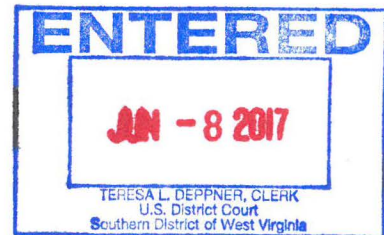


UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA



GENERAL ORDER
JUNE 8, 2017
IN THE MATTER OF THE AMENDMENTS TO THE
LOCAL RULES OF PROCEDURE



It is hereby **ORDERED** that the Local Rules of Procedure for the Southern District of West Virginia are hereby amended effective June 8, 2017.

Attachment 1 summarizes the changes made to select Local Rules of Civil Procedure.

Attachment 2 summarizes the changes made to select Local Rules of Criminal Procedure.

Attachment 3 is a copy of the amended Local Rules of Procedure for the Southern District of West Virginia effective June 8, 2017.

Attachment 4 are the forms referenced in the Local Rules.

The Clerk is directed to provide a copy of this General Order to the Judicial Council of the United States Court of Appeals for the Fourth Circuit.

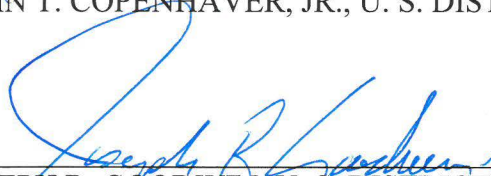
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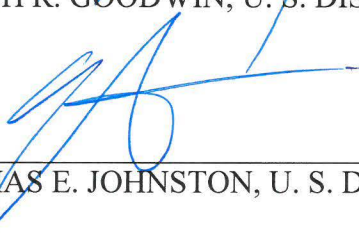
ROBERT C. CHAMBERS, CHIEF U.S. DISTRICT JUDGE



JOHN T. COPENHAVER, JR., U. S. DISTRICT JUDGE




JOSEPH R. GOODWIN, U. S. DISTRICT JUDGE



THOMAS E. JOHNSTON, U. S. DISTRICT JUDGE



IRENE C. BERGER, U. S. DISTRICT JUDGE



DAVID A. FABER, SENIOR U. S. DISTRICT JUDGE

ATTACHMENT 1

**LOCAL RULES OF CIVIL PROCEDURE
(Select Revised Local Rules of Civil Procedure)**

LOCAL RULES OF CIVIL PROCEDURE
(Select Revised Local Rules of Civil Procedure)

LR Civ P 3.4. Local Filing Requirements

(a) Civil Docket Cover Sheet.

A civil docket cover sheet, in a form supplied by the clerk, must be completed and submitted with any complaint commencing an action or any notice of removal from state court. Each cover sheet must cite the title and section of the United States Code or relevant statute pursuant to which the action or notice is filed. A cover sheet is for administrative purposes only.

(b) State Court Docket Sheet.

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

LR Civ P 5.1. Filing Pleadings and Other Papers

(a) Filing of Papers.

Except as otherwise permitted or required by the Federal Rules, these local rules, or order, the original of all papers, not electronically filed, that must be filed with the court shall be filed at the clerk's office at the point of holding court in which the particular action or proceeding is docketed. In emergency situations, due to travel conditions, time limitations or other factors, filings may be made at any of the clerk's offices, in which event the papers so filed shall be forwarded by the receiving clerk's office to the clerk's office at the point of holding court in which the particular action or proceeding is docketed.

(b) Filing by Facsimile Transmission.

The clerk's office will not accept any facsimile transmission for filing unless ordered by the court.

(c) Filing by Electronic Means.

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

Pursuant to FR Civ P 5(d)(34), the clerk's office will accept pleadings or documents filed, signed or verified by electronic means that are consistent with the technical standards, if any, that the Judicial Conference of the United States establishes. A pleading or document filed by electronic means in compliance with this Rule constitutes a written paper for the purpose of applying these Rules and the Federal Rules of Civil Procedure. All electronic filings shall be governed by the court's Administrative Procedures for Electronic Case Filing, the provisions of which are incorporated by reference, and which may be amended from time to time by the court.

(d) Documents filed by an attorney must include the attorney's registration number. Attorneys who are licensed in West Virginia must provide their West Virginia license number as their attorney-registration number. Visiting Attorneys licensed in a state other than West Virginia must provide the state of licensure and the license number as their attorney-registration number.

(e) Service of Documents through the Court's Electronic Transmission Facilities: A party may serve a paper under FR Civ P 5(b)(2)(E) by using the court's electronic transmission facilities in accordance with the court's Administrative Procedures for Electronic Case Filing. If a document is served electronically, the notice of electronic filing generated by the court's electronic transmission facilities constitutes a certificate of service with respect to those persons to whom electronic notice of the filing is sent, and no separate certificate of service need be filed with respect to those persons.

Because the electronic notification also identifies parties and/or attorneys that are NOT registered users of the system, the filer is responsible for serving copies of pleadings on unregistered users by other means. A certificate of service should be electronically filed with the Court anytime a document must be served by other than electronic means.

LR Civ P 7.1. Motion Practice

(a) Motions and Supporting Memoranda.

(1) General. All motions shall be concise, state the relief requested precisely, and be filed timely but not prematurely. Copies of depositions (or pertinent portions thereof), admissions, documents, affidavits, and other such materials or exhibits upon which the motion relies shall be attached to the motion, not the supporting memorandum.

(2) Length. A memorandum of not more than 20 pages in length must accompany the following types of motions: (1) to intervene; (2) to transfer; (3) to vacate; (4) to reconsider; (5) for rehearing; (6) for

attorney fees; (7) for clarification; (8) to realign parties; (9) to consolidate; (10) to recuse; (11) to dismiss; (12) to remand; (13) for summary judgment; (14) for sanctions; (15) for default judgment; (16) for declaratory judgment; (17) to compel arbitration; (18) for injunctive relief or for a temporary restraining order; (19) for a new trial, to reconsider or to alter or amend judgment; (20) to reinstate or reopen a civil action; (21) to substitute a party; (22) to stay; (23) to seal; or (24) to show cause.

In addition to these motions, the court has discretion to direct a movant to submit a memorandum to accompany any other type of motion. If a movant deems appropriate, a memorandum of not more than 20 pages in length may accompany any other type of motion even if not required by this rule or the court. Any response and reply memoranda shall adhere to the same page limitation.

Motions to exceed the page limitation ~~are disfavored and~~ will be denied absent a showing of good cause. ~~Unless extraordinary circumstances exist, a motion to exceed the page limitation for a supporting memorandum of law, memorandum in response, and a memorandum in reply, must be tendered to the presiding judge at least 3 days in advance of filing the proposed oversized memorandum.~~

If a memorandum is not submitted as required by this rule or by the court, the motion will be denied without prejudice.

- (3) Paper Size, Line Spacing and Margins. All memoranda must be on 8½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.
- (4) Typeface and Type Styles. Either a proportionally spaced or monospaced face may be used. A proportionally spaced face must be 12-point or larger. A monospaced face may not contain more than 10½ characters per inch. The font must be clearly legible as determined by the judicial officer to whom the motion is addressed. The following fonts are presumed legible: ~~either~~ Times New Roman, Courier New, ~~or~~ Arial, Century Gothic, Garamond, Georgia, and Century Schoolbook.
- (5) Courtesy Copies of Memoranda. When electronically filing documents with the clerk's office, a paper courtesy copy to the assigned judicial officer is not required except where any motion, memorandum, response, or reply, together with documents in support thereof, is 50

pages or more in length, or where any administrative record is 75 pages or more in length.

- (6) Motions to Dismiss. Motions to dismiss shall be ~~given priority status provided they are designated prominently as a motion to dismiss and~~ filed as a separate pleading.
- (7) Filing Deadlines for Response and Reply Memoranda. Memoranda and other materials in response to motions shall be filed and served on opposing counsel and unrepresented parties within 14 days from the date of service of the motion. Any reply memoranda shall be filed and served on opposing counsel and unrepresented parties within 7 days from the date of service of the memorandum in response to the motion. Surreply memoranda shall not be filed except by leave of court. These times for serving memoranda may be modified by the judicial officer to whom the motion is addressed.
- (8) Referral to Magistrate Judge. Non-dispositive discovery and pretrial motions relating to discovery practice are referred to a magistrate judge unless otherwise ordered by the district judge assigned to the case. All other non-dispositive motions and any dispositive motion may be referred to a magistrate judge by the district judge assigned to the case.
- ~~(9) Action on Motions. All motions shall be decided expeditiously to facilitate compliance with the deadlines established by the scheduling order. Failure of a judicial officer to rule on a dispositive motion may be good cause for modification of a scheduling order upon motion of a party. District judges may impose time limits on referred motions and monitor those time limits.~~
- (940) Courtroom Technology: If any courtroom technology is required for a hearing, counsel must request any such technology by filing a certification that the court's technology staff has been notified. The certification regarding such notification shall be filed with the clerk no later than 7 days before the scheduled commencement of the hearing.

LR Civ P 9.7. Electronic Filing

Electronic filing of documents is required. In addition to the electronic filing, a paper copy of the certified administrative transcript (and certified supplemental administrative transcript, if any), ~~however,~~ shall be provided by the Commissioner to the chambers of the magistrate judge assigned to the action when the answer is filed.

LR Civ P 16.1. Scheduling Conferences

- (a) **Order and Notice** ~~Convening of Scheduling Conferences; Removed and Transferred Actions.~~

~~Except in actions exempted by paragraph (g) of this rule or as otherwise ordered, a judicial officer shall convene a scheduling conference as soon as practicable, but in any event within 80 days after the appearance of a defendant and within 110 days after the complaint has been served on a defendant.~~

By entry of an Order and Notice, a judicial officer shall establish the date, time, and place of the scheduling conference, and inform the parties of their right to consent to proceed before a magistrate judge under FR Civ P 73(b). ~~As soon as practicable, but in no event later than 7 days after the appearance of a defendant,~~ **T**he clerk shall transmit a notice of the conference to all counsel then of record and to each then unrepresented party for whom an address is available from the record. The notice shall also establish the date by which a meeting of the parties must be held pursuant to FR Civ P 26(f) and paragraph (b) of this rule, and the date by which a written report on the meeting of the parties must be submitted to the court pursuant to FR Civ P 26(f) and paragraph (c) of this rule.

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

- (b) **Obligation of the Parties to Meet.**

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

- (1) consider, consistent with paragraph (d) of this rule, whether the case is complex and appropriate for monitoring in an individualized and case-specific manner through one or more case-management conferences,

and, if it is, to propose for the court's consideration 3 alternative dates and times for the first conference;

- (2) agree, if they can, upon the disputed facts that have been alleged with particularity in the pleadings;
- (3) consider consenting to trial by a magistrate judge; ~~and~~
- (4) consider alternative dispute resolution processes such as the one in LR Civ P 16.6; ~~and~~;
- (5) in cases involving the discovery of electronically stored information ("ESI"), address matters set forth in LR Civ P 26.5(c).

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

- (c) Written Report on the Meeting of the Parties; Cancellation of Scheduling Conference.

Counsel and all unrepresented parties who were present or represented at the meeting are jointly responsible for submitting to the court, no later than 14 days before the date set for the scheduling conference, a written report on their meeting. The written report submitted by the parties shall follow a form available from the clerk and on the court's web site.

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

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

- (d) Conduct of Scheduling Conferences.

Except in a case in which a scheduling conference has been cancelled pursuant to paragraph (c) of this rule, a judicial officer shall convene a scheduling conference, which may be held by telephone, within the mandatory time frame specified in paragraph (a) of this rule regardless of whether the parties have met pursuant to paragraph (b) of this rule or filed a written report pursuant to paragraph (c) of this rule.

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

At or following the scheduling conference if one is held, or as soon as practicable after the date fixed for filing the written report if the scheduling conference is cancelled, the judicial officer shall determine whether the case is complex or otherwise appropriate for careful and deliberate monitoring in an individualized and case-specific manner. The judicial officer shall consider assigning in the scheduling order any case so categorized to a case-management conference or series of conferences under LR Civ P 16.2. If the case is so assigned, the scheduling order, notwithstanding paragraph (e) of this rule, may be limited to establishing time limits and addressing other matters that should not await the first case-management conference. The factors to be considered by the judicial officer in determining whether the case is complex include:

- (1) the complexity of the issues, the number of parties, the difficulty of the legal questions and the uniqueness of proof problems;
- (2) the amount of time reasonably needed by the parties and their attorneys to prepare the case for trial;
- (3) the judicial and other resources required and available for the preparation and disposition of the case;
- (4) whether the case belongs to those categories of cases that involve little or no discovery,
 - (A) ordinarily require little or no additional judicial intervention, or
 - (B) generally fall into identifiable and easily managed patterns;
- (5) the extent to which individualized and case-specific treatment will promote the goal of reducing cost and delay; and
- (6) whether the public interest requires that the case receive more intense judicial attention.

(e) Scheduling Orders.

Following the scheduling conference, if one is held, or as soon as practicable after the date fixed for filing the written report if the scheduling conference is cancelled, but in any event within 90 days after the appearance of a defendant

and within 120 days after the complaint has been served on a defendant, the judicial officer shall enter a scheduling order pursuant to FR Civ P 16(b).

(f) Modification of Scheduling Order.

- (1) Time limits in the scheduling order for the joinder of other parties, amendment of pleadings, filing of motions, and completion of discovery, and dates for conferences before trial, a final pretrial conference, and trial may be modified for good cause by order.
- (2) Subject to subparagraph (3), stipulations to modify disclosure or discovery procedures or limitations will be valid and enforced if they are in writing, signed by the parties making them or their counsel, filed promptly with the clerk, and do not affect the trial date or other dates and deadlines specified in subparagraph (1).
- (3) A private agreement to extend discovery beyond the discovery completion date in the scheduling order will be respected by the court if the extension does not affect the trial date or other dates and deadlines specified in subparagraph (1). A discovery dispute arising from a private agreement to extend discovery beyond the discovery completion date need not, however, be resolved by the court.

(g) Categories of Actions Exempted.

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

- (1) habeas corpus cases and motions attacking a federal sentence;
- (2) procedures and hearings involving recalcitrant witnesses before federal courts or grand juries pursuant to 28 U.S.C. § 1826;
- (3) actions for injunctive relief;
- (4) review of administrative rulings;
- (5) Social Security cases;
- (6) ~~prisoner~~ petitions pursuant to 42 U.S.C. § 1983 and “Bivens-type” actions in which plaintiff is unrepresented by counsel;
- (7) condemnation actions;

- (8) bankruptcy proceedings appealed to this court;
- (9) collection and forfeiture cases in which the United States is plaintiff and the defendant is unrepresented by counsel;
- (10) Freedom of Information Act proceedings;
- (11) certain cases involving the assertion of a right under the Constitution of the United States or a federal statute, if good cause for exemption is shown;
- (12) post-judgment enforcement proceedings and debtor examinations;
- (13) enforcement or vacation of arbitration awards;
- (14) civil forfeiture actions;
- (15) student loan collection cases;
- (16) actions which present purely legal issues, require no resolution of factual issues, and which may be submitted on the pleadings, motions and memoranda of law; and
- (17) actions filed pursuant to the Employment Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.*; and
- (18) such other categories of actions as may be exempted by standing order.

LR Civ P 16.3. Pretrial Conferences in Non-Complex Cases

Abrogated.

~~(a) — Convening of Pretrial Conferences.~~

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

~~(b) — Pretrial Conference Orders.~~

~~After a pretrial conference, the judicial officer shall enter an order reciting the action taken. The order shall control the subsequent course of the action and~~

~~may be modified in the same manner as a scheduling order under LR Civ P 16.1(f).~~

LR Civ P 16.6. Mediation

(a) Cases to be Mediated.

The judicial officer may order mediation *sua sponte* or at the request of any party. When so ordered, the following provisions of this local rule shall control. The Southern District of West Virginia also supports the voluntary use of alternative dispute resolution, ~~and will endeavor to facilitate mediation or similar proceedings when the presiding judicial officer finds a request to do so appropriate and timely.~~ The parties are free to engage in mediation without court involvement so long as it does not interfere with court-ordered deadlines.

(b) Motion for Exception to Mandatory Mediation.

An attorney or a *pro se* party may file a motion for leave not to engage in mediation. The presiding judicial officer may grant the motion for good cause shown.

LR Civ P 16.6.1. Timing of Mediation

Mediation shall take place at any time ordered by the court. The parties may consult with each other and agree upon a mutually convenient date, time, and place for the mediation and ask the court to approve such arrangements.

LR Civ P 16.6.2. Selection of Mediator; Notice of Nomination

The parties are expected to agree upon a mediator, the amount of the mediator's fee, and the responsibility for payment. ~~Not later than 7 days before the date set for mediation, or as otherwise directed by the court, the parties shall file a notice of nomination with the clerk, setting forth the name, address, telephone number, facsimile number, and e-mail address of the nominated mediator. The form "Notice of Nomination," available from the clerk and on the court's website, shall be used.~~ If the parties are unable to agree on a mediator, then the parties shall promptly notify the presiding judicial officer. The judicial officer may then ~~who shall without delay~~ appoint a mediator, set the amount of the mediator's fee, and assign responsibility for payment. The parties may request that a judicial officer (who is not the presiding judicial officer) conduct the mediation. Such requests are particularly appropriate in complex cases or in cases in which a party is financially unable to bear its proportionate share of the mediation expense.

LR Civ P 16.6.3. Appointment of Mediator

Abrogated.

~~Upon the filing of a Notice of Nomination, or upon selection of a mediator by the presiding judicial officer, an Order Appointing Mediator will be entered, using the form available from the clerk and on the court's web site.~~

LR Civ P 16.6.4. Attendance at Mediation

~~Unless the court directs otherwise, the following persons shall attend the entire mediation in person: (a) all lead trial counsel and (b) any party who is prosecuting a claim (i.e., the plaintiff(s) and any defendant who has made a counterclaim, cross-claim, or third-party complaint).~~ Unless the court directs otherwise, any other party or his/her/its representative who is knowledgeable about the facts of the case, and who has full authority to negotiate on behalf of the party and to approve or recommend a settlement, shall attend the entire mediation in person or, with prior approval of the judicial officer, by telephone or other electronic means such as video-conference.

