists for
2 restricting dissemination on the ground that harm would result from its disclosure.

3 (b) *Sealed Documents.* (1) General. The rule requiring public inspection of court
4 documents is necessary to allow interested parties to judge the court's work product in the
5 cases assigned to it. The rule may be abrogated only in exceptional circumstances.

6 (2) Submission. Unless otherwise authorized by law, a motion to seal shall be
7 accompanied by a memorandum of law which contains (A) the reasons why sealing is
8 necessary, including the reasons why alternatives to sealing, such as redaction, are
9 inadequate; (B) the requested duration of the proposed seal, and (C) a discussion of the
10 propriety of sealing, giving due regard to the parameters of the common law and First
11 Amendment rights of access as interpreted by the Supreme Court and our court of appeals.

12
13 **[OLD] LR Civ P 33.1. Interrogatories.** (a) *Form of response.* Each answer, statement or
14 objection shall be preceded by the interrogatory to which it responds.

15 (b) *Reference to Records.* Whenever a party answers any interrogatory by reference
16 to records from which the answer may be derived or ascertained, as permitted in FR Civ P
17 33(d):

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

22
23 (2) the producing party shall provide any relevant compilations, abstracts,
24 or summaries in its custody or readily obtainable by it, unless these materials
25 are privileged or otherwise not subject to discovery;
26

1 (3) the documents shall be made available for inspection and copying
2 within 14 days after service of the answers to interrogatories or at a date
3 agreed upon by the parties; and
4

5 (4) If a party answers an interrogatory by reference to a deposition in the
6 action, the party shall identify the deponent and the pages of specific
7 transcripts where the answer may be found. If a party answers an
8 interrogatory by reference to a deposition in another action, the party shall
9 identify the deponent, the date of deposition, the style of the action, the pages
10 of a specific transcript where the answer may be found and shall make the
11 deposition available for inspection and copying.
12

13 (c) *Answers to interrogatories following objections.* When it is ordered that
14 interrogatories to which objections were made must be answered, the answers shall be served
15 within 14 days of the order, unless the court directs or the parties stipulate otherwise.
16

17 **[OLD] LR Civ P 34.1. Document Production.** (a) *Form of response.* Each answer,
18 statement, or objection shall be preceded by the request to which it responds.

19 (b) *Objections to document requests.* (1) When an objection is made to any
20 document request or sub-part, it shall state with specificity all grounds for the objection. Any
21 ground not stated in an objection within the time provided by the FR Civ P 34, or within any
22 extensions of time, is waived.

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

25 (c) *Answers to document request following objections.* When it is ordered that
26 document requests to which objections were made must be answered, the answers shall be
27 served within 14 days of the order, unless the court directs or the parties stipulate otherwise.
28

1 **[OLD] LR Civ P 36.1. Admissions.** *(a) Form of response.* Each answer, statement or
2 objection shall be preceded by the request for admission to which it responds.

3 *(b) Statements in response to requests for admission following objections.* When it
4 is ordered that a request for admission to which objections were made is proper, the matter
5 shall be deemed admitted unless within 14 days of the order the party to whom the request
6 was directed serves a statement denying the matter or setting forth the reasons why that party
7 cannot admit or deny the matter, as provided in FR Civ P 36.

8
9 **[AMENDED] LR Civ P 37.1. Discovery Disputes.** *(a) Objections to disclosures or*
10 *discovery.* Objections to disclosures or discovery that are not filed within the response time
11 allowed by the Federal Rules of Civil Procedure, the scheduling order(s), or stipulation of
12 the parties pursuant to FR Civ P 29, whichever governs, are waived unless otherwise ordered
13 for good cause shown. Objections shall comply with FR Civ P 26(g) and any claim of
14 privilege or objection shall comply with FR Civ P 26(b)(5).

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

20 *(c) Motions to cCompel.* A motion to compel disclosure or discovery must be
21 accompanied by a statement setting forth verbatim each discovery request or disclosure
22 requirement and any response thereto to which an exception is taken. In addition, the
23 movant may include a statement of the grounds and pertinent authorities relied upon and

1 shall file such a statement if requested by the court. If the discovery request or disclosure
2 requirement is ignored, the movant need only file a motion to compel without setting forth
3 verbatim the discovery request or disclosure requirement. Motions to compel or other
4 motions in aid of discovery not filed within 30 days after the discovery response or
5 disclosure requirement was due are waived, and in no event provide an excuse, good cause
6 or reason to delay trial or modify the scheduling order.

7 (d) Telephonic conferences during discovery events. If a dispute arises during a
8 discovery event, the parties must attempt in good faith to resolve the matter without judicial
9 intervention. If a good faith conferral fails to resolve the dispute and if its disposition during
10 the discovery event is likely to result in savings of substantial time and expense, a party or
11 counsel may contact the chambers' staff of the magistrate judge to whom the case is
12 assigned to request a telephone conference during the discovery event.

13
14 **[AMENDED] LR Civ P 41.1. Dismissal of Actions.** When it appears in any pending civil
15 action that the principal issues have been adjudicated or have become moot, or that the
16 parties have shown no interest in further prosecution, the judicial officer may give notice to
17 all counsel and unrepresented parties that the action will be dismissed 30 days after the date
18 of the notice unless good cause for its retention on the docket is shown. In the absence of
19 good cause shown within that period of time, the judicial officer may dismiss the action. The
20 clerk shall ~~mail~~ transmit a ~~certified~~ copy of any order of dismissal to all counsel and
21 unrepresented parties. This rule does not modify or affect provisions for dismissal of actions
22 under FR Civ P 41 or any other authority.