LR Civ P 16.6.5. Mediation Statements; Confidentiality

The mediator may require the submission of written mediation statements. If the mediator does not require submission of written mediation statements, any party may submit a written mediation statement. Mediation statements submitted in writing to the mediator are confidential. All communications ~~Oral statements~~ made during the mediation are confidential.

LR Civ P 16.6.6. Impartiality of Mediator

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

LR Civ P 16.6.7. Compensation of Mediator

Mediators will be compensated at the rate established when the mediator was selected, with payment as agreed by the parties or ordered by the presiding judicial officer.

LR Civ P 16.6.8. Notification to Judicial Officer; Report of Mediator

Immediately upon the completion of mediation resulting in the settlement of all or part of a case, the parties shall notify the chambers of the presiding judicial officers. Within 7 days of the close of mediation, the mediator will file with the clerk a report which states that all or part of the case was settled (specifying which part of the case settled) or that it was not settled. If all or part of the case was settled, the parties shall, at the

mediation, place in writing the terms of the settlement, and all participants shall sign the terms of the settlement, with the mediator retaining the original. ~~Within 30 days of the mediation, the parties shall submit to the chambers of the presiding judicial officer, an agreed order of dismissal as to all or part of the case that was settled.~~

LR Civ P 26.4. Clawback Orders, Protective Orders, and Sealed Documents

(a) Clawback Orders.

At the court's request, or if the parties jointly agree to the entry of an order governing the clawback of privileged or protected materials that are inadvertently disclosed, the parties should complete and submit one of the following orders, which are preferred by the court: Order Governing the Inadvertent Disclosure of Documents and Materials under Rule 502(b), available on-line at www.wvsc.uscourts.gov, or Order Governing the Inadvertent Disclosure of Documents and Materials under Rule 502(d), also available on-line. Motions seeking to modify the provisions of the approved clawback orders should be made sparingly and only for good cause.

(a)(b) Protective Orders.

To succeed on a motion for the entry of a protective order shielding information from dissemination, the movant or movants must demonstrate with specificity that (1) the information qualifies for protection under FR Civ P 26(c), and (2) good cause exists for restricting dissemination on the ground that harm would result from its disclosure. When filing a joint motion for the entry of a protective order, the movants shall complete and submit with the motion the court's on-line Protective Order found at www.wvsc.uscourts.gov. The court's on-line Protective Order is the preferred protective order in this district. Therefore, motions requesting modifications to the provisions of the court's Protective Order should be made sparingly and only for good cause.

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

(b)(c) Sealed Documents.

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

- (2) Submission. Unless otherwise authorized by law, a motion to seal shall be filed electronically pursuant to the Administrative Procedures for Electronic Case Filing and accompanied by a memorandum of law which contains:
- (A) the reasons why sealing is necessary, including the reasons why alternatives to sealing, such as redaction, are inadequate;
 - (B) the requested duration of the proposed seal; and
 - (C) a discussion of the propriety of sealing, giving due regard to the parameters of the common law and First Amendment rights of access as interpreted by the Supreme Court and our Court of Appeals.

LR Civ P 26.5 Discovery of Electronically Stored Information

- (a) Prior to a Rule 26(f) conference, each party shall individually assess the likelihood that its ESI will play a role in discovery. When a party in possession of ESI reasonably anticipates, or should anticipate, that its ESI will play a significant role, the party shall complete the following tasks for discussion at the Rule 26(f) conference:
- (1) determine how and where its ESI is stored; how it has been or can be preserved, accessed, retrieved, and produced; and any other issues to be discussed at the Rule 26(f) conference including the issues set forth in subparagraph (c) below; and
 - (2) identify a person or persons with knowledge about the ESI, with the ability to facilitate, through counsel, the preservation and discovery of ESI.
- (b) At the Rule 26(f) conference, counsel shall meet and confer about:
- (1) the steps the parties have taken to preserve ESI;
 - (2) the anticipated scope of ESI discovery and the search protocol for locating responsive ESI, including methods to filter the data, such as using search terms or date ranges;
 - (3) procedures to deal with inadvertent production of privileged information;
 - (4) accessibility of ESI, including but not limited to the accessibility of back-up, deleted, archival, or historic legacy data;

- (5) the media, format and procedures for preserving and producing ESI;
- (6) allocation of costs of preservation, production, and restoration (if possible and/or necessary) of any ESI;
- (7) the need for a designated resource person through who all issues relating to the preservation and production of ESI should be addressed;
- (8) the need for an Order setting out the ESI protocol; and
- (9) any other issues related to the discovery of ESI.

LR Civ P 37.1. Discovery Disputes

- (a) Objections to Disclosures or Discovery.

Objections to disclosures or discovery that are not filed within the response time allowed by the Federal Rules of Civil Procedure, the scheduling order(s), or stipulation of the parties pursuant to FR Civ P 29, whichever governs, are waived unless otherwise ordered for good cause shown. Objections shall comply with FR Civ P 26(g) and any claim of privilege or objection shall comply with FR Civ P 26(b)(5).

- (b) Duty to Confer.

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

- (c) Motions to Compel.

A motion to compel disclosure or discovery must be accompanied by a statement setting forth verbatim each discovery request or disclosure requirement and any response thereto to which an exception is taken. In addition, the movant may include a statement of the grounds and pertinent authorities relied upon and shall file such a statement if requested by the court. If the discovery request or disclosure requirement is ignored, the movant need only file a motion to compel without setting forth verbatim the discovery request or disclosure requirement. Motions to compel or other motions in aid of discovery not filed within 30 days after the discovery response or disclosure requirement was due are waived, and in no event provide an excuse, good cause or reason to delay trial or modify the scheduling order. The 30-day deadline

may be extended by court order for good cause shown, or by stipulation of the parties, so long as the extension does not interfere with the scheduling order. Any such stipulation must be filed pursuant to LR Civ P 11.2.

(d) Telephonic Conferences During Discovery Events.

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

LR Civ P 47.1. Trial Juries

(a) Examination of Prospective Jurors.

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

(b) Jury Lists.

Names of jurors drawn for jury service from the court's qualified jury wheel may be disclosed only in accordance with the court's Jury Selection Plan, ~~approved and made effective February 25, 2009, and as it may be modified.~~ Jury lists prepared by the clerk shall be made available to counsel and unrepresented parties as provided in the Jury Selection Plan.

LR Civ P 54.1. Fees and Costs

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

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

~~If an adverse party makes s~~Specific objections to any item of costs filed by the prevailing party shall be filed, within 14 days after service of a bill of costs. Any response to the objections shall be filed within 7 days of service of the objections. The clerk shall ~~set the matter for hearing or may~~ assess costs based on the papers submitted.

LR Civ P 65.1.1. Approval of Bonds ~~by the Clerk~~

~~Except in criminal cases or for supersedeas bonds pursuant to FR Civ P 62, or where another procedure is prescribed by law, the clerk may approve bonds without an order if:~~

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

~~(b) — the bond is secured by~~

~~(1) — the deposit of cash or obligations of the United States,~~

~~(2) — the guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury, or~~

~~(3) — the guaranty of a qualified property owner when the guaranty is accompanied by an acceptable certificate of justification.~~

(a) General Requirements. Every bond must be executed by the principal obligor and, if applicable, one or more sureties qualified as provided in this rule.

(b) Corporate Sureties.

(1) A corporate surety must be qualified to write bonds under 31 U.S.C. §§ 9301–9309 and approved by the Secretary of the Treasury of the United States.

(2) The representative of the corporate surety that signs the bond must attach to the bond a power of attorney that establishes the representative’s authority to bind the corporate surety.

(c) Real-Property Bond.

(1) A person may serve as a surety on a real-property bond only by court order. A person seeking permission to serve as a surety on a real property bond must:

(A) offer as security real property located in the State of West Virginia, or other property as approved by a judge of this court, of an unencumbered value equal to or greater than the stated amount of the bond;

(B) be competent to convey the real property; and

(C) submit an affidavit and supporting documents including: (i) a legal description of the real property; (ii) a complete list of all encumbrances and liens on the real property; (iii) a current appraisal of the real property by a qualified appraiser; (iv) a waiver of inchoate rights; (v) a certification that the real property is not exempt from execution; and (vi) proof of payment of property taxes.

(2) Within 14 days after the court approves the real-property bond, the surety must file with the court a copy of a notice of encumbrance filed by the surety with the county recorder or registrar of titles that identifies the bond as an encumbrance on the real property.

(3) A real-property bond will be released only by court order.

(d) Cost Bonds. The court may, on motion or on its own, order a party to file a bond or other security for costs in an amount, and subject to conditions, specified by the court.

(e) Cash bonds. Deposit of cash bonds is governed by LR 67.1. Withdrawal of cash bonds is governed by LR 67.2.

(f) Objections. Any party may object to the issuance of a bond.

(g) All bonds must receive court approval.

LR Civ P 67.1. Deposits Pursuant to FR Civ P 67

(a) Court Order Required. A party may deposit money into the court registry only by court order. A party seeking to deposit money into the court registry under FR Civ P 67(a) must file and serve a motion requesting an order permitting the deposit.

(b) Any order obtained by a party that directs the clerk to invest funds pursuant to 28 U.S.C. § 2041 shall provide for payment by check made payable to the Clerk, United States District Court, for deposit in a renewable time certificate, treasury bill, passbook savings account, or other secure instrument.

~~(a)~~(c) In accordance with FR Civ P 67, funds paid to the clerk for deposit into the court's registry shall be placed in an interest-bearing account or instrument as ordered, and shall remain so deposited pending disposition by subsequent court order.

LR Civ P 67.2. Withdrawal of Money from the Court Registry

(a) Court Order Required. A party may withdraw money from the court registry only by court order. A party seeking to withdraw money from the court registry must file and serve a motion requesting an order permitting the withdrawal and specifying whether the moving party is seeking withdrawal before the expiration of the 14-day automatic stay imposed under FR Civ P 62(a). The proposed order should specify: (i) the name of each payee; (ii) the amount of money to be disbursed to each payee; and (iii) the percentage of accrued interest to be disbursed to each payee, if applicable.

(b) The party must complete a Withdrawal Payee Information form that is available from the clerk and electronically on the court's website at www.wvwd.uscourts.gov. The social security number information collected by the clerk on the form is provided to the depository institution pursuant to Title 26 of the United States Code and Internal Revenue service regulations, as a condition of the release of said funds. This information is used for administrative purposes only and will be kept confidential. The withdrawal Payee Information form will not be filed on the court's ECF system.

~~(a)~~(c) Fees. A charge for the handling of registry funds deposited with the court will be assessed from the interest earnings in accordance with the fee schedule issued by the Director of the Administrative Office of the United States. Funds that are invested through the Court Registry Investment System will also be assessed an investment services fee from the interest earnings in accordance with the District Court Miscellaneous Fee Schedule. In accordance with FR Civ P 67, funds paid to the clerk for deposit into the court's registry shall be placed in an interest-bearing account or instrument as ordered, and shall remain so deposited pending disposition by subsequent court order. Any order obtained by a party that directs the clerk to invest funds pursuant to 28 U.S.C. § 2041 shall provide for payment by check made payable to the Clerk, United States District Court, for deposit in a renewable time certificate, treasury bill, passbook savings account, or other secure instrument. Any order authorizing disbursement of funds on deposit shall provide for payment of the statutory administrative registry fee from the income earnings prior to any other

~~distribution of the account. If any individual or entity receives payment of earned interest in excess of \$10.00 per annum, parties shall provide identification by name, address and social security or tax identification number in compliance with Title 26 of the United States Code, and Internal Revenue Service regulations, as a condition of the release of said funds. A copy of any order affecting the deposit, investment or disbursement of funds in the court's registry shall be served on the clerk.~~

LR Civ P 78.1. Hearing on Motions

The judicial officer may require or permit hearings on motions, and the hearings may be by telephone or other electronic means.

LR Civ P 83.1. Admission of Attorneys

(a) Admission as Member of Bar or Court.

Any person who is admitted to practice before the Supreme Court of Appeals of West Virginia and who is in good standing as a member of its bar, is eligible for admission as a member of the bar of this court. An eligible attorney may be admitted as a member of the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the register of attorneys with the person admitted. If the motion for admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorneys' register, and pay the clerk the admission fee. Once admitted under this provision, the person need not have an office for the practice of law in West Virginia to appear and practice in this court.

Any person who has been subject to disciplinary suspension or disbarment by the West Virginia Supreme Court of Appeals but has been readmitted to practice by the Supreme Court and is in good standing as a member of its bar, is eligible for re-admission as a member of the bar of this court. The attorney may be re-admitted as a member of the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the register of attorneys with the person re-admitted. If the motion for re-admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorney's register, and pay the clerk the admission fee.

(b) Sponsorship of Visiting Attorneys by Members of Court.

The Sponsoring Attorney must be a member of the bar of this court, have an office for the practice of law in West Virginia, and practice law primarily in West Virginia.

- (c) Appearance by Assistant United States Attorneys and Assistant Federal Public Defenders.

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

- (d) Appearance by Federal Government Attorneys.

Federal government attorneys who are not members of the bar of this court need not complete the Statement of Visiting Attorney. In cases where the United States Attorney is associated with other government attorneys in proceedings involving the Federal government, the United States Attorney (except in student loan collection cases), in addition to other Federal government attorneys, shall sign all pleadings, notices, and other papers filed and served by the United States. All pleadings, notices, and other papers involving the Federal government may be served on the United States Attorney in accordance with the service requirements of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

LR Civ P 83.2. Legal Assistance by Law Students

- (a) Written Consent.

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

- (b) Responsibilities of Attorneys of Record.

An eligible law student may assist in the preparation of pleadings, briefs, and other documents to be filed in this court, but such pleadings, briefs, or documents must be signed by the attorney of record. An eligible law student may also participate in hearings, trials, and other proceedings with leave of court, but only in the presence of the attorney of record. The attorney of record shall assume personal professional responsibility for the law student's work.

The attorney of record shall be familiar with the case and be prepared to supplement or correct any written or oral statement made by the law student.

(c) Eligibility Requirements.

To be eligible to appear pursuant to this rule, the law student must:

- (1) be enrolled in a law school approved by the American Bar Association;
- (2) have successfully completed legal studies for at least 4 semesters, or the equivalent if the school is on some basis other than a semester basis;
- (3) be certified by the dean of his or her law school as being of good character and competent legal ability. The dean's certification shall be filed with the clerk. This certification may be withdrawn by the dean at any time without notice or hearing and without any showing of cause by notifying the clerk in writing, or it may be terminated by the court at any time without notice of hearing and without any showing of cause. Unless withdrawn or terminated, the certification shall remain in effect for 18 months after it has been filed with the clerk or until the law student has been admitted as a permanent member of the bar of this court, whichever is earlier;
- (4) certify in writing to the clerk that he or she has read the Code of Professional Conduct of the American Bar Association, the Rules of Professional Conduct and the Standards of Professional Conduct promulgated and adopted by the Supreme Court of Appeals of West Virginia, and the Model Rules of Professional Conduct published by the American Bar Association;
- (5) be introduced to the court by a permanent member of the bar of this court; and
- (6) neither ask for nor receive any compensation or remuneration of any kind for services from the party assisted, but this shall not prevent an attorney, legal services program, law school, public defender agency, the State of West Virginia, or the United States from paying compensation to the law student, nor from making appropriate charges for such services.

LR Civ P 83.4. Withdrawal and/or Termination of Representation

An attorney may withdraw from a case in which he or she has appeared only as follows: ~~No attorney who has entered an appearance in any civil action shall withdraw the appearance or have it stricken from the record, except by order.~~

- (a) By Notice of Withdrawal. A party's attorney may withdraw from a case by filing and serving a notice of withdrawal, effective upon filing, if:
- (1) multiple attorneys have appeared on behalf of the party; and
 - (2) at least one of those attorneys will still be the party's counsel of record after the attorney seeking to withdraw does so.
- (b) By Notice of Withdrawal and Substitution. A party's attorney may withdraw from a case by filing and serving a notice of withdrawal and substitution, effective upon filing, if the notice includes:
- (1) the withdrawal and substitution will not delay the trial or other progress of the case; and
 - (2) the notice is filed and served at least 90 days before trial.
- (c) By Motion. An attorney who seeks to withdraw other than under LR Civ P 83.4(a) or (b) must move to withdraw and must show good cause. The attorney must notify his or her client of the motion.

LR Civ P 83.7. Codes of Professional Conduct

In all appearances, actions and proceedings within the jurisdiction of this court, attorneys shall conduct themselves in accordance with the Rules of Professional Conduct and the Standards of Professional Conduct promulgated and adopted by the Supreme Court of Appeals of West Virginia, and the Model Rules of Professional Conduct published by the American Bar Association. ~~Judicial officers of this court must comply with the Code of Conduct for United States Judges adopted by the Judicial Conference of the United States; judiciary employees of this court must comply with the Code of Conduct for Judicial Employees, also adopted by the Judicial Conference.~~

LR Civ P 83.15. Courthouse Security

- (a) Entry of Federal Courthouse Buildings.

All persons wishing to enter a federal building housing a United States Court within the Southern District of West Virginia (the building) must first properly clear the security screening post located in the main lobby at each facility. Court security officers staff the security screening post during normal business hours. The purpose for the security screening post is to ensure that no weapons, including guns, knives, explosives or other items that are deemed to be a possible weapon, are brought into the building. Any person refusing to submit

to such inspection, including inspection of all carried items, shall be denied entrance to the building.

(b) Persons Requiring Access.

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

(c) Weapons.

The United States Marshal and Deputy United States Marshals may possess and oversee possession of firearms or other weapons in the building. Only members of the United States Marshals Service and those specifically designated by that service may possess firearms and other weapons in the space occupied and controlled by this court.

(d) Identification Card.