1 **[OLD] LR Civ P 43.1. Addressing the Court; Examination of Witnesses.** Attorneys and
2 pro se litigants must stand and speak clearly when addressing the court. Only one attorney
3 for each party may participate in examination and cross-examination of a witness. With the
4 court’s permission, the attorney may approach a witness to present or inquire about an
5 exhibit.

6
7 **[OLD] LR Civ P 47.1. Trial Juries.** *(a) Examination of prospective jurors.* The judicial
8 officer shall conduct the examination of prospective jurors called to serve in civil actions.
9 In conducting the examination, the judicial officer shall identify the parties and their
10 respective counsel and briefly outline the nature of the action. The judicial officer shall
11 interrogate the jurors to elicit from them whether they have any prior knowledge of the case
12 and what connections they may have, if any, with the parties or their attorneys. Inquiries
13 directed to the jurors shall embrace areas and matters designed to discover basis for
14 challenge for cause, to gain knowledge enabling an intelligent exercise of peremptory
15 challenges, and to ascertain whether the jurors are qualified to serve in the case on trial. The
16 judicial officer may consult with the attorneys, who may request or suggest other areas of
17 juror interrogation. To the extent deemed proper, the judicial officer may then supplement
18 or conclude his or her examination of the jurors.

19 *(b) Jury lists.* Names of jurors drawn for jury service from the court’s qualified jury
20 wheel may be disclosed only in accordance with the court’s Jury Selection Plan, approved
21 and made effective January 26, 2005, and as it may be modified. Jury lists prepared by the
22 clerk shall be made available to counsel and unrepresented parties as provided in the Jury
23 Selection Plan.

1 **[AMENDED] LR Civ P 48.1. Contact with Jurors.** After conclusion of a trial, no party,
2 nor his or her agent or attorney, shall communicate or attempt to communicate with any
3 member of the jury, including alternate jurors who were dismissed prior to deliberations,
4 about the jury’s deliberations or verdict without first applying for (with notice to all other
5 parties) and obtaining for good cause an order allowing such communication.

6
7 **[OLD] LR Civ P 51.1. Cases to be Tried by Jury; Proposed Jury Instructions.** Not
8 less than 3 business days prior to the trial date, counsel and unrepresented parties shall, in
9 jury cases, submit to the judicial officer proposed jury instructions with supporting statutory
10 and case authority, special interrogatories, and a verdict form. Counsel and unrepresented
11 parties shall exchange copies of the proposed instructions, special interrogatories and verdict
12 form prior to their submission to the judicial officer. Submissions pursuant to this local rule
13 shall not be filed and made a part of the record unless ordered by the judicial officer.

14
15 **[OLD] LR Civ P 52.1. Cases to be Tried by the Court; Proposed Findings of Fact and**
16 **Conclusions of Law.** Within 7 business days after the final pretrial conference, counsel and
17 unrepresented parties shall submit to the judicial officer proposed findings of fact and
18 conclusions of law for cases to be tried to the court. Counsel and unrepresented parties shall
19 exchange copies of the proposals prior to submission to the judicial officer. The suggested
20 findings of fact should contain a detailed listing of the relevant and material facts that the
21 party intends to prove. They should not be in formal language, but should be in simple
22 narrative form. The proposed conclusions of law should contain a full discussion of the
23 principles of law relied upon, with statutory and case citations.

1 Submissions pursuant to this local rule shall not be filed and made a part of the
2 record unless ordered by the judicial officer.

3
4 **[AMENDED] LR Civ P 54.1. Fees and Costs.** Fees and costs shall be taxed and paid in
5 accordance with the provisions of 28 U.S.C. §§ 1911-1929, and other controlling statutes and
6 rules. If costs are awarded, the reasonable premiums or expenses paid on any bond or other
7 security given by the prevailing party shall be taxed as part of the costs.

8 The prevailing party shall prepare a bill of costs ~~as soon as possible~~ within 30 days
9 after entry of the final judgment on the form supplied by the clerk. The bill of costs shall
10 contain an itemized schedule of the costs and a statement signed by counsel for the
11 prevailing party that the schedule is correct and the charges were actually and necessarily
12 incurred. The original of the bill of costs shall be filed with the clerk and a copy served on
13 counsel for the adverse party or on the unrepresented adverse party.

14 If an adverse party makes specific objections to any item of costs filed by the
15 prevailing party, within 10 days after service of a bill of costs, the clerk shall set the matter
16 for hearing or may assess costs based on the papers submitted.

17
18 **[AMENDED] LR Civ P 58.1. Entry of Judgments and Orders.** Except for good cause,
19 no judgment or order may be presented for entry unless it bears the signature of all counsel
20 and unrepresented parties. This rule does not apply to judgments or orders drawn or prepared
21 by the court. When counsel or an unrepresented party ~~unrepresented parties~~ responsible for
22 the preparation and presentation of a judgment or order unreasonably delays or withholds
23 its presentation, the court may proceed to enter such judgment or order.

1 **[AMENDED] LR Civ P 65.1.1. Approval of Bonds by the Clerk.** Except in criminal
2 cases or for supersedeas bonds pursuant to FR Civ P 62, or where another procedure is
3 prescribed by law, the clerk may approve bonds without an order if:

4 (a) the amount of the bond has been fixed by prior order, local rule, or
5 statute; and

6
7 (b) the bond is secured by

8
9 (1) the deposit of cash or obligations of the United
10 States,

11
12 (2) the guaranty of a corporate surety holding a
13 certificate of authority from the Secretary of the Treasury, or

14
15 (3) the guaranty of a qualified property owner when the
16 guaranty is accompanied by an acceptable certificate of
17 justification.
18

19
20 **[AMENDED] LR Civ P 67.1. Deposits Pursuant to FR Civ P 67.** In accordance with
21 FR Civ P 67, funds paid to the clerk for deposit into the court's registry shall be placed in
22 an interest-bearing account or instrument as ordered, and shall remain so deposited pending
23 disposition by subsequent court order. Any order obtained by a party that directs the clerk
24 to invest funds pursuant to 28 U.S.C. § 2041 shall provide for payment by check made
25 payable to the Clerk, United States District Court, for deposit in a renewable time certificate,
26 treasury bill, passbook savings account, or other secure instrument. Any order authorizing
27 disbursement of funds on deposit shall provide for payment of the statutory administrative
28 registry fee from the income earnings prior to any other distribution of the account. If any
29 individual or entity receives payment of earned interest in excess of \$10.00 per annum,
30 parties shall provide identification by name, address and social security or tax identification
31 number in compliance with Title 26 of the United States Code, and Internal Revenue Service

1 regulations, as a condition of the release of said funds. A copy of any order affecting the
2 deposit, investment or disbursement of funds in the court's registry shall be served on the
3 ~~court administrator~~ clerk.

4 **[AMENDED] LR Civ P 71A.1. Land Condemnation Actions; Manner of Filing,**
5 **Docketing, Recording, and Reporting.** The guidelines for filing, docketing, recording and
6 reporting land condemnation proceedings approved by the Judicial Conference of the United
7 States at its March, 1975, session are adopted for use in this jurisdiction. Copies of the
8 guidelines are available in the clerk's office on the court's website.

9
10 **[AMENDED] LR Civ P 72.1. Authority of Magistrate Judges.** (a) General. A
11 magistrate judge is a judicial officer of the district court. A magistrate judge of this district
12 is designated to perform, and may be assigned, any duty allowed by law to be performed by
13 a magistrate judge. Performance of a duty by a magistrate judge will be governed by the
14 applicable provisions of federal statutes and rules, the general procedural rules of this court,
15 and the requirements specified in any order or reference from a district judge. In performing
16 a duty, a magistrate judge may determine preliminary matters; require parties, attorneys, and
17 witnesses to appear; require briefs, proofs, and argument; and conduct any hearing,
18 conference, or other proceeding the magistrate judge deems appropriate.

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

1 (c) *Habeas corpus and collateral relief.* Magistrate judges are authorized to perform
2 the duties imposed upon district judges by Rules for Proceedings Under 28 U.S.C. § 2254
3 and Rules for Proceedings Under 28 U.S.C. § 2255, in accordance with Rule 10 of those
4 Rules and 28 U.S.C. § 636.

5 *(d) The following matters are referred to magistrate judges:*

- 6 1. Post-conviction habeas corpus, filed pursuant to 28 U.S.C. §§ 2241,
7 2254, 2255, and 18 U.S.C. § 3582(c), and related actions;
- 8 2. Prisoner challenges to conditions of confinement, filed pursuant to 42
9 U.S.C. § 1983, and Bivens, and related actions;
- 10 3. Appeals of administrative decisions under the Social Security Act,
11 and related actions, including motions or petitions for attorney’s fees
12 arising out of such appeals;
- 13 4. Discovery disputes and pretrial motions relating to discovery practice;
- 14 5. Applications to proceed without prepayment of fees and costs; and
- 15 6. Actions filed by persons who are proceeding *pro se*, whether or not
16 they are in custody, until such person is represented by retained
17 counsel.

18 (e) *Miscellaneous duties.* Magistrate judges are authorized to:

- 19 (1) exercise general supervision of civil calendars, conduct calendar and
20 status calls, conduct hearings to resolve discovery disputes, and determine
21 motions to expedite or postpone the trial of cases for the district judges;
22
- 23 (2) analyze civil cases to determine an appropriate schedule; report
24 findings to the assigned district judge; and, in complex and other selected
25 cases, conduct conferences at which a schedule for the completion of various
26 stages of the litigation will be established, the possibility of early settlement

1 will be evaluated, and alternative dispute resolution mechanisms will be
2 considered;

3
4 (3) conduct pretrial conferences, scheduling conferences, mediations,
5 settlement conferences, omnibus hearings, and related pretrial proceedings;

6
7 (4) with the consent of the parties, conduct voir dire and preside over the
8 selection of petit juries;

9
10 (5) accept petit jury verdicts in the absence of the district judge;

11
12 (6) issue subpoenas, writs of habeas corpus ad testificandum, or other
13 orders necessary to obtain the presence of parties, witnesses, or evidence for
14 court proceedings;

15
16 (7) rule on applications for disclosure of tax returns and tax return
17 information, pursuant to 26 U.S.C. § 6103(i)(1);

18
19 (~~7~~ 8) order the exoneration or forfeiture of bonds;

20
21 (~~8~~ 9) conduct proceedings for the collection of civil penalties of not more
22 than \$200 assessed under the Federal Boat Safety Act of 1971, pursuant to
23 46 U.S.C. §§ 4311(d) and 12309(c);