All employees will use an identification card issued by the employee's agency. Employees will be required to display or show the identification card to the court security officers to pass through the security screening post. If an employee fails to present their issued identification card, he or she must successfully pass through the security screening post.

(e) Wireless Communication Devices.

Only attorneys, court reporters and court interpreters conducting official business ~~at a federal courthouse~~ in a federal courthouse in this District are permitted limited use of wireless communication devices, ~~such as cellular telephones, pagers, personal data assistants (PDAs), BlackBerrys, and laptop computers.~~ Audio or video recording or the taking of any photographs with such devices while in the courthouse is prohibited. Wireless communication devices must be turned off or rendered silent ~~Cellular telephones and pagers must be programmed so they will not emit any audible noise while in a courtroom. PDAs, BlackBerrys and laptop computers may be used to assist attorneys in their cases. The use of wireless communication devices for purposes of transmitting and/or receiving data while in a courtroom is prohibited. The use of wireless communication devices shall not be disruptive to court proceedings. Wireless communication devices are not permitted in a grand jury room while the grand jury is in session unless utilized by an agent~~

~~or representative of the United States Attorney's Office for evidence presentation. Each judicial officer may modify this rule as circumstances warrant.~~

Any other individual who brings a wireless communication device into a federal courthouse in this District, excepting federal employees, elevator response personnel and PBX telephone technicians, will be required by the court security officers to deposit such device in storage facilities as provided at the front entry of the building, to be retrieved upon leaving the courthouse.

Appropriate signage will be posted outside the courthouse and at the security posts, published on the court's external web site and in notices provided to jurors.

The court authorizes the United States Marshal to allow wireless communication devices for emergency situations as deemed appropriate.

ATTACHMENT 2

**LOCAL RULES OF CRIMINAL PROCEDURE
(Select Revised Local Rules of Criminal Procedure)**

LOCAL RULES OF CRIMINAL PROCEDURE
(Select Revised Local Rules of Criminal Procedure)

LR Cr P 5.1. Initial Appearance

(a) Pretrial Services Interview.

Pretrial services officers (or probation officers acting in the capacity of pretrial services officers), to the extent practicable, shall attempt notification of counsel prior to conducting pretrial services interviews. If counsel cannot attend an interview, the information provided by the defendant shall be made available to counsel upon request, in accordance with LR Cr P 5.1.(b).

(b) Disclosure of Pretrial Services Information.

A written pretrial services report will, if possible, be provided to counsel in the courtroom when a defendant makes an initial appearance, and will be provided to counsel in the courtroom when a defendant appears for a detention hearing. Pretrial services information is confidential, pursuant to the provisions of 18 U.S.C. § 3153(c) and regulations promulgated by the Administrative Office of the United States Courts. Judicial officers may disclose pretrial services information, in whole or in part, upon a showing of good cause. When a demand for disclosure of pretrial services information regarding a defendant is made by service of a subpoena or by other judicial formal process upon a probation officer, the probation officer may petition in writing seeking instructions from the court regarding a response to the ~~subpoena~~ demand for disclosure. Further, the probation officer, upon request, is authorized to provide a copy of the pretrial report to another federal pretrial or probation officer without further order of the court.

(c) Standard Terms and Conditions for Release on Bond.

- (1) The defendant shall not violate any local, state or federal laws;
- (2) The defendant shall not possess a firearm, destructive device or other dangerous weapon (~~felony offense only~~), and shall reside in a residence free from such items;
- (3) The defendant's travel is restricted to the Southern District of West Virginia unless otherwise permitted by the court;
- (4) The defendant shall submit to random urine screens, as directed by the probation department or the court, for detection of use of controlled substances; and

(5) The defendant shall not contact, either directly or indirectly, any victim or potential witnesses in the case, except through counsel (for witness/victim protection where needed).

(d) Modification of Conditions of Pretrial Release.

The pretrial services or probation officer may, in the exercise of his/her discretion, meet with the defendant and defense counsel and modify conditions of release. Following such meeting, if any, a Consent to Modify Conditions of Release (PS 42) shall be completed and submitted to the judicial officer for signature and filing.

LR Cr P 18.2. Divisions

The Southern District of West Virginia is composed of 23 counties. Each of these counties is assigned to 1 of ~~5~~4 administrative divisions. Each division is given the name of the city in the division where the court and offices of its clerk are located. The divisions, addresses of division offices, and counties comprising each division are as follows:

Division 1: Bluefield

Elizabeth Kee Federal Building
Address: Room 2303, 601 Federal Street, Bluefield, West Virginia 24701
Counties Composing Division: Mercer, Monroe and McDowell

Division 2: Charleston

Robert C. Byrd United States Courthouse
Address: Room 2400, 300 Virginia Street East, Charleston, WV 25301
Mailing address: P.O. Box 2546, Charleston, West Virginia 25329
Counties Composing Division: Boone, Clay, Fayette, Jackson, Kanawha, Lincoln, Logan, Mingo, Nicholas, Roane, Wirt and Wood

Division 3: Huntington

Sidney L. Christie Federal Building
Address: Room 101, 845 Fifth Avenue, Huntington, West Virginia 25701
Counties Composing Division: Cabell, Mason, Putnam and Wayne

Division: 5: Beckley

Robert C. Byrd Federal Building and Courthouse
Address: Room 119, 110 North Heber Street, Beckley, West Virginia 25801
Counties Composing Division: Greenbrier, Summers, Raleigh and Wyoming

The court will occasionally convene at Parkersburg to deal with matters falling in the Huntington or Charleston Divisions, as needed, and at Lewisburg to deal with matters falling within either the Beckley or Bluefield Division, as needed.

LR Cr P 24.1. Confidentiality of Juror Information

- (a) All information obtained from juror questionnaires is confidential and may be used only for jury selection and in accordance with this rule.
- (b) All copies of juror questionnaires must be destroyed or returned to the Court upon completion of the trial, or at any earlier time determined by the Court.
- (c) For represented parties, counsel of record is responsible for maintaining the confidentiality and security of juror questionnaires, and must apply security practices no less stringent than those applicable to confidential client information. Unrepresented parties may use juror questionnaires only under supervision of the Court, and may not reproduce the juror questionnaires in any form, or distribute them to anyone.
- (d) Juror questionnaires will be electronically filed under restricted access to only counsel and court personnel in the Case Management/Electronic Case Filing (CM/ECF) system five (5) business days before trial or as otherwise directed by the Court. Electronic access will be available to the Court and counsel of record only. The Court will provide unrepresented parties with one paper copy of the juror questionnaires at the beginning of jury selection. Juror questionnaires will not be available via mail or facsimile transmission.

LR Cr P 32.2. Disclosure of Presentence Reports, Statement of Reasons and Probation Records

- (a) Disclosure of Presentence Reports.

Disclosure of presentence reports is governed by 18 U.S.C. § 3552(d) and FR Cr P 32. Except as specifically provided by statute, rule, regulation, or guideline promulgated by the Administrative Office of the United States Courts, or LR Cr P 32.3, no confidential records of the court maintained by the probation office, including presentence reports and probation or supervised release records, shall be producible except as set forth below or by written petition to the court, particularizing the need for specific information. When a demand for disclosure of presentence and probation records is made by way of subpoena or other ~~judicial~~ **formal** process to a probation officer, the probation officer may petition in writing seeking instructions from the court regarding a response to the ~~subpoena~~ **demand for disclosure**. No disclosure shall be made except upon order of the court.

Presentence reports prepared by the probation office, as well as objections to the report filed by counsel, shall be filed electronically under seal via the Case Management/Electronic Case Filing System (CM/ECF). These documents will be made part of the case record for the purposes of appeal. The probation officer is authorized to provide a copy of the presentence report, without the officer's recommendation as to the sentence, to the defendant's appellate counsel. In addition, the probation officer is authorized to forward a copy of the presentence report, without the officer's recommendation as to the sentence, to counsel in revocation proceedings upon request without further order of the court. The copy of the presentence report shall be used by counsel for the purpose of the revocation proceeding only. Further, the probation officer, upon request, is authorized to provide a copy of the presentence report to another federal probation officer without further order of the court.

(b) Disclosure of Special Conditions Within Presentence Reports.

When the presentence report is disclosed to the parties and the court, the probation office should include any recommended special conditions in the body of the report, as well as the reasons for the recommendation of each condition. However, LR Cr P 32.2(a) allows the court to limit such disclosure through an order of the court.

~~(b)~~(c) Statement of Reasons.

The Clerk is directed to SEAL the Statement of Reasons in all criminal cases before this court and shall forward a SEALED copy to counsel of record and to the probation office in this District. The probation office shall forward the Statement of Reasons to the United States Sentencing Commission and the Bureau of Prisons. The probation office is further directed to make the sealed Statement of Reasons an attachment to, and part of, any copy of the presentence report made available to the Bureau of Prisons, the Fourth Circuit Court of Appeals and appellate counsel for the defendant. In addition, the probation office is authorized to forward a copy of the Statement of Reasons to counsel in revocation proceedings upon request and without further order of the court. The copy of the Statement of Reasons shall be used by counsel for the purpose of the revocation proceeding only.

~~(c)~~(d) Disclosure of Probation Office Recommendation.

The probation officer shall not disclose to anyone other than the court the officer's recommendation as to the sentence.

LR Cr P 32.3. Standard Conditions of Probation and Supervised Release in all Criminal Cases

In addition to the Standard Conditions of Supervised Release and Probation promulgated by the Administrative Office of the United States Courts (National Form AO 245B), the following six conditions are forthwith adopted as standard conditions of probation and supervised release for all defendants sentenced in criminal cases in the District.

- (1) If the offender is unemployed, the probation officer may direct the offender to register and remain active with Workforce West Virginia.
- (2) Offenders shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. Offenders shall not use any method or device to evade a drug screen.
- (3) As directed by the probation officer, the defendant will make co-payments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.
- (4) A term of community service is imposed on every offender on supervised release or probation. Fifty hours of community service is imposed on every offender for each year the offender is on supervised release or probation. The obligation for community service is waived if the offender remains fully employed or actively seeks such employment throughout the year.
- (5) The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers), and shall reside in a residence free from such items.
- (6) The defendant shall not purchase, possess, or consume any organic or synthetic intoxicants, including bath salts, synthetic cannabinoids, or other designer stimulants.

LR Cr P 32.4. Standard and Optional Conditions of Probation and Supervised Release in all Sex Offense Cases

The following standard and optional conditions of probation or supervised release shall be included in the Judgment as appropriate in all cases where the offense of conviction, or a defendant's prior state or federal conviction, would qualify as a "sex offense" as defined in the Sex Offender Registration and Notification Act (SORNA), 42 U.S.C.

§ 16911(5) or otherwise result in a reporting obligation by the defendant to any state or federal sex offender registry. Within those conditions requiring an offender to obtain approval by the probation officer for certain actions, the court retains the ultimate authority to grant the approval requested, along with the right to review the probation officer's decision upon the offender's written request.

(a) Standard Conditions.

- (1) The defendant shall have no direct or indirect contact, at any time, for any reason, with the victim(s) identified in the presentence report or the victim's family.
- (2) The defendant shall submit to an evaluation by a qualified mental health professional, approved by the probation officer, who is experienced in treatment of sexual offenders. The defendant shall take all medications reasonably related to treatment of his or her condition, complete all treatment recommendations and abide by all rules, requirements and conditions imposed by the professional. The defendant must do so until discharged from treatment by the professional. Prior to being required to submit any proposed course of treatment, the defendant or the United States may seek review by the presiding district judge of any facet of the prescribed course of treatment. The United States and the defendant shall also have the right to seek review by the presiding district judge of any continuation or discontinuation of such treatment.
- (3) The defendant shall submit to risk assessments, psychological and physiological testing, which may include, but is not limited to, a polygraph examination or other specific tests to monitor the defendant's compliance with probation or supervised release treatment conditions, at the direction of the probation officer.
- (4) The defendant's residence and employment shall be approved by the probation officer. Any proposed change in residence or employment must be provided to the probation officer at least 10 days[†] prior to the change and pre-approved before the change may take place.
- (5) The defendant shall not access or possess any materials depicting and/or describing "child pornography" depicting sexually explicit conduct as defined in 18 U.S.C. § 2256(2)(A), including any photograph, film, video, picture, or computer or computer generated image or picture, nor shall the defendant knowingly enter, or knowingly remain in, any location, without the prior approval of the probation officer, where such materials can be accessed, obtained or viewed, including pictures, photographs, books, writings, drawings, videos or video games. [The

[†]Pursuant to WV Code § 55-12-3

rationale for amending this condition broadens the condition to include any sexually explicit material and not just possession of child pornography, which is already a prohibited crime. A sex offender who continues to have exposure to any pornography is continuing to engage in “fantasy sex,” which may lead to high-risk behavior. He or she would also not be addressing his or her intimacy deficits appropriately. Intimacy deficits are a well-researched risk factor for sexual recidivism.]

- (6) The defendant shall not use, purchase, possess, procure or otherwise obtain any computer or electronic device that can be linked to any computer networks, bulletin boards, ~~I~~internet, ~~I~~internet service providers or exchange formats involving computers unless approved by the probation officer for such purposes as looking for employment opportunities and submitting applications to prospective employers through the internet; defendant’s lawful gainful employment by a business entity; ~~or~~ use by an immediate family member living in defendant’s same household or for other legitimate purposes. Such computers, computer hardware or software possessed solely by the defendant is subject to searches and/or seizures by the probation office.
- (7) The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) and/or register as directed by the probation officer. The defendant shall register with any local and/or State Sex Offender Registration agency in any state or federal territory where the defendant resides, is employed, carries on a vocation, or is a student, or was convicted of a qualifying offense, pursuant to state law.
- (8) The defendant shall provide the probation officer access to any requested financial records and authorize the release of any financial information.
- (9) The defendant shall not purchase, possess, or consume alcohol, and the defendant shall not frequent any businesses whose primary function is to serve alcohol beverages. [Substance abuse is considered to be an acute risk factor for sex offenders. Drug and alcohol use have long been considered a “disinhibitor,” and problems with drugs or alcohol are generally regarded as elevating an individual’s risk for sexual recidivism. The sex offender, more than any other type of criminal on supervision, needs to be alert, in control, and ready to execute avoidance and escape plans whenever he or she encounters a high-risk situation.]

(b) Optional Conditions.

- (1) The term “minor” with respect to any condition of supervised release refers to one who is under the age of eighteen (18) years.
- (2) The defendant shall not associate or have verbal, written, telephonic or electronic communications with any minor except: 1) in the presence of the parent or legal guardian of said minor; 2) on the condition that the defendant notifies the parent or legal guardian of the defendant’s sex offender conviction(s); and 3) with written approval from the probation officer. This provision does not encompass minors working as waiters, cashiers, ticket vendors, and similar service personnel with whom the defendant must deal in order to obtain ordinary and usual commercial services.
- (3) The defendant shall not loiter within 100 feet of any parks, school property, playgrounds, arcades, amusement parks, daycare centers, swimming pools, community recreation fields, zoos, youth centers, video arcades, carnivals, circuses or other places that are primarily used or can reasonably be expected to be used by minors without prior written permission of the probation officer.
- ~~(4)~~ The defendant shall not frequent any businesses whose primary function is to serve alcoholic beverages.
- ~~(5)~~(4) The defendant shall not purchase, possess or control cameras, camcorders, or movie cameras without prior approval of the probation officer. ~~and~~ The defendant may only use and possess cell phones that are limited by design to vocal telephone communication without the capability to access the ~~I~~internet or store or create images or video without prior approval of the probation officer.
- ~~(6)~~(5) The defendant shall notify employers, family, friends and others with whom the defendant has regular contact of defendant’s conviction(s) as a sex offender and that the defendant is being supervised by a probation officer.
- ~~(7)~~(6) The defendant shall not engage in any forms of exhibitionism, voyeurism, obscene phone calls or other lewd or lascivious behavior toward a minor, nor engage in “grooming” behavior that is apt to attract, seduce or reduce sexual resistance or inhibitions of a minor.
- ~~(8)~~(7) The defendant shall not own, use or have access to the services of any commercial mail receiving agency or storage unit nor shall the defendant open or maintain a post office box or storage unit without the prior approval of the probation officer. The defendant shall provide the

probation officer with a list of all P.O. boxes and/or storage units the defendant can access.

- ~~(9)~~(8) The defendant shall not possess sadomasochistic or similar bindings or handcuffs, or like forms of restraint.
- ~~(10)~~(9) The defendant shall not possess minor's clothing, toys, games, or the like without permission of the probation officer.
- ~~(11)~~(10) The defendant shall not be employed in any position or participate as a volunteer in any activity that involves contact with minors without written permission from the probation officer. The defendant may not engage in an activity that involves being in a position of trust or authority over any minor.
- ~~(12)~~(11) The defendant shall participate in the District's computer **and internet** monitoring program and pay any costs associated therewith and abide by all special conditions therein, as directed by the probation officer. Participation in this program is contingent upon all program criteria being met.
- ~~(13)~~(12) The defendant shall not possess pictures of minors, unless the pictures are of the defendant's children.

LR Cr P 32.1.1. Modification or Revocation of Probation or Supervised Release

- (a) Petition for Modification or Revocation.
 - (1) A petition for modification or revocation of probation or supervised release shall be set forth on the form adopted for that purpose by the Administrative Office of the United States. The petition shall be presented to the sentencing judge. The sentencing judge shall determine whether the petition shall be filed.
 - (2) The petition shall set forth the facts allegedly constituting the violation of probation or supervised release. The petition shall also seek either a summons or an arrest warrant, modification of the terms of release, or no action.
 - (3) A petition ordered filed shall be served upon the probationer or releasee, the attorney for the government, and last known counsel of record except that in all cases in which prior counsel was appointed pursuant to the Criminal Justice Act, the Office of the Federal Public Defender shall be served in lieu of service upon prior counsel. ~~Unless~~ **When** the court orders an arrest warrant **to** be issued, the petition shall be served

upon the probationer or releasee after arrest, but in no event later than the initial appearance.

(b) Disclosure of Evidence.