24
25 (~~9~~ 10) determine post-judgment discovery motions and conduct
26 examinations of judgment debtors pursuant to FR Civ P 69;

27
28 (~~10~~ 11) supervise proceedings conducted pursuant to letters rogatory as set
29 forth in 28 U.S.C. § 1782(a);

30
31 (~~11~~ 12) issue orders of withdrawal of funds from the court registry pursuant
32 to 28 U.S.C. § 2042;

33
34 (~~12~~ 13) issue orders or warrants authorizing acts necessary in the
35 performance of the duties of administrative and regulatory agencies and
36 departments of the United States; and

37
38 (14) conduct extradition proceedings in accordance with 18 U.S.C. § 3184;
39 and

40
41 (~~13~~ 15) serve with designated committees or other judicial officers,
42 participate in promulgation of local rules and procedures, administration of
43 the forfeiture of collateral system, and other functions of court governance
44 as approved by the Chief Judge.
45

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

8
9 **[NEW] LR Civ P 72.2. Effect of Magistrate Judge Ruling Pending Objection.** When
10 an objection to a magistrate judge’s ruling on a nondispositive pretrial motion is filed
11 pursuant to FR Civ P 72(a), the ruling remains in full force and effect unless and until it is
12 stayed by the magistrate judge or by a district judge.

13
14 **[AMENDED] LR Civ P. 73.1. Special Designation of Magistrate Judges.** (a) *Consent*
15 *of the parties.* Upon consent of the parties, magistrate judges are specially designated by the
16 district judges to exercise civil jurisdiction pursuant to 28 U.S.C. § 636(c)(1), and to conduct
17 any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in
18 the case.

19 (b) *Notice of consent option.* ~~At the time of the filing of a complaint, the clerk shall~~
20 ~~provide to counsel for plaintiff a notice, as approved by the court, informing the parties of~~
21 ~~their right to consent to the exercise of jurisdiction by a magistrate judge. The clerk shall~~
22 ~~also append a copy of such notice to each summons in a civil action and summons will not~~
23 ~~issue by the clerk or marshal unless accompanied by a notice. The plaintiff shall append a~~

1 ~~copy of such notice with any notice and request for waiver of service. In removed cases,~~
2 ~~such notice shall be provided by the clerk to the removing party, with copies for service on~~
3 ~~other parties. The Order and Notice entered by a judicial officer under LR Civ P 16.1(a)~~
4 ~~shall inform the parties of their right to consent to proceed before a magistrate judge.~~
5 Parties added to an action after reference to a magistrate judge shall be notified by the clerk
6 of their right to consent to the exercise of jurisdiction by a magistrate judge. In the event an
7 added party does not consent to the magistrate judge's jurisdiction, the action shall be
8 returned to the district judge for further proceedings. Additional notices may be furnished
9 by the clerk to the parties at later stages of the proceeding, and may be included with pretrial
10 notices and instructions. The consent form may be filed at any time prior to trial; however,
11 no civil action shall be referred to a magistrate judge unless a district judge has signed an
12 order of reference.

13 (c) *Execution of consent.* Any party may deliver a consent form to the clerk. An
14 alternative and acceptable consent form is a Rule 26(f) Parties' Report of Planning Meeting,
15 signed by all parties or their counsel, which states that all parties consent to the exercise of
16 jurisdiction by a magistrate judge. No consent form shall be made available, nor will its
17 contents be made known to any district judge or magistrate judge, unless all parties have
18 consented to the reference to the magistrate judge. No magistrate judge, district judge or
19 other court official may attempt to persuade or induce any party to consent to the reference
20 of any matter to a magistrate judge. This rule, however, shall not preclude a district judge
21 or magistrate judge from informing the parties that they may have the option of referring the
22 case, or one or more case-dispositive motions, to a magistrate judge.

1 (d) *Vacating a reference.* A district judge may, ~~for good cause shown~~ on his or her
2 own motion, or under extraordinary circumstances shown by any party, vacate the reference
3 assignment to a magistrate judge of a case in which the parties have filed consents.
4

5 **[OLD] LR Civ P 77.1. Principal Offices.** The headquarters of the United States District
6 Court for the Southern District of West Virginia and of its Clerk is located in the Robert C.
7 Byrd United States Courthouse, Room 2400, 300 Virginia Street East, Charleston, West
8 Virginia. The mailing address is P.O. Box 2546, Charleston, West Virginia 25329.
9

10 **[AMENDED] LR Civ P 77.2. Divisions.** The Southern District of West Virginia is
11 composed of 23 counties. Each of these counties is assigned to one of 5 administrative
12 divisions. Each division is given the name of the city in the division where the court and
13 offices of its clerk are located. The divisions, addresses of division offices, and counties
14 comprising each division are as follows:

15 **Division 1: Bluefield**

16 Elizabeth Kee Federal Building
17 Address: Room 2303, 601 Federal Street, Bluefield, West Virginia 24701
18 Mailing address: P.O. Box 4128, Bluefield, West Virginia 24701
19 Counties Composing Division: Mercer, Monroe and McDowell
20
21

22 **Division 2: Charleston**

23 Robert C. Byrd United States Courthouse
24 Address: Room 2400, 300 Virginia Street East, Charleston, WV 25301
25 Mailing address: P.O. Box 2546, Charleston, West Virginia 25329
26 Counties Composing Division: Boone, Clay, Jackson, Kanawha, Lincoln, Logan, Mingo,
27 Nicholas, Putnam and Roane
28
29
30
31

1 **Division 3: Huntington**

2
3 Sidney L. Christie Federal Building
4 Address: Room 101, 845 Fifth Avenue, Huntington, West Virginia 25701
5 Mailing address: P. O. Box 1570, Huntington, West Virginia 25716
6 Counties Composing Division: Cabell, Mason and Wayne

7
8 **Division: 5: Beckley**

9
10 Robert C. Byrd Federal Building and Courthouse,
11 Address: Room 119, 110 North Heber Street, Beckley, West Virginia 25801
12 Mailing address: P.O. Drawer 5009, Beckley, West Virginia 25801
13 Counties Composing Division: Fayette, Greenbrier, Summers, Raleigh and Wyoming

14
15 **Division 6: Parkersburg**

16
17 Federal Office Building
18 Address: Room 5102, 425 Juliana Street, Parkersburg, West Virginia 26102
19 Mailing address: Room 5102, 425 Juliana Street, Parkersburg, West Virginia 26102
20 Counties Composing Division: Wirt and Wood
21

22 The court will occasionally convene in Lewisburg to deal with matters falling within
23 either the Beckley or Bluefield Division. **[This rule has been amended generally to reflect**
24 **the correct address for each of the divisions].**

25
26 **[OLD] LR Civ P 77.3. Sessions.** The court is considered open and in continuous session
27 in all divisions of the district on all business days throughout the year in accordance with the
28 provisions of 28 U.S.C. § 139, FR Civ P 77(c), FR Cr P 56, and other controlling statutes
29 and rules.

30
31 **[OLD] LR Civ P 77.4. Court Library.** Attorneys and other persons authorized by the
32 court may use the court's library. Library books may not be removed from the court's

1 premises. Persons using library books shall be responsible for their care and preservation and
2 shall return them to their proper places in the library.

3
4 **[OLD] LR Civ P 78.1. Hearing On Motions.** The judicial officer may require or permit
5 hearings on motions, and the hearings may be by telephone.

6
7 **[AMENDED] LR Civ P 79.1. Custody and Disposition of Exhibits.** After being marked
8 for identification, exhibits of a documentary nature admitted in evidence or made a part of
9 the record in any case pending or tried in this court shall be placed in the custody of the clerk
10 unless otherwise ordered. All other exhibits, models and materials admitted in evidence that
11 cannot be stored conveniently in the clerk's facilities shall be retained in the custody of the
12 attorney or party producing them at trial unless otherwise ordered, and the attorney or party
13 shall execute a receipt therefor. ~~All exhibits admitted in evidence in a criminal case that are~~
14 ~~in the nature of controlled substances, legal or counterfeit money, firearms, dangerous~~
15 ~~devices or contraband of any kind, shall be retained by the United States Marshal or his or~~
16 ~~her designee pending disposition of the case and any appeal, and until the court authorizes~~
17 ~~destruction or other disposal of such exhibits.~~

18 A party or attorney who has custody of an exhibit shall keep it available for the use
19 of this court or any appellate court, and shall grant the reasonable request of any party to
20 examine or reproduce the exhibit for use in the proceeding.

21 Upon application the court will order that documentary exhibits retained by the clerk
22 be returned to the party to whom they belong, provided that copies approved by counsel and
23 unrepresented parties are filed in place of the originals.

1 After final judgment and after the time for motion for new trial and appeal has passed,
2 or upon the filing of a stipulation waiving and abandoning the right to appeal and to move
3 for a new trial, the clerk is authorized, without further order, to return all exhibits in civil;
4 ~~criminal~~ and bankruptcy cases to the parties or their counsel.

5
6 **[AMENDED] LR Civ P 79.2. Removal of Papers from Custody of Clerk.** Papers on file
7 in the office of the clerk shall be produced pursuant to subpoena from a court of competent
8 jurisdiction directing their production.

9 Papers may be removed from the files of the clerk only upon order except that the
10 clerk may permit temporary removal of papers by a district judge, a bankruptcy judge, a
11 magistrate judge, or a master in matters relating to their official duties.

12 The person receiving the papers shall provide to the clerk a signed receipt identifying
13 the papers removed.

14
15 **[AMENDED] LR Civ P 83.1. Admission of Attorneys.** *(a) Admission as member of bar*
16 *of court.* Any person who is admitted to practice before the Supreme Court of Appeals of
17 West Virginia and who is in good standing as a member of its bar, is eligible for admission
18 as a member of the bar of this court. An eligible attorney may be admitted as a member of
19 the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the
20 register of attorneys with the person admitted. If the motion for admission is granted, the
21 applicant shall take the attorney's admission oath or affirmation, sign the attorneys' register,
22 and pay the clerk the admission fee.

1 (b) Sponsorship of visiting attorneys by members of court. An attorney may sponsor
2 another attorney for membership or for *pro hac vice* status (Visiting Attorney) if the
3 Sponsoring Attorney is a member of the bar of this court, has an office for the practice of
4 law in West Virginia, and practices law primarily in West Virginia.

5 (c) *Appearance by Assistant United States Attorneys and Assistant Federal Public*
6 *Defenders.* Any attorney employed by the United States Attorney or the Federal Public
7 Defender for this judicial district must qualify as a member of the bar of this court within
8 one year of his or her employment. Until so qualified, the attorney may appear and practice
9 under the sponsorship of the appointing officer.