The probation officer shall, without further request by the probationer, or releasee, or his/her counsel, disclose to the probationer or releasee or his/her counsel, all evidence against the probationer or releasee regarding the violations contained in the petition, including any potential oral statement and any potentially exculpatory material. Any information disclosed by the probation officer to an attorney for the government shall be promptly disclosed by the probation officer to probationer or releasee or to his/her counsel.

(c) Recommendation for Revocation of Probation or Supervised Release.

If after a hearing the defendant is found to have violated the terms of probation or supervised release, the probation officer may make a recommendation to the court. The reasons supporting the recommendation shall be disclosed to the parties if such reasons are evidence against the probationer or releasee, as shall any response by the probation officer to recommendations by counsel.

(d) Request for Modification of the Terms of Probation or Supervised Release.

No terms of probation or supervised release shall be modified upon a waiver of counsel by the probationer or releasee unless and until the probationer or releasee shall have consulted with counsel regarding the advisability of waiving counsel. Any such waiver of counsel must certify that the probationer or releasee consulted with counsel prior to executing such waiver. In the alternative, waiver of counsel may be made by the probationer or releasee before a magistrate judge.

LR Cr P 44.1. Admission of Attorneys

(a) Admission as Member of Bar or Court.

Any person who is admitted to practice before the Supreme Court of Appeals of West Virginia and who is in good standing as a member of its bar is eligible for admission as a member of the bar of this court. An eligible attorney may be admitted as a member of the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the register of attorneys with the person admitted. If the motion for admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorneys' register, and pay the clerk the admission fee. Once admitted under this provision, the person need not have an office for the practice of law in West Virginia to appear and practice in this court.

Any person who has been subject to disciplinary suspension or disbarment by the West Virginia Supreme Court of Appeals but has been readmitted to practice by the Supreme Court and is in good standing as a member of its bar, is eligible for re-admission as a member of the bar of this court. The attorney may be re-admitted as a member of the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the register of attorneys with the person re-admitted. If the motion for re-admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorney's register, and pay the clerk the admission fee.

(b) Sponsorship of Visiting Attorneys by Members of Court.

The Sponsoring Attorney must be a member of the bar of this court, have an office for the practice of law in West Virginia, and practice law primarily in West Virginia.

(c) Appearance by Assistant United States Attorneys and Assistant Federal Public Defenders.

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

(d) Appearance by Federal Government Attorneys.

Federal government attorneys who are not members of the bar of this court need not complete the Statement of Visiting Attorney. In cases where the United States Attorney is associated with other government attorneys in proceedings involving the Federal government, the United States Attorney (except in student loan collection cases), in addition to other Federal government attorneys, shall sign all pleadings, notices, and other papers filed and served by the United States. All pleadings, notices, and other papers involving the Federal government may be served on the United States Attorney in accordance with the service requirements of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

LR Cr P 44.2. Legal Assistance by Law Students

(a) Written Consent.

With the written consent of an indigent and his or her attorney of record, an eligible law student may appear on behalf of that indigent. With the written consent of the United States Attorney or his or her representative, an eligible

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

(b) Responsibilities of Attorneys of Record.

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

(c) Eligibility Requirements.

To be eligible to appear pursuant to this rule, the law student must:

- (1) be enrolled in a law school approved by the American Bar Association;
- (2) have successfully completed legal studies for at least 4 semesters, or the equivalent if the school is on some basis other than a semester basis;
- (3) be certified by the dean of his or her law school as being of good character and competent legal ability. The dean's certification shall be filed with the clerk. This certification may be withdrawn by the dean at any time without notice or hearing and without any showing of cause by notifying the clerk in writing, or it may be terminated by the court at any time without notice of hearing and without any showing of cause. Unless withdrawn or terminated, the certification shall remain in effect for 18 months after it has been filed with the clerk or until the law student has been admitted as a permanent member of the bar of this court, whichever is earlier;
- (4) certify in writing to the clerk that he or she has read ~~the Code of Professional Conduct of the American Bar Association~~ the Rules of Professional Conduct and the Standards of Professional Conduct promulgated and adopted by the Supreme Court of Appeals of West Virginia;

- (5) be introduced to the court by a permanent member of the bar of this court; and
- (6) neither ask for nor receive any compensation or remuneration of any kind for services from the party assisted, but this shall not prevent an attorney, legal services program, law school, public defender agency, the State of West Virginia, or the United States from paying compensation to the law student, nor from making appropriate charges for such services.

LR Cr P 44.4. Withdrawal and/or Termination of Representation

No attorney who has entered an appearance in any criminal action shall withdraw the appearance or have it stricken from the record, except by order. **A defense attorney in any criminal case shall continue the representation until relieved by order of this court or the Court of Appeals. A motion to withdraw shall be accompanied by a notice of appearance of substitute counsel. In the absence of the appearance of substitute counsel, a motion to withdraw shall set forth sufficient information to enable the court to rule.**

LR Cr P 44.7. Code of Professional Conduct

In all appearances, actions and proceedings within the jurisdiction of this court, attorneys shall conduct themselves in accordance with the Rules of Professional Conduct and the Standards of Professional Conduct promulgated and adopted by the Supreme Court of Appeals of West Virginia, ~~and the Model Rules of Professional Conduct published by the American Bar Association. Judicial officers of this court must comply with the Code of Conduct for United States Judges adopted by the Judicial Conference of the United States; judiciary employees of this court must comply with the Code of Conduct for Judicial Employees, also adopted by the Judicial Conference.~~

LR Cr P 46.1. Release from Custody

- (a) General Requirements. Every bond must be executed by the defendant and principal obligor or one or more qualified sureties, if applicable, as provided in this rule.
- (b) Corporate Sureties.
 - (1) A corporate surety must be qualified to write bonds under 31 U.S.C. §§ 9301–9309 and approved by the Secretary of the Treasury of the United States.

(2) The representative of the corporate surety that signs the bond must attach to the bond a power of attorney that establishes the representative's authority to bind the corporate surety.

(c) Real-Property Bond.

(1) A person may serve as a surety on a real-property bond only by court order. A person seeking permission to serve as a surety on a real property bond must:

(A) offer as security real property located in the State of West Virginia, or other property as approved by a judge of this court, of an unencumbered value equal to or greater than the stated amount of the bond;

(B) be competent to convey the real property; and

(C) submit an affidavit and supporting documents including: (i) a legal description of the real property; (ii) a complete list of all encumbrances and liens on the real property; (iii) a current appraisal of the real property by a qualified appraiser; (iv) a waiver of inchoate rights; (v) a certification that the real property is not exempt from execution; and (vi) proof of payment of property taxes.

(2) Within 14 days after the court approves the real-property bond, the surety must file with the court a copy of a notice of encumbrance filed by the surety with the county recorder or registrar of titles that identifies the bond as an encumbrance on the real property.

(3) A real-property bond will be released only by court order.

(d) Cost Bonds. The court may, on motion or on its own, order a party to file a bond or other security for costs in an amount, and subject to conditions, specified by the court.

(e) Cash bonds. Deposit of cash bonds is governed by LR Civ P 67.1. Withdrawal of cash bonds is governed by LR Civ P 67.2.

(f) Personal Recognizance Bond. On a personal recognizance bond, the defendant promises to comply with all conditions imposed by the court. A defendant that fails to comply with a condition or fails to appear will be subject to penalties as authorized by statute.

(g) Objections. Any party may object to the issuance of a bond.

(h) All bonds must receive court approval.

LR Cr P 49.2. Filing by Facsimile or Electronic Means

- (a) The clerk's office will not accept any facsimile transmission for filing unless ordered by the court.
- (b) Pursuant to FR Cr P 49(d), the clerk's office will accept pleadings or documents filed, signed or verified by electronic means that are consistent with the technical standards, if any, established by the Judicial Conference of the United States. A pleading or document filed by electronic means in compliance with this Rule constitutes a written paper for the purpose of applying these Rules and the Federal Rules of Criminal Procedure. All electronic filings shall be governed by the court's Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means for Criminal Cases, the provisions of which are incorporated by reference, and which may be amended from time to time by the court.
- (c) Documents filed by an attorney must include the attorney's registration number. Attorneys who are licensed in West Virginia must provide their West Virginia license number as their attorney-registration number. Visiting Attorneys licensed in a state other than West Virginia must provide the state of licensure and the license number as their attorney-registration number.
- (d) Service of Documents through the Court's Electronic Transmission Facilities: A party may serve a paper under FR Cr P 49(b) by using the court's electronic transmission facilities in accordance with the court's Administrative Procedures for Electronic Case Filing. If a document is served electronically, the notice of electronic filing generated by the court's electronic transmission facilities constitutes a certificate of service with respect to those persons to whom electronic notice of the filing is sent, and no separate certificate of service need be filed with respect to those persons.

Because the electronic notification also identifies parties and/or attorneys that are NOT registered users of the system, the filer is responsible for serving copies of pleadings on unregistered users by other means. A certificate of service must be electronically filed with the Court when a document is served by other than electronic means.

LR Cr P 57.1. Courthouse Security

- (a) Entry of Federal Courthouse Buildings.

All persons wishing to enter a federal building housing a United States Court within the Southern District of West Virginia (the building) must first properly

clear the security screening post located in the main lobby at each facility. Court security officers staff the security screening post during normal business hours. The purpose for the security screening post is to ensure that no weapons, including guns, knives, explosives or other items that are deemed to be a possible weapon, are brought into the building. Any person refusing to submit to such inspection, including inspection of all carried items, shall be denied entrance to the building.

(b) Persons Requiring Access.

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

(c) Weapons.

The United States Marshal and Deputy United States Marshals may possess and oversee possession of firearms or other weapons in the building. Only members of the United States Marshals Service and those specifically designated by that service may possess firearms and other weapons in the space occupied and controlled by this court.

(d) Identification Card.

All employees will use an identification card issued by the employee's agency. Employees will be required to display or show the identification card to the court security officers to pass through the security screening post. If an employee fails to present their issued identification card, he or she must successfully pass through the security screening post.

(e) Wireless Communication Devices.

Only attorneys, court reporters, probation officers, and court interpreters conducting official business at a federal courthouse in a federal courthouse in this District are permitted limited use of wireless communication devices, ~~such as cellular telephones, pagers, personal data assistants (PDAs), BlackBerrys, and laptop computers.~~ Audio or video recording or the taking of any photographs with such devices while in the courthouse is prohibited. Wireless communication devices must be turned off or rendered silent while in a courtroom. ~~Cellular telephones and pagers must be programmed so they will not emit any audible noise while in a courtroom. PDAs, BlackBerrys and laptop computers may be used to assist attorneys in their cases. The use of wireless~~

~~communication devices for purposes of transmitting and/or receiving data while in a courtroom is prohibited. The use of wireless communication devices shall not be disruptive to court proceedings.~~ Wireless communication devices are not permitted in a grand jury room while the grand jury is in session unless utilized by an agent or representative of the United States Attorney's Office for evidence presentation. Each judicial officer may modify this rule as circumstances warrant.

Any other individual who brings a wireless communication device into a federal courthouse in this District, excepting federal employees, elevator response personnel and PBX telephone technicians, will be required by the court security officers to deposit such device in storage facilities as provided at the front entry of the building, to be retrieved upon leaving the courthouse.

Appropriate signage will be posted outside the courthouse and at the security posts, published on the court's external web site and in notices provided to jurors.

The court authorizes the United States Marshal to allow wireless communication devices for emergency situations as deemed appropriate.

ATTACHMENT 3

**Local Rules of Procedure
Amended June 8, 2017**

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA



LOCAL RULES OF PROCEDURE
effective December 1, 2009
amended February 1, 2011
amended June 30, 2011
amended November 18, 2013
amended June 8, 2017



UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES DISTRICT JUDGES

Robert C. Chambers, Chief Judge, Huntington, West Virginia
John T. Copenhaver, Jr., Judge, Charleston, West Virginia
Joseph R. Goodwin, Judge, Charleston, West Virginia
Thomas E. Johnston, Judge, Charleston, West Virginia
Irene C. Berger, Judge, Beckley, West Virginia

UNITED STATES SENIOR DISTRICT JUDGES

David A. Faber, Senior Judge, Bluefield, West Virginia

UNITED STATES MAGISTRATE JUDGES

Omar J. Aboulhosn, Beckley and Bluefield, West Virginia
Cheryl A. Eifert, Huntington, West Virginia
Dwane L. Tinsley, Charleston, West Virginia

CLERK OF U. S. DISTRICT COURT

Teresa L. Deppner, Charleston, West Virginia

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I. LOCAL RULES OF CIVIL PROCEDURE

LR Civ P 3.1. Assignment of Cases

Cases filed shall be assigned by the clerk to a judge at the direction of the Chief Judge or through the use of random electronic methods. The clerk shall not reveal the case assignment allocation or sequence of the electronic method to anyone, unless ordered to do so by a district judge. A record of all assignments made shall be kept by the clerk.

LR Civ P 3.2. Reassignment, Referral and Intra-District Transfer of Cases

The clerk is authorized to sign orders to effectuate the reassignment, referral or intra-district transfer of cases when needed and as directed by a judge of this court.

LR Civ P 3.3. Assignment of Urgent Cases or Matters

In matters requiring urgent and immediate attention by a judge and for which a district judge has not yet been assigned, such as a complaint and motion for temporary restraining order or injunctive relief, the filing party shall contact the clerk after filing the document(s). The clerk, after consulting with the Chief Judge, shall forthwith assign such urgent case or matter to an available judge in the District.

LR Civ P 3.4. Local Filing Requirements

(a) Civil Docket Cover Sheet.

A civil docket cover sheet, in a form supplied by the clerk, must be completed and submitted with any complaint commencing an action or any notice of removal from state court. Each cover sheet must cite the title and section of the United States Code or relevant statute pursuant to which the action or notice is filed. A cover sheet is for administrative purposes only.

(b) State Court Docket Sheet.

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

LR Civ P 3.5. Proceedings without Prepayment of Fees and Costs

Application to proceed without prepayment of fees and costs shall be made upon a form available from the clerk and on the court's web site.

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

LR Civ P 4.1. Waiver of Service

A plaintiff who intends to obtain service of summons on a defendant under the provisions of FR Civ P 4(d)(1) shall, within 14 days of the filing of the complaint, dispatch the notice and request through first-class mail or other reliable means to the defendant and file a copy thereof with the clerk. If a plaintiff fails to dispatch and file the notice and request within the period specified, service of the summons shall be effectuated by means other than by waiver of service unless otherwise ordered. A plaintiff who dispatches a notice and request under the provisions of FR Civ P 4(d)(1) shall allow the defendant not less than 30 days nor more than 45 days from the date on which the notice and request is sent, or not less than 60 days nor more than 75 days from that date if the defendant is addressed outside any judicial district of the United States, within which to return the waiver of service. The plaintiff shall file the waiver of service with the clerk within 7 days after its return.

LR Civ P 4.1.1. Initiation of Civil Contempt Proceedings

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

LR Civ P 4.1.2. Issues; Trial by Jury

If the alleged contemnor puts in issue his or her alleged misconduct or the damages sought, he or she shall, upon demand, be entitled to have evidence taken, either before the court or before a master appointed by the court. When the alleged contemnor is entitled to a trial by jury, he or she shall make written demand therefor at least 7 days before the trial date; otherwise he or she will have waived a trial by jury.

LR Civ P 4.1.3. Order of the Court; Confinement of Contemnor

In the event the alleged contemnor is found to be in contempt of court, an order shall be entered:

- (a) reciting the verdict or findings of fact upon which the adjudication is based;
- (b) setting forth the amount of the damages to which the complainant is entitled;
- (c) fixing the fine, if any, imposed by the court (with the fine to include the damages) and naming the person to whom the fine shall be payable;
- (d) stating any other conditions necessary to purge the contempt; and
- (e) directing the arrest of the contemnor by the United States Marshal and his or her confinement until the performance of the conditions in the order and the payment of the fine, or until the contemnor is otherwise lawfully discharged.

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

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

LR Civ P 5.1. Filing Pleadings and Other Papers

(a) Filing of Papers.

Except as otherwise permitted or required by the Federal Rules, these local rules, or order, the original of all papers, not electronically filed, that must be filed with the court shall be filed at the clerk's office at the point of holding court in which the particular action or proceeding is docketed. In emergency situations, due to travel conditions, time limitations or other factors, filings may be made at any of the clerk's offices, in which event the papers so filed shall be forwarded by the receiving clerk's office to the clerk's office at the point of holding court in which the particular action or proceeding is docketed.

(b) Filing by Facsimile Transmission.

The clerk's office will not accept any facsimile transmission for filing unless ordered by the court.

(c) Filing by Electronic Means.

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

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

(d) Documents filed by an attorney must include the attorney's registration number. Attorneys who are licensed in West Virginia must provide their West Virginia license number as their attorney-registration number. Visiting Attorneys licensed in a state other than West Virginia must provide the state of licensure and the license number as their attorney-registration number.

(e) Service of Documents through the Court's Electronic Transmission Facilities: A party may serve a paper under FR Civ P 5(b)(2)(E) by using the court's electronic transmission facilities in accordance with the court's Administrative Procedures for Electronic Case Filing. If a document is served electronically, the notice of

electronic filing generated by the court's electronic transmission facilities constitutes a certificate of service with respect to those persons to whom electronic notice of the filing is sent, and no separate certificate of service need be filed with respect to those persons.

Because the electronic notification also identifies parties and/or attorneys that are NOT registered users of the system, the filer is responsible for serving copies of pleadings on unregistered users by other means. **A certificate of service should be electronically filed with the Court anytime a document must be served by other than electronic means.**

LR Civ P 5.2.1. Privacy Protection for Filings Made with the Court

(a) Documents.

In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002 and its amendments, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all pleadings filed with the court, including exhibits thereto, whether filed, electronically or in paper, unless otherwise ordered by the court.

- (1) Social Security Numbers. If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.
- (2) Names of Minor Children. If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- (3) Dates of Birth. If an individual's date of birth must be included in a pleading, only the year should be used.
- (4) Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal or may file a reference list under seal. This document shall be retained by the court as part of the record. The court will require the party to file a redacted copy for the public file.