10 (d) Appearance by federal government attorneys. Federal government attorneys
11 who are not members of the bar of this court need not complete the Statement of Visiting
12 Attorney. In cases where the United States Attorney is associated with other government
13 attorneys in proceedings involving the Federal government ~~Although the United States~~
14 Attorney may be associated with other government attorneys in proceedings involving the
15 government, the United States Attorney (except in student loan collection cases), in addition
16 to other Federal government attorneys, shall sign all pleadings, notices, and other papers
17 filed and served by the United States. All pleadings, notices, and other papers involving the
18 Federal government may be served on the United States Attorney in accordance with the
19 service requirements of the Federal Rules of Civil Procedure and the Federal Rules of
20 Criminal Procedure.

21
22 **[OLD] LR Civ P 83.2. Legal Assistance by Law Students.** (a) *Written consent.* With the
23 written consent of an indigent and his or her attorney of record, an eligible law student may

1 appear on behalf of that indigent. With the written consent of the United States Attorney or
2 his or her representative, an eligible law student may also appear on behalf of the United
3 States. With the written consent of the Federal Public Defender, an eligible law student may
4 appear on behalf of the Federal Public Defender. With the written consent of the Attorney
5 General of the State of West Virginia or his or her representative, an eligible law student
6 may also appear on behalf of the State of West Virginia. In each case in which an eligible
7 law student appears, the consent shall be filed with the clerk.

8 (b) *Responsibilities of attorneys of record.* An eligible law student may assist in the
9 preparation of pleadings, briefs, and other documents to be filed in this court, but such
10 pleadings, briefs, or documents must be signed by the attorney of record. An eligible law
11 student may also participate in hearings, trials, and other proceedings with leave of court,
12 but only in the presence of the attorney of record. The attorney of record shall assume
13 personal professional responsibility for the law student's work. The attorney of record shall
14 be familiar with the case and be prepared to supplement or correct any written or oral
15 statement made by the law student.

16 (c) *Eligibility requirements.* To be eligible to appear pursuant to this rule, the law
17 student must:

- 18 (1) be enrolled in a law school approved by the American Bar Association;
19
- 20 (2) have successfully completed legal studies for at least 4 semesters, or
21 the equivalent if the school is on some basis other than a semester basis;
22
- 23 (3) be certified by the dean of his or her law school as being of good
24 character and competent legal ability. The dean's certification shall be filed
25 with the clerk. This certification may be withdrawn by the dean at any time
26 without notice or hearing and without any showing of cause by notifying the
27 clerk in writing, or it may be terminated by the court at any time without
28 notice of hearing and without any showing of cause. Unless withdrawn or

1 terminated, the certification shall remain in effect for 18 months after it has
2 been filed with the clerk or until the law student has been admitted as a
3 permanent member of the bar of this court, whichever is earlier;

4
5 (4) certify in writing to the clerk that he or she has read the Code of
6 Professional Conduct of the American Bar Association;

7
8 (5) be introduced to the court by a permanent member of the bar of this
9 court; and

10
11 (6) neither ask for nor receive any compensation or remuneration of any
12 kind for services from the party assisted, but this shall not prevent an
13 attorney, legal services program, law school, public defender agency, the
14 State of West Virginia, or the United States from paying compensation to the
15 law student, nor from making appropriate charges for such services.
16

17 **[AMENDED] LR Civ P 83.3. Representation of Parties.** Every party to proceedings in
18 this court, except parties appearing *pro se*, shall be represented by a member of the bar of
19 this court and may be represented by a Visiting Attorney and Sponsoring Attorney as
20 provided in Rule 83.12(a), 83.1(b), and 83.6. A corporation or unincorporated association
21 cannot appear *pro se*.

22
23 **[OLD] LR Civ P 83.4. Termination of Representation.** No attorney who has entered an
24 appearance in any civil action shall withdraw the appearance or have it stricken from the
25 record, except by order.

26
27 **[AMENDED] LR Civ P 83.5. Pro se Appearances.** A party who represents himself or
28 herself shall file with the clerk his or her complete name and address where pleadings,
29 notices, orders, and other papers may be served on him or her, and his/her telephone number.
30 A *pro se* party must advise the clerk promptly of any changes in name, address, and

1 telephone number. ~~Parties appearing pro se shall, at their first appearance, file with the clerk~~
2 ~~their complete names and addresses where pleadings, notices and other papers may be served~~
3 ~~upon them, and their telephone numbers.~~

4
5 **[AMENDED] LR Civ P 83.6. Admission of Visiting Attorneys.** *(a) Procedure for*
6 *admission.* Any person who has not been admitted to practice before the Supreme Court of
7 Appeals of West Virginia, but who is a member in good standing of the bar of the Supreme
8 Court of the United States, the bar of the highest court of any other state in the United States,
9 or the bar of the District of Columbia, and who has not been convicted of a felony, shall be
10 permitted to appear as a Visiting Attorney in a particular case in association with a
11 Sponsoring Attorney as herein provided. The Visiting Attorney shall file with the clerk, at
12 or before his or her initial appearance (including signing a pleading), the Statement of
13 Visiting Attorney adopted by order of this court, which is available from the clerk and on
14 the court's website, and shall pay the Visiting Attorney fee. The Statement shall designate
15 a Sponsoring Attorney, upon whom pleadings, notices, and other papers may be served. The
16 Sponsoring Attorney shall consent to the designation and shall thereafter sign all papers that
17 require the signature of an attorney. Any paper filed by a Visiting Attorney not in
18 compliance with this rule may be stricken from the record after 15 days' written notice
19 ~~mailed~~ transmitted to the Visiting Attorney at his or her address as known to the clerk. Upon
20 compliance with this rule and introduction of the Visiting Attorney to the court by the
21 Sponsoring Attorney, the Sponsoring Attorney, with the consent of the court, may be
22 excused from further attendance during the proceedings and the Visiting Attorney may
23 continue to appear in that particular case.