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

(b) Transcripts of Hearings.

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

LR Civ P 6.1. Definitions

For the purpose of these Local Rules of Civil Procedure, “judicial officer” means a district judge or, when authorized by a district judge, a statute, the Federal Rules of Civil Procedure, or these Local Rules of Civil Procedure, a magistrate judge.

LR Civ P 7.1. Motion Practice

(a) Motions and Supporting Memoranda.

- (1) General. All motions shall be concise, state the relief requested precisely, and be filed timely but not prematurely. Copies of depositions (or pertinent portions thereof), admissions, documents, affidavits, and other such materials or exhibits upon which the motion relies shall be attached to the motion, not the supporting memorandum.
- (2) Length. A memorandum of not more than 20 pages in length must accompany the following types of motions: (1) to intervene; (2) to transfer; (3) to vacate; (4) to reconsider; (5) for rehearing; (6) for attorney fees; (7) for clarification; (8) to realign parties; (9) to consolidate; (10) to recuse; (11) to dismiss; (12) to remand; (13) for summary judgment; (14) for sanctions; (15) for default judgment; (16) for declaratory judgment; (17) to compel arbitration; (18) for injunctive relief or for a temporary restraining order; (19) for a new trial, to reconsider or to alter or amend judgment; (20) to reinstate or reopen a civil action; (21) to substitute a party; (22) to stay; (23) to seal; or (24) to show cause.

In addition to these motions, the court has discretion to direct a movant to submit a memorandum to accompany any other type of motion. If a movant

deems appropriate, a memorandum of not more than 20 pages in length may accompany any other type of motion even if not required by this rule or the court. Any response and reply memoranda shall adhere to the same page limitation.

Motions to exceed the page limitation will be denied absent a showing of good cause.

If a memorandum is not submitted as required by this rule or by the court, the motion will be denied without prejudice.

- (3) Paper Size, Line Spacing and Margins. All memoranda must be on 8½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.
- (4) Typeface and Type Styles. Either a proportionally spaced or monospaced face may be used. A proportionally spaced face must be 12-point or larger. A monospaced face may not contain more than 10½ characters per inch. The font must be clearly legible as determined by the judicial officer to whom the motion is addressed. The following fonts are presumed legible: Times New Roman, Courier New, Arial, Century Gothic, Garamond, Georgia, and Century Schoolbook.
- (5) Courtesy Copies of Memoranda. When electronically filing documents with the clerk's office, a paper courtesy copy to the assigned judicial officer is not required except where any motion, memorandum, response, or reply, together with documents in support thereof, is 50 pages or more in length, or where any administrative record is 75 pages or more in length.
- (6) Motions to Dismiss. Motions to dismiss shall be filed as a separate pleading.
- (7) Filing Deadlines for Response and Reply Memoranda. Memoranda and other materials in response to motions shall be filed and served on opposing counsel and unrepresented parties within 14 days from the date of service of the motion. Any reply memoranda shall be filed and served on opposing counsel and unrepresented parties within 7 days from the date of service of the memorandum in response to the motion. Surreply memoranda shall not be filed except by leave of court. These times for serving memoranda may be modified by the judicial officer to whom the motion is addressed.
- (8) Referral to Magistrate Judge. Non-dispositive discovery and pretrial motions relating to discovery practice are referred to a magistrate judge

unless otherwise ordered by the district judge assigned to the case. All other non-dispositive motions and any dispositive motion may be referred to a magistrate judge by the district judge assigned to the case.

- (9) Courtroom Technology: If any courtroom technology is required for a hearing, counsel must request any such technology by filing a certification that the court's technology staff has been notified. The certification regarding such notification shall be filed with the clerk no later than 7 days before the scheduled commencement of the hearing.

LR Civ P 9.1. Scope and Assignment

- (a) Scope.

These rules apply to actions in which an individual seeks district court review of a final decision of the Commissioner of Social Security (Commissioner), pursuant to 42 U.S.C. § 405(g).

- (b) Appeals of Social Security Claims.

When an appeal of a Social Security claim is filed, it will be referred to the magistrate judge. The clerk will provide to each party and/or attorney a "Consent to Proceed Before U.S. Magistrate Judge" form along with a notice to return the completed consent form within 21 days. If the United States Attorney offers to consent in all Social Security appeals by providing the clerk with a letter to that effect, it will not be necessary for the Commissioner of Social Security to complete the consent form; a copy of the letter will be placed in the file when the plaintiff's consent is filed. When the parties in a Social Security appeal consent to proceed before a magistrate judge, it is not necessary for a district judge to sign an order of reference.

LR Civ P 9.2. Initiation of Action - Complaint

A plaintiff shall file a complaint to initiate an action to seek review of a final decision of the Commissioner pursuant to 42 U.S.C. § 405(g) by:

- (a) completing and filing the form "Complaint for Review of the Decision of the Commissioner of Social Security" appended to these Rules, or
- (b) filing a complaint that contains the following information:
 - (1) the street address, city, county, and state of the plaintiff's residence;

- (2) the plaintiff's Social Security number(s), date(s) of birth, names of minor children (with cases involving children under age eighteen, both the parent or guardian and the child claimant);
- (3) the date of the decision of the Appeals Council;
- (4) an allegation that the decision of the Commissioner is not supported by substantial evidence and/or a description of other error alleged by the plaintiff;
- (5) a demand for the specific relief claimed; and
- (6) the address, telephone, facsimile number, and e-mail address of plaintiff's attorney.

If the plaintiff is not represented by an attorney, the plaintiff shall also provide the plaintiff's telephone number and facsimile number and e-mail address, if any.

LR Civ P 9.3. Commissioner's Response

- (a) Filing and Service.

No later than 60 days after the plaintiff serves the summons and complaint, the Commissioner shall file and serve on the plaintiff either:

- (1) a motion and memorandum in support as described in LR Civ P 9.5(a)(1),
or
- (2) an answer alleging generally that the Commissioner's decision is supported by substantial evidence and a certified copy of the administrative transcript.

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

- (b) Privacy.

In addition to the docket sheet, the public may view an opinion, order, judgment, or other disposition of the court in Social Security cases via remote internet access. However, the remainder of the Social Security case files, including the Administrative records, will be available only to the court and to the parties through their counsel via the court's remote electronic filing system. Social Security files are still available at the courthouse in their entirety to the general public.

- (c) Form.

Social Security case documents are exempt from the court's civil case redaction requirements.

- (d) Discovery.

Discovery is not permitted in these cases.

- (e) Material Defect in Administrative Transcript.

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

LR Civ P 9.4. Briefs

- (a) Time for Filing and Service.

The plaintiff shall file and serve a brief in support of the complaint no later than 30 days after the date of service of the certified (or supplemental) administrative transcript. The Commissioner shall file and serve a brief in support of the defendant's decision no later than 30 days after the date of service of the plaintiff's brief. The plaintiff may file and serve a reply brief no later than 14 days after the date of service of the Commissioner's brief.

- (b) Form of Briefs.

The plaintiff's brief shall contain a statement of issues, a statement of the facts, and an argument on each issue asserted. The statement of facts shall cite by transcript page number to the evidence on which the plaintiff relies. The argument on each issue shall identify the findings which are alleged not to be supported by substantial evidence, and other errors which are alleged to have been made, with citations to the pertinent transcript pages and to relevant regulations, rulings, and cases. The Commissioner's brief shall contain a statement of facts and an argument in response to each issue raised by the plaintiff. Opening and responding briefs shall not exceed 20 double-spaced pages and the reply brief shall not exceed 10 double-spaced pages, except with leave of court. Neither a table of contents nor a table of authorities is required.

LR Civ P 9.5. Motions to Dismiss or Remand

- (a) Time for Filing by Commissioner.

No later than 60 days after the plaintiff serves the summons and complaint, the Commissioner may file and serve either:

- (1) a motion to dismiss pursuant to FR Civ P 12 and memorandum in support, or
- (2) a motion to remand to the Commissioner for further action pursuant to either sentence four or sentence six of 42 U.S.C. § 405(g).

- (b) Time for Filing by Plaintiff.

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

- (c) Briefs.

The time periods for filing and serving responses and replies to motions to dismiss or to remand are the same as for briefs.

LR Civ P 9.6. Petition or Motion for Attorney's Fees

The time limits set forth in FR Civ P 54(d) do not apply to petitions or motions for attorney's fees in Social Security cases. If the plaintiff seeks attorney's fees pursuant to the Equal Access to Justice Act, a motion for such fees shall be filed within 90 days of the entry of final judgment, pursuant to 28 U.S.C. § 2412(d) and served on the United States Attorney. If the plaintiff seeks attorney's fees pursuant to 42 U.S.C. § 406(b), such motion for fees shall be filed promptly after the plaintiff receives notice of the amount of past-due benefits, shall be itemized, shall be limited to the time expended in the representation of the plaintiff in federal court, and shall be served on the United States Attorney.

LR Civ P 9.7. Electronic Filing

Electronic filing of documents is required. In addition to the electronic filing, a paper copy of the certified administrative transcript (and certified supplemental administrative transcript, if any) shall be provided by the Commissioner to the chambers of the magistrate judge assigned to the action when the answer is filed.

LR Civ P 9.8. Oral Argument

The court will generally decide Social Security appeals on the pleadings and briefs, without oral argument. A judicial officer may hear oral argument, either *sua sponte* or at the request of either party.

LR Civ P 9.9. Other Local Rules in Conflict

These Rules governing Social Security appeals take precedence over other Local Rules in conflict with them.

LR Civ P 11.1. Verification of Pleadings

Attorneys for parties in proceedings in this court shall not verify pleadings or other papers except where required by statute or rule. The court may grant exceptions to this rule for good cause. Violations of this rule will not void or impair any pleading, document or paper to the detriment of the parties.

LR Civ P 11.2. Stipulations

Unless otherwise ordered, stipulations under the Federal Rules of Civil Procedure and these Local Rules of Civil Procedure must be in writing, signed by the parties making them or their counsel, and promptly filed with the clerk.

LR Civ P 12.1. Extensions of Answer Date

Unless otherwise ordered, the time to answer or otherwise respond to a complaint may be extended by stipulation. For purposes of LR Civ P 16.2 only, the stipulation shall constitute an appearance by any defendant who is a party to it. An extension by stipulation will not affect other deadlines established by the Federal Rules of Civil Procedure, these Local Rules of Civil Procedure, or the court.

LR Civ P 16.1. Scheduling Conferences

(a) Order and Notice.

By entry of an Order and Notice, a judicial officer shall establish the date, time, and place of the scheduling conference, and inform the parties of their right to consent to proceed before a magistrate judge under FR Civ P 73(b). The clerk shall transmit a notice of the conference to all counsel then of record and to each then

unrepresented party for whom an address is available from the record. The notice shall also establish the date by which a meeting of the parties must be held pursuant to FR Civ P 26(f) and paragraph (b) of this rule, and the date by which a written report on the meeting of the parties must be submitted to the court pursuant to FR Civ P 26(f) and paragraph (c) of this rule.

(b) **Obligation of the Parties to Meet.**

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

- (1) consider, consistent with paragraph (d) of this rule, whether the case is complex and appropriate for monitoring in an individualized and case-specific manner through one or more case-management conferences, and, if it is, to propose for the court's consideration 3 alternative dates and times for the first conference;
- (2) agree, if they can, upon the disputed facts that have been alleged with particularity in the pleadings;
- (3) consider consenting to trial by a magistrate judge;
- (4) consider alternative dispute resolution processes such as the one in LR Civ P 16.6; and
- (5) in cases involving the discovery of electronically stored information ("ESI"), address matters set forth in LR Civ P 26.5(c).

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

(c) **Written Report on the Meeting of the Parties; Cancellation of Scheduling Conference.**

Counsel and all unrepresented parties who were present or represented at the meeting are jointly responsible for submitting to the court, no later than 14 days before the date set for the scheduling conference, a written report on their meeting. The written report submitted by the parties shall follow a form available from the clerk and on the court's web site.

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

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

(d) Conduct of Scheduling Conferences.

Except in a case in which a scheduling conference has been cancelled pursuant to paragraph (c) of this rule, a judicial officer shall convene a scheduling conference, which may be held by telephone, within the mandatory time frame specified in paragraph (a) of this rule regardless of whether the parties have met pursuant to paragraph (b) of this rule or filed a written report pursuant to paragraph (c) of this rule.

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

At or following the scheduling conference if one is held, or as soon as practicable after the date fixed for filing the written report if the scheduling conference is cancelled, the judicial officer shall determine whether the case is complex or otherwise appropriate for careful and deliberate monitoring in an individualized and case-specific manner. The judicial officer shall consider assigning in the scheduling order any case so categorized to a case-management conference or series of conferences under LR Civ P 16.2. If the case is so assigned, the scheduling order, notwithstanding paragraph (e) of this rule, may be limited to establishing time limits and addressing other matters that should not await the first case-management conference. The factors to be considered by the judicial officer in determining whether the case is complex include:

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

- (4) whether the case belongs to those categories of cases that involve little or no discovery,
 - (A) ordinarily require little or no additional judicial intervention, or
 - (B) generally fall into identifiable and easily managed patterns;
 - (5) the extent to which individualized and case-specific treatment will promote the goal of reducing cost and delay; and
 - (6) whether the public interest requires that the case receive more intense judicial attention.
- (e) Scheduling Orders.

Following the scheduling conference, if one is held, or as soon as practicable after the date fixed for filing the written report if the scheduling conference is cancelled, but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant, the judicial officer shall enter a scheduling order pursuant to FR Civ P 16(b).

- (f) Modification of Scheduling Order.
- (1) Time limits in the scheduling order for the joinder of other parties, amendment of pleadings, filing of motions, and completion of discovery, and dates for conferences before trial, a final pretrial conference, and trial may be modified for good cause by order.
 - (2) Subject to subparagraph (3), stipulations to modify disclosure or discovery procedures or limitations will be valid and enforced if they are in writing, signed by the parties making them or their counsel, filed promptly with the clerk, and do not affect the trial date or other dates and deadlines specified in subparagraph (1).
 - (3) A private agreement to extend discovery beyond the discovery completion date in the scheduling order will be respected by the court if the extension does not affect the trial date or other dates and deadlines specified in subparagraph (1). A discovery dispute arising from a private agreement to extend discovery beyond the discovery completion date need not, however, be resolved by the court.

(g) Categories of Actions Exempted.

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

- (1) habeas corpus cases and motions attacking a federal sentence;
- (2) procedures and hearings involving recalcitrant witnesses before federal courts or grand juries pursuant to 28 U.S.C. § 1826;
- (3) actions for injunctive relief;
- (4) review of administrative rulings;
- (5) Social Security cases;
- (6) petitions pursuant to 42 U.S.C. § 1983 and “Bivens-type” actions in which plaintiff is unrepresented by counsel;
- (7) condemnation actions;
- (8) bankruptcy proceedings appealed to this court;
- (9) collection and forfeiture cases in which the United States is plaintiff and the defendant is unrepresented by counsel;
- (10) Freedom of Information Act proceedings;
- (11) certain cases involving the assertion of a right under the Constitution of the United States or a federal statute, if good cause for exemption is shown;
- (12) post-judgment enforcement proceedings and debtor examinations;
- (13) enforcement or vacation of arbitration awards;
- (14) civil forfeiture actions;
- (15) student loan collection cases;
- (16) actions which present purely legal issues, require no resolution of factual issues, and which may be submitted on the pleadings, motions and memoranda of law; and

- (17) actions filed pursuant to the Employment Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.*; and
- (18) such other categories of actions as may be exempted by standing order.

LR Civ P 16.2. Case-Management Conferences in Complex Cases

(a) Conduct of Case-Management Conferences.

Case-management conferences shall be presided over by a judicial officer who, in furtherance of the scheduling order required by LR Civ P 16.1, may:

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

(b) Obligation of Counsel to Confer.

The judicial officer may require counsel and unrepresented parties to confer before a case-management conference and prepare a statement containing:

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

This statement is to be filed no later than 7 days before the case-management conference.

- (c) Number of Case-Management Conferences and Conference Orders.

The judicial officer may convene as many case-management conferences as appropriate. After a case-management conference, the judicial officer shall enter an order reciting the action taken. The order shall control the subsequent course of the action and may be modified in the same manner as a scheduling order under LR Civ P 16.1(f).

LR Civ P 16.3. Pretrial Conferences in Non-Complex Cases

Abrogated.

LR Civ P 16.4. Authority Regarding Settlement, Stipulations and Admissions at Conferences

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

LR Civ P 16.5. Sanctions

Counsel and parties are subject to sanctions for failures and lack of preparation specified in FR Civ P16(f) respecting pretrial conferences or orders and are subject to the payment of reasonable expenses, including attorneys fees, as provided in FR Civ P 37(g) for failure to participate in good faith in the development and submission of a proposed discovery plan as required by FR Civ P 26(f) and LR Civ 16.1.

LR Civ P 16.6. Mediation

- (a) Cases to be Mediated.

The judicial officer may order mediation *sua sponte* or at the request of any party. When so ordered, the following provisions of this local rule shall control. The Southern District of West Virginia also supports the voluntary use of alternative dispute resolution. The parties are free to engage in mediation without court involvement so long as it does not interfere with court-ordered deadlines.

(b) Motion for Exception to Mandatory Mediation.

An attorney or a *pro se* party may file a motion for leave not to engage in mediation. The presiding judicial officer may grant the motion for good cause shown.

LR Civ P 16.6.1. Timing of Mediation

Mediation shall take place at any time ordered by the court. The parties may consult with each other and agree upon a mutually convenient date, time, and place for the mediation and ask the court to approve such arrangements.

LR Civ P 16.6.2. Selection of Mediator; Notice of Nomination

The parties are expected to agree upon a mediator, the amount of the mediator's fee, and the responsibility for payment. If the parties are unable to agree on a mediator, then the parties shall promptly notify the presiding judicial officer. The judicial officer may then appoint a mediator, set the amount of the mediator's fee, and assign responsibility for payment. The parties may request that a judicial officer (who is not the presiding judicial officer) conduct the mediation. Such requests are particularly appropriate in complex cases or in cases in which a party is financially unable to bear its proportionate share of the mediation expense.