1 (b) Motion not required. Filing a properly completed Statement of Visiting Attorney
2 and paying the Visiting Attorney fee constitute all steps necessary to qualifying as a Visiting
3 Attorney for a particular case and no motion to appear as a Visiting Attorney is required.

4 (c) Payment of visiting attorney fee. (1) Fee payable to clerk. The court will charge
5 a Visiting Attorney fee, payable to the Clerk, United States District Court, in an amount to
6 be set by order. Pursuant to Judicial Conference policy, the fees will be used only for
7 “purposes which inure to the benefit of the members of the bench and the bar in the
8 administration of justice.” Other than library materials, the fees will not be used to
9 supplement appropriated funds and will not be used to pay for materials or supplies available
10 from statutory appropriations. The fees will be placed in a fund administered by the clerk
11 as custodian of the fund. Disbursements will be made only at the direction of a committee,
12 the members of which will be appointed by the Chief Judge, in accordance with a written
13 plan.

14 (2) West Virginia State Bar pro hac vice fee. The pro hac vice fee imposed by the
15 Supreme Court of Appeals of West Virginia applicable to Visiting Attorneys shall be paid
16 to The West Virginia State Bar and is not payable to the clerk of the district court.

17 (d) Exceptions to payment of visiting attorney fee. (1) Bankruptcy cases. The
18 Visiting Attorney fee will apply in every bankruptcy case in which the reference to the
19 Bankruptcy Court has been withdrawn, and in every appeal of a bankruptcy case to the
20 District Court. Otherwise, the imposition of a Visiting Attorney fee in a bankruptcy case
21 will be governed by the Local Rules for Bankruptcy Court.

1 (2) Multidistrict litigation cases. Pursuant to the Rules of Procedure of the Judicial
2 Panel on Multidistrict Litigation, a Visiting Attorney fee will not be charged in any case
3 which is filed in this court pursuant to a transfer under said Rules.

4 (3) Miscellaneous cases. A Visiting Attorney who files a miscellaneous case which
5 does not require judicial action (e.g., one filed in order to obtain a subpoena) is exempt from
6 paying the Visiting Attorney fee, from associating with a Sponsoring Attorney, and from
7 filing the Statement of Visiting Attorney. A Visiting Attorney who files a miscellaneous
8 case which does require judicial action (e.g., motion to compel testimony at a deposition)
9 must comply with Rule 83.6(a).

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

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

15 (e) Waiver of payment of visiting attorney fee. A Visiting Attorney and his/her
16 Sponsoring Attorney may file a motion requesting a waiver of the Visiting Attorney fee in
17 a particular case or cases, for good cause shown. The motion will be decided by the judge
18 assigned to the case; the motion should be filed within 20 days of the assignment of the case
19 to the judge. Examples of cases in which waiver may be appropriate are: numerous
20 collection actions filed by one plaintiff; numerous negligence actions filed by one firm
21 representing many plaintiffs against one defendant or group of defendants arising out of a
22 single incident or related incidents (e.g., a catastrophic fire, or exposure to a toxic

1 substance). If a waiver is granted, the Visiting Attorney will pay such Visiting Attorney fee
2 in an amount as ordered by the presiding district judge.

3 (f) *Revocation of visiting attorney privilege.* For good cause, the presiding district
4 judge may revoke the privilege of an attorney to be a Visiting Attorney in one or more
5 specified cases.

6
7 **[AMENDED] LR Civ. P. 83.7. Codes of Professional Conduct.** In all appearances,
8 actions and proceedings within the jurisdiction of this court, attorneys shall conduct
9 themselves in accordance with the Rules of Professional Conduct and the Standards of
10 Professional Conduct promulgated and adopted by the Supreme Court of Appeals of West
11 Virginia, and the Model Rules of Professional Conduct published by the American Bar
12 Association. Judicial officers of this court must comply with the Code of Conduct for
13 United States Judges adopted by the Judicial Conference of the United States; judiciary
14 employees of this court must comply with the Code of Conduct for Judicial Employees, also
15 adopted by the Judicial Conference. The Code of Professional Conduct of the American Bar
16 Association, the Model Federal Rules of Disciplinary Enforcement as adopted by this court,
17 and the Code of Professional Conduct as adopted by the Supreme Court of Appeals of West
18 Virginia provide the basic ethical considerations and disciplinary rules for the conduct of
19 attorneys practicing in this court. In all appearances, actions and proceedings within the
20 jurisdiction of this court, attorneys shall conduct themselves in accordance with the Model
21 Federal Rules of Disciplinary Enforcement and the Codes of Professional Conduct, and shall
22 be subject to the statutes, rules and orders applicable to the procedures and practice of law
23 in this court. These codes, rules and orders provide minimal standards for the conduct of

1 ~~attorneys and the court encourages attorneys to conform their conduct to the highest of~~
2 ~~ethical standards. Judges and others serving in a judicial capacity are expected to comply~~
3 ~~with the American Bar Association's Code of Judicial Conduct.~~