LR Civ P 16.6.3. Appointment of Mediator

Abrogated.

LR Civ P 16.6.4. Attendance at Mediation

Unless the court directs otherwise, any party or his/her/its representative who is knowledgeable about the facts of the case, and who has full authority to negotiate on behalf of the party and to approve or recommend a settlement, shall attend the entire mediation in person or, with prior approval of the judicial officer, by telephone or other electronic means such as video-conference.

LR Civ P 16.6.5. Mediation Statements; Confidentiality

The mediator may require the submission of written mediation statements. If the mediator does not require submission of written mediation statements, any party may submit a written mediation statement. Mediation statements submitted in writing to the mediator are confidential. All communications made during the mediation are confidential.

LR Civ P 16.6.6. Impartiality of Mediator

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

LR Civ P 16.6.7. Compensation of Mediator

Mediators will be compensated at the rate established when the mediator was selected, with payment as agreed by the parties or ordered by the presiding judicial officer.

LR Civ P 16.6.8. Notification to Judicial Officer; Report of Mediator

Immediately upon the completion of mediation resulting in the settlement of all or part of a case, the parties shall notify the chambers of the presiding judicial officers. Within 7 days of the close of mediation, the mediator will file with the clerk a report which states that all or part of the case was settled (specifying which part of the case settled) or that it was not settled. If all or part of the case was settled, the parties shall, at the mediation, place in writing the terms of the settlement, and all participants shall sign the terms of the settlement, with the mediator retaining the original.

LR Civ P 16.7. Final Pretrial and Settlement Conferences; Pretrial Order

- (a) Obligation of Counsel to Meet; Pretrial Disclosures Under FR Civ P 26(a)(3).

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

(b) Proposed Pretrial Order.

Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, counsel and unrepresented parties shall file, no later than 7 days prior to the final pretrial conference, a proposed pretrial order setting forth:

- (1) the pre-trial disclosures required by FR Civ P 26(a)(3) and any objections thereto;
- (2) contested issues of law requiring a ruling before trial;
- (3) a realistic and brief statement by counsel for plaintiff(s) and third-party plaintiff(s) of essential elements which must be proved to establish any meritorious claim remaining for adjudication and the damages or relief sought, accompanied by supporting legal authorities; and by counsel for defendant(s) and third-party defendant(s) of essential elements which must be proved to establish any meritorious defense(s), accompanied by supporting legal authorities. Corresponding statements must also be included for counterclaims and cross-claims;
- (4) in all cases, for each party, a brief summary of the material facts and theories of liability or defense;
- (5) in all cases, for each party, a single listing of the contested issues of fact; and a single listing of the contested issues of law, together with case and statutory citations;
- (6) stipulations;
- (7) suggestions for the avoidance of unnecessary proof and cumulative evidence;
- (8) suggestions concerning any need for adopting special procedures for managing potentially difficult or protracted aspects of the trial that may involve complex issues, multiple parties, difficult legal questions or unusual proof problems;
- (9) a list of special voir dire questions, if any, that counsel request be asked of the jury panel;
- (10) a statement setting forth a realistic estimate of the number of trial days required;

- (11) any courtroom technology requested for use at trial and a certification that the court's technology staff has been notified regarding such use no later than 7 days before the scheduled commencement of trial; and
- (12) any other matters relevant for pretrial discussion or disposition, including those set forth in FR Civ P 16.

(c) Final Pretrial Conference.

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

(d) Final Pretrial Order.

Following the final pretrial conference, the judicial officer shall enter a final pretrial order, which shall be modified only to prevent manifest injustice.

(e) Final Settlement Conference.

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

(f) Settlement Before Trial.

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

LR Civ P 26.1. Control of Discovery

(a) Initial Disclosures Under FR Civ P 26(a)(1).

Unless otherwise ordered or stipulated by the parties, the disclosures required under FR Civ P 26(a)(1) shall be made no later than 30 days after the meeting required under FR Civ P 26(f).

(b) Disclosures Under FR Civ P 26(a)(2) Regarding Experts.

Unless otherwise ordered or stipulated by the parties, the making, sequence, and timing of disclosures under FR Civ P 26(a)(2) will be as follows:

- (1) the party bearing the burden of proof on an issue shall make the disclosures required by FR Civ P 26(a)(2)(A) and (B) for that issue to all other parties or their counsel no later than 60 days prior to the discovery completion date;
- (2) the party not bearing the burden of proof on an issue shall make the disclosures required by FR Civ P 26(a)(2)(A) and (B) for that issue to all other parties or their counsel no later than 30 days prior to the discovery completion date; and
- (3) all parties shall provide no later than 14 days prior to the discovery completion date the disclosures required by FR Civ P 26(a)(2)(A) and (B) if the evidence is intended solely to contradict or rebut evidence on the same issue identified by another party under FR Civ P 26(a)(2)(B).

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

(c) Further Discovery.

After the opportunities for discovery pursuant to the Federal Rules of Civil Procedure, stipulation of the parties, or order have been exhausted, any requests that the parties may make for additional depositions, interrogatories, or requests for admissions shall be by discovery motion.

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

LR Civ P 26.2. Uniform Definitions in Discovery Requests

(a) Incorporation by Reference and Limitations.

The full text of the definitions set forth in paragraph (c) of this rule is incorporated by reference into all discovery request, but shall not preclude:

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

(b) Effect on Scope of Discovery.

This rule does not broaden or narrow the scope of discovery permitted by the Federal Rules of Civil Procedure or these Local Rules.

(c) Definitions.

The following definitions apply to all discovery requests:

- (1) “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise);
- (2) “document” is synonymous in meaning and equal in scope to the usage of this term in FR Civ P 34(a). A draft or non-identical copy is a separate document;
- (3) “identify” when referring to a person means to give, to the extent known, the person’s full name and present or last known address. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person;
- (4) “identify” when referring to documents means to give, to the extent known, the
 - (A) type of document,
 - (B) general subject matter,
 - (C) author(s), addressee(s), and recipient(s), and

- (D) date the document was prepared;
- (5) “plaintiff,” “defendant,” a party’s full or abbreviated name, or a pronoun referring to a party, mean the party, and, where applicable, its officers, directors, employees, and partners. This definition does not impose a discovery obligation on any person who is not a party to the case;
- (6) “person” means any natural person or any business, legal or governmental entity or association; and
- (7) “concerning” means referring to, describing, evidencing, or constituting.

LR Civ P 26.3. Court Filings and Costs

- (a) Non-Filing of Discovery Materials Other than Certificates of Service.

Disclosures pursuant to FR Civ P 26(a)(1), (2) and (3), depositions upon oral examination or written questions, notices of receipt of depositions, interrogatories, requests pursuant to FR Civ P 34, requests for admissions, and answers and responses thereto shall not be filed unless ordered or required under these Local Rules of Civil Procedure. Certificates of service of discovery materials shall be filed. Unless otherwise stipulated or ordered, the party taking a deposition or obtaining any material through discovery is responsible for its custody, preservation and delivery to the court if needed or ordered, and the responsibility shall not terminate upon dismissal of any party while the action is still pending. The custodial responsibility of the dismissed party may be discharged by stipulation of the parties to transfer the custody of the discovered material to one or more of the remaining parties. If for any reason a party or concerned citizen believes that any of the named documents should be filed, an *ex parte* request may be made that the document be filed, stating the reasons therefor. The court may also order filing *sua sponte*. If relief is sought under FR Civ P 26(c) or 37, copies of the relevant portions of disputed documents shall be filed with any motion. If the moving party under FR Civ P 56 or the opponent relies on discovery documents, copies of the pertinent parts shall be filed with the motion or opposition.

- (b) Inspection of Documents and Copying Expense.

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

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

LR Civ P 26.4. Clawback Orders, Protective Orders, and Sealed Documents

- (a) Clawback Orders.

At the court's request, or if the parties jointly agree to the entry of an order governing the clawback of privileged or protected materials that are inadvertently disclosed, the parties should complete and submit one of the following orders, which are preferred by the court: Order Governing the Inadvertent Disclosure of Documents and Materials under Rule 502(b), available on-line at www.wvsd.uscourts.gov, or Order Governing the Inadvertent Disclosure of Documents and Materials under Rule 502(d), also available on-line. Motions seeking to modify the provisions of the approved clawback orders should be made sparingly and only for good cause.

- (b) Protective Orders.

To succeed on a motion for the entry of a protective order shielding information from dissemination, the movant or movants must demonstrate with specificity that (1) the information qualifies for protection under FR Civ P 26(c), and (2) good cause exists for restricting dissemination on the ground that harm would result from its disclosure. When filing a joint motion for the entry of a protective order, the movants shall complete and submit with the motion the court's on-line Protective Order found at www.wvsd.uscourts.gov. The court's on-line Protective Order is the preferred protective order in this district. Therefore, motions requesting modifications to the provisions of the court's Protective Order should be made sparingly and only for good cause.

- (c) Sealed Documents.

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

- (2) Submission. Unless otherwise authorized by law, a motion to seal shall be filed electronically pursuant to the Administrative Procedures for Electronic Case Filing and accompanied by a memorandum of law which contains:
 - (A) the reasons why sealing is necessary, including the reasons why alternatives to sealing, such as redaction, are inadequate;
 - (B) the requested duration of the proposed seal; and
 - (C) a discussion of the propriety of sealing, giving due regard to the parameters of the common law and First Amendment rights of access as interpreted by the Supreme Court and our Court of Appeals.

LR Civ P 26.5 Discovery of Electronically Stored Information

- (a) Prior to a Rule 26(f) conference, each party shall individually assess the likelihood that its ESI will play a role in discovery. When a party in possession of ESI reasonably anticipates, or should anticipate, that its ESI will play a significant role, the party shall complete the following tasks for discussion at the Rule 26(f) conference:
 - (1) determine how and where its ESI is stored; how it has been or can be preserved, accessed, retrieved, and produced; and any other issues to be discussed at the Rule 26(f) conference including the issues set forth in subparagraph (c) below; and
 - (2) identify a person or persons with knowledge about the ESI, with the ability to facilitate, through counsel, the preservation and discovery of ESI.
- (b) At the Rule 26(f) conference, counsel shall meet and confer about:
 - (1) the steps the parties have taken to preserve ESI;
 - (2) the anticipated scope of ESI discovery and the search protocol for locating responsive ESI, including methods to filter the data, such as using search terms or date ranges;
 - (3) procedures to deal with inadvertent production of privileged information;
 - (4) accessibility of ESI, including but not limited to the accessibility of back-up, deleted, archival, or historic legacy data;
 - (5) the media, format and procedures for preserving and producing ESI;

- (6) allocation of costs of preservation, production, and restoration (if possible and/or necessary) of any ESI;
- (7) the need for a designated resource person through who all issues relating to the preservation and production of ESI should be addressed;
- (8) the need for an Order setting out the ESI protocol; and
- (9) any other issues related to the discovery of ESI.

LR Civ P 33.1. Interrogatories

- (a) Form of Response.

Each answer, statement or objection shall be preceded by the interrogatory to which it responds.

- (b) Reference to Records.

Whenever a party answers any interrogatory by reference to records from which the answer may be derived or ascertained, as permitted in FR Civ P 33(d):

- (1) the producing party shall make available any computerized information or summaries thereof that it either has or can adduce by a relatively simple procedure, unless these materials are privileged or otherwise not subject to discovery;
- (2) the producing party shall provide any relevant compilations, abstracts, or summaries in its custody or readily obtainable by it, unless these materials are privileged or otherwise not subject to discovery;
- (3) the documents shall be made available for inspection and copying within 14 days after service of the answers to interrogatories or at a date agreed upon by the parties; and
- (4) If a party answers an interrogatory by reference to a deposition in the action, the party shall identify the deponent and the pages of specific transcripts where the answer may be found. If a party answers an interrogatory by reference to a deposition in another action, the party shall identify the deponent, the date of deposition, the style of the action, the pages of a specific transcript where the answer may be found and shall make the deposition available for inspection and copying.

- (c) Answers to Interrogatories Following Objections.

When it is ordered that interrogatories to which objections were made must be answered, the answers shall be served within 14 days of the order, unless the court directs or the parties stipulate otherwise.

LR Civ P 34.1. Document Production

- (a) Form of Response.

Each answer, statement, or objection shall be preceded by the request to which it responds.

- (b) Objections to Document Requests.

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

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

- (c) Answers to Document Requests Following Objections.

When it is ordered that document requests to which objections were made must be answered, the answers shall be served within 14 days of the order, unless the court directs or the parties stipulate otherwise.

LR Civ P 36.1. Admissions

- (a) Form of Response.

Each answer, statement or objection shall be preceded by the request for admission to which it responds.

- (b) Statements in Response to Requests for Admission Following Objections.

When it is ordered that a request for admission to which objections were made is proper, the matter shall be deemed admitted unless within 14 days of the order the party to whom the request was directed serves a statement denying the matter or setting forth the reasons why that party cannot admit or deny the matter, as provided in FR Civ P 36.

LR Civ P 37.1. Discovery Disputes

(a) **Objections to Disclosures or Discovery.**

Objections to disclosures or discovery that are not filed within the response time allowed by the Federal Rules of Civil Procedure, the scheduling order(s), or stipulation of the parties pursuant to FR Civ P 29, whichever governs, are waived unless otherwise ordered for good cause shown. Objections shall comply with FR Civ P 26(g) and any claim of privilege or objection shall comply with FR Civ P 26(b)(5).

(b) **Duty to Confer.**

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

(c) **Motions to Compel.**

A motion to compel disclosure or discovery must be accompanied by a statement setting forth verbatim each discovery request or disclosure requirement and any response thereto to which an exception is taken. In addition, the movant may include a statement of the grounds and pertinent authorities relied upon and shall file such a statement if requested by the court. If the discovery request or disclosure requirement is ignored, the movant need only file a motion to compel without setting forth verbatim the discovery request or disclosure requirement. Motions to compel or other motions in aid of discovery not filed within 30 days after the discovery response or disclosure requirement was due are waived, and in no event provide an excuse, good cause or reason to delay trial or modify the scheduling order. The 30-day deadline may be extended by court order for good cause shown, or by stipulation of the parties, so long as the extension does not interfere with the scheduling order. Any such stipulation must be filed pursuant to LR Civ P 11.2.

(d) **Telephonic Conferences During Discovery Events.**

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

LR Civ P 41.1. Dismissal of Actions

When it appears in any pending civil action that the principal issues have been adjudicated or have become moot, or that the parties have shown no interest in further prosecution, the judicial officer may give notice to all counsel and unrepresented parties that the action will be dismissed 30 days after the date of the notice unless good cause for its retention on the docket is shown. In the absence of good cause shown within that period of time, the judicial officer may dismiss the action. The clerk shall transmit a copy of any order of dismissal to all counsel and unrepresented parties. This rule does not modify or affect provisions for dismissal of actions under FR Civ P 41 or any other authority.

LR Civ P 43.1. Addressing the Court; Examination of Witnesses

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

LR Civ P 47.1. Trial Juries

(a) Examination of Prospective Jurors.

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

(b) Jury Lists.

Names of jurors drawn for jury service from the court's qualified jury wheel may be disclosed only in accordance with the court's Jury Selection Plan. Jury lists prepared by the clerk shall be made available to counsel and unrepresented parties as provided in the Jury Selection Plan.

LR Civ P 48.1. Contact with Jurors

After conclusion of a trial, no party, nor his or her agent or attorney, shall communicate or attempt to communicate with any member of the jury, including alternate jurors who were dismissed prior to deliberations, about the jury's deliberations or verdict without first applying for (with notice to all other parties) and obtaining for good cause an order allowing such communication.

LR Civ P 51.1. Cases to be Tried by Jury; Proposed Jury Instructions

Not less than 7 days prior to the trial date, counsel and unrepresented parties shall, in jury cases, submit to the judicial officer proposed jury instructions with supporting statutory and case authority, special interrogatories, and a verdict form. Counsel and unrepresented parties shall exchange copies of the proposed instructions, special interrogatories and verdict form prior to their submission to the judicial officer. Submissions pursuant to this local rule shall not be filed and made a part of the record unless ordered by the judicial officer.

LR Civ P 52.1. Cases to be Tried by the Court; Proposed Findings of Fact and Conclusions of Law

Counsel and unrepresented parties shall submit to the judicial officer 14 days prior to trial proposed findings of fact and conclusions of law for cases to be tried to the court. Counsel and unrepresented parties shall exchange copies of the proposals prior to submission to the judicial officer. The suggested findings of fact should contain a detailed listing of the relevant and material facts that the party intends to prove. They should not be in formal language, but should be in simple narrative form. The proposed conclusions of law should contain a full discussion of the principles of law relied upon, with statutory and case citations.

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

LR Civ P 54.1. Fees and Costs

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

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

Specific objections to any item of costs filed by the prevailing party shall be filed within 14 days after service of a bill of costs. Any response to the objections shall be filed within 7 days of service of the objections. The clerk shall assess costs based on the papers submitted.

LR Civ P 58.1. Entry of Judgments and Orders

Except for good cause, no judgment or order may be presented for entry unless it bears the signature of all counsel and unrepresented parties. This rule does not apply to judgments or orders drawn or prepared by the court. When counsel or an unrepresented party responsible for the preparation and presentation of a judgment or order unreasonably delays or withholds its presentation, the court may proceed to enter such judgment or order.