4
5 **[OLD] LR Civ P 83.8. Bias and Prejudice.** The United States District Court for the
6 Southern District of West Virginia aspires to achieve absolute fairness in the determination
7 of cases and matters before it and expects the highest standards of professionalism, human
8 decency, and considerate behavior toward others from its judicial officers, lawyers, and court
9 personnel, as well as from all witnesses, litigants, and other persons who come before it. As
10 to matters in issue before the court, conduct and statements toward one another must be
11 without bias with regard to such factors as gender, race, ethnicity, religion, handicap, age,
12 and sexual orientation when such conduct or statements bear no reasonable relationship to
13 a good faith effort to argue or present a position on the merits. Judicial officers must ensure
14 that appropriate action is taken to preserve a neutral and fair forum for all persons. Nothing
15 in this local rule, however, is intended to infringe unnecessarily or improperly upon the
16 otherwise legitimate rights, including the right of freedom of speech, of any person, nor to
17 impede or interfere with the aggressive advocacy of causes and positions by lawyers and
18 litigants.

19
20 **[OLD] LR Civ P 83.9. Opening Statements and Closing Arguments to Jury.** (a)
21 *Opening Statements.* At the commencement of the trial, the party upon whom rests the
22 burden of proof may state, without argument, its claim and the evidence expected to support
23 it. The adverse party may then state, without argument, its defense and the evidence

1 expected to sustain it. If the trial is to the jury, the opening statements shall be made
2 immediately after the jury is impaneled. If the trial is to the court, the opening statements
3 shall be made immediately after the case is called for trial. Opening statements shall be
4 subject to time limitations imposed by the assigned judicial officer. In actions involving
5 several parties and unusual procedures, the judicial officer, after conferring with attorneys
6 and unrepresented parties, shall direct the order and time of the opening statements in a
7 manner appearing just and proper.

8 *(b) Closing Arguments.* The right to open and close the arguments shall belong to the
9 party who has the burden of proof, without regard to whether the defendant offers evidence.
10 Where each of the parties has the burden of proof on one or more issues, the judicial officer
11 shall determine the order of arguments. In actions involving several parties and unusual
12 procedures, the judicial officer, after conferring with attorneys for the parties, shall
13 determine the order of arguments in a manner appearing just and proper. Arguments shall
14 be subject to time limitations imposed by the judicial officer, giving due consideration to the
15 length of the trial, the number of witnesses and exhibits, the complexity of issues, and the
16 nature of the case.

17 The opening argument of plaintiff before the jury shall be a fair statement of
18 plaintiff's case and shall consume at least one-half of the entire time allotted to plaintiff's
19 counsel for opening argument. In the event that one-half of the allotted time is not used, one-
20 half shall nevertheless be charged by the judicial officer to plaintiff's opening argument.

21 After plaintiff's opening argument, counsel for defendant may elect to argue the case
22 or may decline. If counsel for defendant declines to present argument, the case will be
23 submitted without further argument by plaintiff and defendant.

1 **[OLD] LR Civ P 83.107. Photography in and Broadcasting From Courtroom.** The
2 taking of photographs in the courtroom, or in the corridors immediately adjacent, during
3 judicial proceedings or during any recess, and the transmitting or sound recording of
4 proceedings for broadcast by radio or television, is not permitted. Upon approval of the court
5 and under its supervision, proceedings, other than judicial proceedings, designed and
6 conducted as ceremonies, such as administering oaths of office to appointed officials of the
7 court, presentation of portraits, naturalization proceedings, and similar ceremonial occasions,
8 may be photographed in or broadcast from the courtroom.

9
10 **[OLD] LR Civ P 83.118. Impoundment of Photography and Broadcasting Equipment.**

11 The United States Marshal may impound any camera, recording, broadcasting and other
12 related equipment brought into the courtroom or the adjacent corridors in violation of LR
13 CivGen P 5.0183.10. The impounded equipment shall be returned to its owner or its
14 custodian after the proceedings have concluded.

15
16 **LOCAL RULES RELATING TO BANKRUPTCY REFERRALS AND APPEALS**

17 ~~**LR Br R & A 1.01. Referral of Cases to Bankruptcy Court.** Pursuant to 28 U.S.C. §~~
18 ~~157(a), all cases under Title 11, and all proceedings arising under Title 11 or arising in or~~
19 ~~related to a case under Title 11 are referred to the Bankruptcy Court for disposition. Filings~~
20 ~~in bankruptcy actions shall be made directly with the Clerk of the Bankruptcy Court.~~
21 ~~Requests to withdraw this reference shall be filed with the Clerk of the Bankruptcy Court,~~
22 ~~who will transmit the motion to withdraw reference to the Clerk of the District Court. See~~
23 ~~FR Br P 5011, Advisory Committee Note (1987).~~

1 ~~LR Br R & A 1.02. Appeal of a Bankruptcy Court Judgment, Order, or Decree to~~
2 ~~the District Court. A notice of appeal from a judgment order, or decree of a bankruptcy~~
3 ~~judge to the district court shall be filed with the Clerk of the Bankruptcy Court pursuant to~~
4 ~~Part VIII of the Federal Rules of Bankruptcy Procedure. The Clerk of the Bankruptcy Court~~
5 ~~shall transmit to the Clerk of the District Court the notice of appeal, the record designation~~
6 ~~and statement of issues, and the record. On receipt of the transmission, the Clerk of the~~
7 ~~District Court shall enter the appeal on the docket, establish a briefing schedule and notice~~
8 ~~the parties of the date on which the appeal was docketed and of the time for filing supporting~~
9 ~~memoranda.~~