LR Civ P 65.1.1. Approval of Bonds

- (a) General Requirements. Every bond must be executed by the principal obligor and, if applicable, one or more sureties qualified as provided in this rule.
- (b) Corporate Sureties.
 - (1) A corporate surety must be qualified to write bonds under 31 U.S.C. §§ 9301–9309 and approved by the Secretary of the Treasury of the United States.
 - (2) The representative of the corporate surety that signs the bond must attach to the bond a power of attorney that establishes the representative’s authority to bind the corporate surety.
- (c) Real-Property Bond.
 - (1) A person may serve as a surety on a real-property bond only by court order. A person seeking permission to serve as a surety on a real property bond must:
 - (A) offer as security real property located in the State of West Virginia, or other property as approved by a judge of this court, of an

unencumbered value equal to or greater than the stated amount of the bond;

- (B) be competent to convey the real property; and
 - (C) submit an affidavit and supporting documents including: (i) a legal description of the real property; (ii) a complete list of all encumbrances and liens on the real property; (iii) a current appraisal of the real property by a qualified appraiser; (iv) a waiver of inchoate rights; (v) a certification that the real property is not exempt from execution; and (vi) proof of payment of property taxes.
- (2) Within 14 days after the court approves the real-property bond, the surety must file with the court a copy of a notice of encumbrance filed by the surety with the county recorder or registrar of titles that identifies the bond as an encumbrance on the real property.
- (3) A real-property bond will be released only by court order.
- (d) Cost Bonds. The court may, on motion or on its own, order a party to file a bond or other security for costs in an amount, and subject to conditions, specified by the court.
- (e) Cash bonds. Deposit of cash bonds is governed by LR Civ P 67.1. Withdrawal of cash bonds is governed by LR Civ P 67.2.
- (f) Objections. Any party may object to the issuance of a bond.
- (g) All bonds must receive court approval.

LR Civ P 67.1. Deposits Pursuant to FR Civ P 67

- (a) Court Order Required. A party may deposit money into the court registry only by court order. A party seeking to deposit money into the court registry under FR Civ P 67(a) must file and serve a motion requesting an order permitting the deposit.
- (b) Any order obtained by a party that directs the clerk to invest funds pursuant to 28 U.S.C. § 2041 shall provide for payment by check made payable to the Clerk, United States District Court, for deposit in a renewable time certificate, treasury bill, passbook savings account, or other secure instrument.
- (c) In accordance with FR Civ P 67, funds paid to the clerk for deposit into the court's registry shall be placed in an interest-bearing account or instrument as ordered, and shall remain so deposited pending disposition by subsequent court order.

LR Civ P 67.2. Withdrawal of Money from the Court Registry

- (a) Court Order Required. A party may withdraw money from the court registry only by court order. A party seeking to withdraw money from the court registry must file and serve a motion requesting an order permitting the withdrawal and specifying whether the moving party is seeking withdrawal before the expiration of the 14-day automatic stay imposed under FR Civ P 62(a). The proposed order should specify: (i) the name of each payee; (ii) the amount of money to be disbursed to each payee; and (iii) the percentage of accrued interest to be disbursed to each payee, if applicable.
- (b) The party must complete a Withdrawal Payee Information form that is available from the clerk and electronically on the court's website at www.wvsc.uscourts.gov. The social security number information collected by the clerk on the form is provided to the depository institution pursuant to Title 26 of the United States Code and Internal Revenue service regulations, as a condition of the release of said funds. This information is used for administrative purposes only and will be kept confidential. The withdrawal Payee Information form will not be filed on the court's ECF system.
- (c) Fees. A charge for the handling of registry funds deposited with the court will be assessed from the interest earnings in accordance with the fee schedule issued by the Director of the Administrative Office of the United States. Funds that are invested through the Court Registry Investment System will also be assessed an investment services fee from the interest earnings in accordance with the District Court Miscellaneous Fee Schedule.

LR Civ P 71.1. Land Condemnation Actions; Manner of Filing, Docketing, Recording, and Reporting

The guidelines for filing, docketing, recording and reporting land condemnation proceedings approved by the Judicial Conference of the United States are adopted for use in this jurisdiction. Copies of the guidelines are available on the court's web site.

LR Civ P 72.1. Authority of Magistrate Judges

- (a) General.

A magistrate judge is a judicial officer of the district court. A magistrate judge of this district is designated to perform, and may be assigned, any duty allowed by law to be performed by a magistrate judge. Performance of a duty by a magistrate judge will be governed by the applicable provisions of federal statutes and rules, the

general procedural rules of this court, and the requirements specified in any order or reference from a district judge. In performing a duty, a magistrate judge may determine preliminary matters; require parties, attorneys, and witnesses to appear; require briefs, proofs, and argument; and conduct any hearing, conference, or other proceeding the magistrate judge deems appropriate.

(b) Statutory Duties.

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

(c) Habeas Corpus and Collateral Relief.

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

(d) Post-Conviction Habeas Corpus and Related Actions.

The following matters are referred to magistrate judges:

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

(e) Miscellaneous Duties.

Magistrate judges are authorized to:

- (1) exercise general supervision of civil calendars, conduct calendar and status calls, conduct hearings to resolve discovery disputes, and determine motions to expedite or postpone the trial of cases for the district judges;
- (2) analyze civil cases to determine an appropriate schedule; report findings to the assigned district judge; and, in complex and other selected cases, conduct conferences at which a schedule for the completion of various stages of the litigation will be established, the possibility of early settlement will be evaluated, and alternative dispute resolution mechanisms will be considered;
- (3) conduct pretrial conferences, scheduling conferences, mediations, settlement conferences, omnibus hearings, and related pretrial proceedings;
- (4) with the consent of the parties, conduct voir dire and preside over the selection of petit juries;
- (5) accept petit jury verdicts in the absence of the district judge;
- (6) issue subpoenas, writs of habeas corpus ad testificandum, or other orders necessary to obtain the presence of parties, witnesses, or evidence for court proceedings;
- (7) rule on applications for disclosure of tax returns and tax return information, pursuant to 26 U.S.C. § 6103(i)(1);
- (8) order the exoneration or forfeiture of bonds;
- (9) conduct proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, pursuant to 46 U.S.C. §§ 4311(d) and 12309(c);
- (10) determine post-judgment discovery motions and conduct examinations of judgment debtors pursuant to FR Civ P 69;
- (11) supervise proceedings conducted pursuant to letters rogatory as set forth in 28 U.S.C. § 1782(a);
- (12) issue orders of withdrawal of funds from the court registry pursuant to 28 U.S.C. § 2042;

- (13) issue orders or warrants authorizing acts necessary in the performance of the duties of administrative and regulatory agencies and departments of the United States; and
 - (14) conduct extradition proceedings in accordance with 18 U.S.C. § 3184; and
 - (15) serve with designated committees or other judicial officers, participate in promulgation of local rules and procedures, administration of the forfeiture of collateral system, and other functions of court governance as approved by the Chief Judge.
- (f) Method of Assignment of Matters to Magistrate Judges.

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

LR Civ P 72.2. Effect of Magistrate Judge Ruling Pending Objection

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

LR Civ P 73.1. Special Designation of Magistrate Judges

- (a) Consent of the Parties.

Upon consent of the parties, magistrate judges are specially designated by the district judges to exercise civil jurisdiction pursuant to 28 U.S.C. § 636(c)(1), and to conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case.

- (b) Notice of Consent Option.

The Order and Notice entered by a judicial officer under LR Civ P 16.1(a) shall inform the parties of their right to consent to proceed before a magistrate judge. Parties added to an action after reference to a magistrate judge shall be notified by the clerk of their right to consent to the exercise of jurisdiction by a magistrate

judge. In the event an added party does not consent to the magistrate judge's jurisdiction, the action shall be returned to the district judge for further proceedings. Additional notices may be furnished by the clerk to the parties at later stages of the proceeding, and may be included with pretrial notices and instructions. The consent form may be filed at any time prior to trial; however, no civil action shall be referred to a magistrate judge unless a district judge has signed an order of reference.

(c) Execution of Consent.

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

(d) Vacating a Reference.

A district judge may, on his or her own motion, or under extraordinary circumstances shown by any party, vacate the reference to a magistrate judge of a case in which the parties have filed consents.

LR Civ P 77.1. Principal Offices

The headquarters of the United States District Court for the Southern District of West Virginia and of its Clerk is located in the Robert C. Byrd United States Courthouse, Room 2400, 300 Virginia Street East, Charleston, West Virginia. The mailing address is P.O. Box 2546, Charleston, West Virginia 25329.

LR Civ P 77.2. Divisions

The Southern District of West Virginia is composed of 23 counties. Each of these counties is assigned to one of four administrative divisions. Each division is given the name of the city in the division where the court and offices of its clerk are located. The divisions, addresses of division offices, and counties comprising each division are as follows:

Division 1: Bluefield

Elizabeth Kee Federal Building
Address: Room 2303, 601 Federal Street, Bluefield, West Virginia 24701
Counties Composing Division: Mercer, Monroe and McDowell

Division 2: Charleston

Robert C. Byrd United States Courthouse
Address: Room 2400, 300 Virginia Street East, Charleston, WV 25301
Mailing address: P.O. Box 2546, Charleston, West Virginia 25329
Counties Composing Division: Boone, Clay, Fayette, Jackson, Kanawha, Lincoln, Logan, Mingo, Nicholas Roane, Wirt and Wood

Division 3: Huntington

Sidney L. Christie Federal Building
Address: Room 101, 845 Fifth Avenue, Huntington, West Virginia 25701
Counties Composing Division: Cabell, Mason, Putnam and Wayne

Division: 5: Beckley

Robert C. Byrd Federal Building and Courthouse
Address: Room 119, 110 North Heber Street, Beckley, West Virginia 25801
Counties Composing Division: Greenbrier, Summers, Raleigh and Wyoming

The court will occasionally convene at Parkersburg to deal with matters falling in the Huntington or Charleston Divisions, as needed, and at Lewisburg to deal with matters falling within either the Beckley or Bluefield Division, as needed.

LR Civ P 77.3. Sessions

The court is considered open and in continuous session in all divisions of the district on all business days throughout the year in accordance with the provisions of 28 U.S.C. § 139, FR Civ P 77(c), and other controlling statutes and rules.

LR Civ P 77.4. Court Library

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

LR Civ P 78.1. Hearing on Motions

The judicial officer may require or permit hearings on motions, and the hearings may be by telephone or other electronic means.

LR Civ P 79.1. Custody and Disposition of Exhibits

(a) During Trial or Hearing.

- (1) Custody of the Clerk. Unless the court otherwise orders, all marked and identified exhibits of a documentary nature that are admitted into evidence during trial or hearing, and that are suitable for filing and transmission to the court of appeals as a part of the record on appeal, must be placed in the custody of the clerk of court.
- (2) Custody of the Parties. Unless the court otherwise orders, all marked and identified exhibits, models and materials of unusual bulk or weight admitted into evidence during trial that cannot be conveniently stored in the clerk's facilities will be retained in the custody of the party offering them. The party will execute a receipt for the exhibits and will grant the reasonable request of any party to examine or reproduce the exhibit for use in the proceeding. With approval of the court, photographs may be substituted for said exhibits once they have been introduced into evidence.
- (3) Custody of the United States Marshal. Unless the court otherwise orders, all marked and identified exhibits admitted into evidence that are sensitive in nature will be retained in the custody of the United States Marshal. Such exhibits will include, but not be limited to, the following types of sensitive exhibits or evidence: controlled substances, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, and counterfeit money. With approval of the court, photographs may be substituted for said exhibits once they have been introduced into evidence.

(b) After Trial or Hearing.

- (1) Custody of the Clerk. Where the clerk of court does take custody of exhibits that are documentary in nature under subsection 79.1.a.1 of this rule, such exhibits may not be taken from the custody of the clerk until final disposition of the matter, except upon order of the court and execution of a receipt that identifies the exhibits taken, which receipt will be filed in the case. Copies approved by counsel and unrepresented parties must be filed in place of the original exhibits.

After final judgment and one year after the time for motion for new trial and appeal has passed, or upon the filing of a stipulation waiving and abandoning the right to appeal and to move for a new trial, the clerk is authorized, without further court order, to return all exhibits to the parties or their counsel.

- (2) Custody of the Parties. Unless the court orders otherwise, the party offering exhibits of the kind described in subsection 79.1.a.2 of this rule will retain custody of them and be responsible for preserving them in their condition as of the time admitted.
- (3) Custody of the United States Marshal. Where the United States Marshal does take custody of exhibits under subsection 79.1.a.3 of this rule, such exhibits will be returned to the offering party following the trial or hearing for preservation in their condition as of the time admitted.
- (4) Retention of and Access to Exhibits by the Parties. Upon reasonable request, parties are to make available any and all exhibits in their custody for use by this court or by any appellate court for a period of two years after the conclusion of the case and any direct appeal.

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

In its discretion, on a case-by-case basis, the court may provide the Clerk with alternative procedures for custody and instruction for disposition of specific exhibits.

LR Civ P 79.2. Removal of Papers from Custody of Clerk

Papers on file in the office of the clerk shall be produced pursuant to subpoena from a court of competent jurisdiction directing their production.

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

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

LR Civ P 83.1. Admission of Attorneys

(a) Admission as Member of Bar or Court.

Any person who is admitted to practice before the Supreme Court of Appeals of West Virginia and who is in good standing as a member of its bar, is eligible for admission as a member of the bar of this court. An eligible attorney may be admitted as a member of the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the register of attorneys with the person admitted. If the motion for admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorneys' register, and pay the clerk the admission fee. Once admitted under this provision, the person need not have an office for the practice of law in West Virginia to appear and practice in this court.

Any person who has been subject to disciplinary suspension or disbarment by the West Virginia Supreme Court of Appeals but has been readmitted to practice by the Supreme Court and is in good standing as a member of its bar, is eligible for re-admission as a member of the bar of this court. The attorney may be re-admitted as a member of the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the register of attorneys with the person re-admitted. If the motion for re-admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorney's register, and pay the clerk the admission fee.

(b) Sponsorship of Visiting Attorneys by Members of Court.

The Sponsoring Attorney must be a member of the bar of this court, have an office for the practice of law in West Virginia, and practice law primarily in West Virginia.

(c) Appearance by Assistant United States Attorneys and Assistant Federal Public Defenders.

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

(d) Appearance by Federal Government Attorneys.

Federal government attorneys who are not members of the bar of this court need not complete the Statement of Visiting Attorney. In cases where the United States Attorney is associated with other government attorneys in proceedings involving the Federal government, the United States Attorney (except in student loan collection cases), in addition to other Federal government attorneys, shall sign all

pleadings, notices, and other papers filed and served by the United States. All pleadings, notices, and other papers involving the Federal government may be served on the United States Attorney in accordance with the service requirements of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

LR Civ P 83.2. Legal Assistance by Law Students

(a) Written Consent.

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

(b) Responsibilities of Attorneys of Record.

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

(c) Eligibility Requirements.

To be eligible to appear pursuant to this rule, the law student must:

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

in writing, or it may be terminated by the court at any time without notice of hearing and without any showing of cause. Unless withdrawn or terminated, the certification shall remain in effect for 18 months after it has been filed with the clerk or until the law student has been admitted as a permanent member of the bar of this court, whichever is earlier;

- (4) certify in writing to the clerk that he or she has read the Code of Professional Conduct of the American Bar Association, the Rules of Professional Conduct and the Standards of Professional Conduct promulgated and adopted by the Supreme Court of Appeals of West Virginia, and the Model Rules of Professional Conduct published by the American Bar Association;
- (5) be introduced to the court by a permanent member of the bar of this court; and
- (6) neither ask for nor receive any compensation or remuneration of any kind for services from the party assisted, but this shall not prevent an attorney, legal services program, law school, public defender agency, the State of West Virginia, or the United States from paying compensation to the law student, nor from making appropriate charges for such services.

LR Civ P 83.3. Representation of Parties

Every party to proceedings in this court, except parties appearing *pro se*, shall be represented by a member of the bar of this court and may be represented by a Visiting Attorney and Sponsoring Attorney as provided in LR Civ P 83.1(a), 83.1(b), and 83.6. A corporation or unincorporated association cannot appear *pro se*.

LR Civ P 83.4. Withdrawal and/or Termination of Representation

An attorney may withdraw from a case in which he or she has appeared only as follows:

- (a) By Notice of Withdrawal. A party's attorney may withdraw from a case by filing and serving a notice of withdrawal, effective upon filing, if:
 - (1) multiple attorneys have appeared on behalf of the party; and
 - (2) at least one of those attorneys will still be the party's counsel of record after the attorney seeking to withdraw does so.
- (b) By Notice of Withdrawal and Substitution. A party's attorney may withdraw from a case by filing and serving a notice of withdrawal and substitution, effective upon filing, if the notice includes:

- (1) the withdrawal and substitution will not delay the trial or other progress of the case; and
 - (2) the notice is filed and served at least 90 days before trial.
- (c) By Motion. An attorney who seeks to withdraw other than under LR 83.4(a) or (b) must move to withdraw and must show good cause. The attorney must notify his or her client of the motion.

LR Civ P 83.5. *Pro se* Appearances

A party who represents himself or herself shall file with the clerk his or her complete name and address where pleadings, notices, orders, and other papers may be served on him or her, and his/her telephone number. A *pro se* party must advise the clerk promptly of any changes in name, address, and telephone number.

LR Civ P 83.6. Admission of Visiting Attorneys

- (a) Procedure for Admission.

Any person who has not been admitted to practice before the Supreme Court of Appeals of West Virginia, but who is a member in good standing of the bar of the Supreme Court of the United States, the bar of the highest court of any other state in the United States, or the bar of the District of Columbia, shall be permitted to appear as a Visiting Attorney in a particular case in association with a Sponsoring Attorney as herein provided. The Sponsoring Attorney must be a member of the bar of this court, have an office for the practice of law in West Virginia, and practice law primarily in West Virginia. The Visiting Attorney shall file with the clerk, at or before his or her initial appearance (including signing a pleading), the Statement of Visiting Attorney adopted by order of this court, which is available from the clerk and on the court's web site, and shall pay the Visiting Attorney fee. The Statement shall designate a Sponsoring Attorney, upon whom pleadings, notices, and other papers may be served. The Sponsoring Attorney shall consent to the designation and shall thereafter sign all papers that require the signature of an attorney. Any paper filed by a Visiting Attorney not in compliance with this rule may be stricken from the record after 14 days written notice transmitted to the Visiting Attorney at his or her address as known to the clerk. Upon compliance with this rule and introduction of the Visiting Attorney to the court by the Sponsoring Attorney, the Sponsoring Attorney, with the consent of the court, may be excused from further attendance during the proceedings and the Visiting Attorney may continue to appear in that particular case.

(b) Motion Not Required.

Filing a properly completed Statement of Visiting Attorney and paying the Visiting Attorney fee constitute all steps necessary to qualifying as a Visiting Attorney for a particular case and no motion to appear as a Visiting Attorney is required.

(c) Payment of Visiting Attorney Fee.

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

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

(d) Exceptions to Payment of Visiting Attorney Fee.

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

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

(3) Miscellaneous Cases. A Visiting Attorney who files a miscellaneous case which does not require judicial action (e.g., one filed in order to obtain a subpoena) is exempt from paying the Visiting Attorney fee, from associating with a Sponsoring Attorney, and from filing the Statement of Visiting Attorney. A Visiting Attorney who files a miscellaneous case

which does require judicial action (e.g., motion to compel testimony at a deposition) must comply with LR Civ P 83.6(a).

- (4) Federal Government Attorneys. Attorneys employed by the United States Department of Justice or any other Federal department or agency will not be required to pay the Visiting Attorney fee.
 - (5) Law Students. Law students who participate in a case in accordance with these Rules will not be charged a Visiting Attorney fee.
- (e) Waiver of Payment of Visiting Attorney Fee.

A Visiting Attorney and his/her Sponsoring Attorney may file a motion requesting a waiver of the Visiting Attorney fee in a particular case or cases, for good cause shown. The motion will be decided by the judge assigned to the case; the motion should be filed within 21 days of the assignment of the case to the judge. Examples of cases in which waiver may be appropriate are: numerous collection actions filed by one plaintiff; numerous negligence actions filed by one firm representing many plaintiffs against one defendant or group of defendants arising out of a single incident or related incidents (e.g., a catastrophic fire, or exposure to a toxic substance). If a waiver is granted, the Visiting Attorney will pay such Visiting Attorney fee in an amount as ordered by the presiding district judge.

- (f) Revocation of Visiting Attorney Privilege.

For good cause, the presiding district judge may revoke the privilege of an attorney to be a Visiting Attorney in one or more specified cases.

LR Civ P 83.7. Codes of Professional Conduct

In all appearances, actions and proceedings within the jurisdiction of this court, attorneys shall conduct themselves in accordance with the Rules of Professional Conduct and the Standards of Professional Conduct promulgated and adopted by the Supreme Court of Appeals of West Virginia, and the Model Rules of Professional Conduct published by the American Bar Association.

LR Civ P 83.8. Bias and Prejudice

The United States District Court for the Southern District of West Virginia aspires to achieve absolute fairness in the determination of cases and matters before it and expects the highest standards of professionalism, human decency, and considerate behavior toward others from its judicial officers, lawyers, and court personnel, as well as from all witnesses, litigants, and other persons who come before it. As to matters in issue before the court,

conduct and statements toward one another must be without bias with regard to such factors as gender, race, ethnicity, religion, handicap, age, and sexual orientation when such conduct or statements bear no reasonable relationship to a good faith effort to argue or present a position on the merits. Judicial officers must ensure that appropriate action is taken to preserve a neutral and fair forum for all persons. Nothing in this local rule, however, is intended to infringe unnecessarily or improperly upon the otherwise legitimate rights, including the right of freedom of speech, of any person, nor to impede or interfere with the aggressive advocacy of causes and positions by lawyers and litigants.

LR Civ P 83.9. Opening Statements and Closing Arguments to Jury

(a) Opening Statements.

At the commencement of the trial, the party upon whom rests the burden of proof may state, without argument, its claim and the evidence expected to support it. The adverse party may then state, without argument, its defense and the evidence expected to sustain it. If the trial is to the jury, the opening statements shall be made immediately after the jury is impaneled. If the trial is to the court, the opening statements shall be made immediately after the case is called for trial. Opening statements shall be subject to time limitations imposed by the assigned judicial officer. In actions involving several parties and unusual procedures, the judicial officer, after conferring with attorneys and unrepresented parties, shall direct the order and time of the opening statements in a manner appearing just and proper.

(b) Closing Arguments.

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

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

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

LR Civ P 83.10. Photography in and Broadcasting from the Courtroom

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

LR Civ P 83.11. Impoundment of Photography and Broadcasting Equipment

The United States Marshal may impound any camera, recording, broadcasting and other related equipment brought into the courtroom or the adjacent corridors in violation of LR Civ P 83.10. The impounded equipment shall be returned to its owner or its custodian after the proceedings have concluded.

LR Civ P 83.12. Scheduling Conflicts

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

LR Civ P 83.13. Referral of Cases to Bankruptcy Court

Pursuant to 28 U.S.C. § 157(a), all cases under Title 11, and all proceedings arising under Title 11 or arising in or related to a case under Title 11, are referred to the Bankruptcy Court for disposition. Filings in bankruptcy actions shall be made directly with the Clerk of the Bankruptcy Court. Requests to withdraw this reference shall be filed with the Clerk of the Bankruptcy Court, who will transmit the motion to withdraw reference to the Clerk of the District Court. See FR Br P 5011, Advisory Committee Note (1987).

LR Civ P 83.14. Appeal of a Bankruptcy Court Judgment, Order, or Decree to the District Court

A notice of appeal from a judgment, order, or decree of a bankruptcy judge to the district court shall be filed with the Clerk of the Bankruptcy Court pursuant to Part VIII of the

Federal Rules of Bankruptcy Procedure. The Clerk of the Bankruptcy Court shall transmit to the Clerk of the District Court the notice of appeal, the record designation and statement of issues, and the record. On receipt of the transmission, the Clerk of the District Court shall enter the appeal on the docket, establish a briefing schedule, and notice the parties of the date on which the appeal was docketed and of the time for filing supporting memoranda.

LR Civ P 83.15. Courthouse Security

(a) Entry of Federal Courthouse Buildings.

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

(b) Persons Requiring Access.

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

(c) Weapons.

The United States Marshal and Deputy United States Marshals may possess and oversee possession of firearms or other weapons in the building. Only members of the United States Marshals Service and those specifically designated by that service may possess firearms and other weapons in the space occupied and controlled by this court.

(d) Identification Card.

All employees will use an identification card issued by the employee's agency. Employees will be required to display or show the identification card to the court security officers to pass through the security screening post. If an employee fails to present their issued identification card, he or she must successfully pass through the security screening post.

(e) Wireless Communication Devices.

Only attorneys, court reporters and court interpreters conducting official business in a federal courthouse in this District are permitted limited use of wireless communication devices. Audio or video recording or the taking of any photographs with such devices while in the courthouse is prohibited. Wireless communication devices must be turned off or rendered silent while in a courtroom.

Any other individual who brings a wireless communication device into a federal courthouse in this District, excepting federal employees, elevator response personnel and PBX telephone technicians, will be required by the court security officers to deposit such device in storage facilities as provided at the front entry of the building, to be retrieved upon leaving the courthouse.

Appropriate signage will be posted outside the courthouse and at the security posts, published on the court's external web site and in notices provided to jurors.

The court authorizes the United States Marshal to allow wireless communication devices for emergency situations as deemed appropriate.

II. LOCAL RULES OF CRIMINAL PROCEDURE

LR Cr P 5.1. Initial Appearance

(a) Pretrial Services Interview.

Pretrial services officers (or probation officers acting in the capacity of pretrial services officers), to the extent practicable, shall attempt notification of counsel prior to conducting pretrial services interviews. If counsel cannot attend an interview, the information provided by the defendant shall be made available to counsel upon request, in accordance with LR Cr P 5.1.(b).

(b) Disclosure of Pretrial Services Information.

A written pretrial services report will, if possible, be provided to counsel in the courtroom when a defendant makes an initial appearance, and will be provided to counsel in the courtroom when a defendant appears for a detention hearing. Pretrial services information is confidential, pursuant to the provisions of 18 U.S.C. § 3153(c) and regulations promulgated by the Administrative Office of the United States Courts. Judicial officers may disclose pretrial services information, in whole or in part, upon a showing of good cause. When a demand for disclosure of pretrial services information regarding a defendant is made by service of a subpoena or by other formal process upon a probation officer, the probation officer may petition in writing seeking instructions from the court regarding a response to the demand for disclosure. Further, the probation officer, upon request, is authorized to provide a copy of the pretrial report to another federal pretrial or probation officer without further order of the court.

(c) Standard Terms and Conditions for Release on Bond.

- (1) The defendant shall not violate any local, state or federal laws;
- (2) The defendant shall not possess a firearm, destructive device or other dangerous weapon, and shall reside in a residence free from such items;
- (3) The defendant's travel is restricted to the Southern District of West Virginia unless otherwise permitted by the court;
- (4) The defendant shall submit to random urine screens, as directed by the probation department or the court, for detection of use of controlled substances; and

- (5) The defendant shall not contact, either directly or indirectly, any victim or potential witnesses in the case, except through counsel (for witness/victim protection where needed).
- (d) Modification of Conditions of Pretrial Release.

The pretrial services or probation officer may, in the exercise of his/her discretion, meet with the defendant and defense counsel and modify conditions of release. Following such meeting, if any, a Consent to Modify Conditions of Release (PS 42) shall be completed and submitted to the judicial officer for signature and filing.

LR Cr P 7.1. Assignment of Cases

Cases filed shall be assigned by the clerk to a judge at the direction of the Chief Judge or through the use of random electronic methods. The clerk shall not reveal the case assignment allocation or sequence of the electronic method to anyone, unless ordered to do so by a district judge. A record of all assignments made shall be kept by the clerk.

LR Cr P 7.2. Reassignment, Referral and Intra-District Transfer of Cases

The clerk is authorized to sign orders to effectuate the reassignment, referral or intra-district transfer of cases when needed and as directed by a judge of this court.

LR Cr P 10.1. Arraignment and Plea

- (a) Notice of Date and Time.

The attorney for the government shall timely notify the defendant of the date and time of defendant's arraignment and plea to an indictment. The government attorney shall furnish a copy of the notice concurrently to defendant's counsel if counsel's name and address are shown on the docket or known to the government. When the indictment is based on substantially similar allegations that form the basis of an earlier complaint before a magistrate judge, the government attorney shall notify counsel who appeared for defendant before the magistrate judge of the date and time of the arraignment. If a defendant is without counsel, the government attorney shall promptly notify the appropriate judicial officer of that fact, so early provision of counsel may be considered.

- (b) Notice of Motion to Dismiss.

The government attorney shall serve on the defendant's counsel or on an unrepresented defendant a notice of a motion to dismiss a complaint pending before a judicial officer.

- (c) No Further Notice.

No other or further notice of arraignment and plea or motion to dismiss need be given by the clerk except on order of the court.

LR Cr P 12.1. Pretrial Motions

- (a) Date for Filing Pretrial Motions in Lieu of Standard Request for Discovery.

If a defendant does not elect to use the standard request for discovery, the magistrate judge shall, at arraignment, set a date 14 days prior to the pretrial motions hearing date for filing defendant's pretrial motions.

- (b) Date for Filing Pretrial Motions in Addition to Standard Request for Discovery.

If defendant elects to use the standard request for discovery, defendant must file any additional pretrial motions (i.e., non-discovery) by the date established in the Arraignment Order and Standard Discovery Request Form available from the clerk and on the court's website.

- (c) Time for Response to Pretrial Motions.

The government has 7 days to respond to motions filed by defendant under paragraphs (a) and (b) of this rule.

- (d) Pretrial Hearing.

The pretrial hearing will be held at least 14 days prior to trial, unless otherwise ordered by the court *sua sponte* or on motion for good cause. If the parties agree a hearing is not necessary, they must inform the district judge immediately. If the pretrial hearing requires the taking of evidence, the parties must notify the district judge in advance.

- (e) Courtroom Technology.

If any courtroom technology is required, counsel must request any such technology for use at trial or other proceeding and make a certification that the court's technology staff has been notified. The certification regarding such notification

shall be filed with the clerk no later than 7 days before the scheduled commencement of the trial or other proceeding.

LR Cr P 16.1. Arraignment and Standard Discovery Requests

(a) Standard Discovery Request Form.

At arraignment on an indictment, or on an information or complaint in a misdemeanor case, counsel for the defendant and the government may make standard requests for discovery as contained in the Arraignment Order and Standard Discovery Request form available from the clerk and on the court's website. The form shall be signed by counsel for the defendant and the government and entered by the magistrate judge.

(b) Reciprocal Discovery.

If counsel for the defendant requests discovery under FR Cr P 16(a)(1)(E), (F) or (G), in an Arraignment Order and Discovery Request form, the defendant is obligated to provide any reciprocal discovery that may be available to the government under FR Cr P 16(b)(1)(A), (B) or (C).

(c) Time for Government Response.

Unless the parties agree otherwise, or the court so orders, within 14 days of the Standard Discovery Request, the government must provide the requested material to counsel for the defendant and file with the clerk a written response to each of defendant's requests.

(d) Time for Reciprocal Discovery Response.

Defendant must provide all reciprocal discovery due the government within 14 days of receiving the materials and the filing and serving of responses in paragraph (c).

(e) Defense Discovery Request Deemed Speedy Trial Motion.

Any request made by the defendant pursuant to this rule will be deemed a motion under the provisions of the Speedy Trial Act, 18 U.S.C. § 3161.

(f) Duty to Supplement.

All duties of disclosure and discovery in this rule are continuing. The parties must produce any additional discovery as soon as they receive it, and in no event later than the time for such disclosure as required by law, rule of criminal procedure, or

order of the court, and without the necessity of further request by the opposing party.

LR Cr P 18.1. Principal Offices

The headquarters of the United States District Court for the Southern District of West Virginia and its Clerk is located in the Robert C. Byrd United States Courthouse, Room 2400, 300 Virginia Street East, Charleston, West Virginia. The mailing address is P.O. Box 2546, Charleston, West Virginia 25329.

LR Cr P 18.2. Divisions

The Southern District of West Virginia is composed of 23 counties. Each of these counties is assigned to 1 of 4 administrative divisions. Each division is given the name of the city in the division where the court and offices of its clerk are located. The divisions, addresses of division offices, and counties comprising each division are as follows:

Division 1: Bluefield

Elizabeth Kee Federal Building
Address: Room 2303, 601 Federal Street, Bluefield, West Virginia 24701
Counties Composing Division: Mercer, Monroe and McDowell

Division 2: Charleston

Robert C. Byrd United States Courthouse
Address: Room 2400, 300 Virginia Street East, Charleston, WV 25301
Mailing address: P.O. Box 2546, Charleston, West Virginia 25329
Counties Composing Division: Boone, Clay, Fayette, Jackson, Kanawha, Lincoln, Logan, Mingo, Nicholas, Roane, Wirt and Wood

Division 3: Huntington

Sidney L. Christie Federal Building
Address: Room 101, 845 Fifth Avenue, Huntington, West Virginia 25701
Counties Composing Division: Cabell, Mason, Putnam and Wayne

Division: 5: Beckley

Robert C. Byrd Federal Building and Courthouse
Address: Room 119, 110 North Heber Street, Beckley, West Virginia 25801
Counties Composing Division: Greenbrier, Summers, Raleigh and Wyoming

The court will occasionally convene at Parkersburg to deal with matters falling in the Huntington or Charleston Divisions, as needed, and at Lewisburg to deal with matters falling within either the Beckley or Bluefield Division, as needed.

LR Cr P 23.1. Opening Statements in Criminal Trials

At the commencement of trial in a criminal action, the government and the defendant may make non-argumentative opening statements as to their theories of the case and the manner in which they expect to offer their evidence. If the trial is to a jury, the opening statements shall be made immediately after the jury is empaneled, and, if the trial is to the court, the opening statements shall be made immediately after the case is called for trial; but, for good cause shown, the court, on request of the defendant, may defer the opening statement for a defendant until the time for commencing presentation of that defendant's direct evidence. Opening statements shall be subject to time limitations imposed by the court. If the action involves more than one defendant, the court, after conferring with the parties to the action, shall determine the order and time of the opening statements.

LR Cr P 24.1. Confidentiality of Juror Information

- (a) All information obtained from juror questionnaires is confidential and may be used only for jury selection and in accordance with this rule.
- (b) All copies of juror questionnaires must be destroyed or returned to the Court upon completion of the trial, or at any earlier time determined by the Court.
- (c) For represented parties, counsel of record is responsible for maintaining the confidentiality and security of juror questionnaires, and must apply security practices no less stringent than those applicable to confidential client information. Unrepresented parties may use juror questionnaires only under supervision of the Court, and may not reproduce the juror questionnaires in any form, or distribute them to anyone.
- (d) Juror questionnaires will be electronically filed under restricted access to only counsel and court personnel in the Case Management/Electronic Case Filing (CM/ECF) system five (5) business days before trial or as otherwise directed by the Court. Electronic access will be available to the Court and counsel of record only. The Court will provide unrepresented parties with one paper copy of the juror questionnaires at the beginning of jury selection. Juror questionnaires will not be available via mail or facsimile transmission.

LR Cr P 26.1. Addressing the Court; Examination of Witnesses

Attorneys and pro se litigants must stand and speak clearly when addressing the court. Only one attorney for each party may participate in examination and cross-examination of a

witness. With the court's permission, the attorney may approach a witness to present or inquire about an exhibit.

LR Cr P 30.1. Jury Instructions

In all criminal cases, counsel for the defendant and for the government shall submit jury instructions to the court prior to the commencement of a jury trial, or earlier if ordered by the court. When it is necessary for counsel for the defendant to submit one or more jury instructions on an ex parte basis, those instructions must be disclosed to the government no later than the charge conference or when specified by the court. Subject to court approval, counsel may amend or supplement jury instructions after commencement of trial.

LR Cr P 31.1. Contact with Jurors

After conclusion of a trial, no party, nor his or her agent or attorney, shall communicate or attempt to communicate with any member of the jury, including alternate jurors who were dismissed prior to deliberations, about the jury's deliberations or verdict without first applying for (with notice to all other parties) and obtaining, for good cause, an order allowing such communication.

LR Cr P 32.1. Presentence Interview

Probation officers shall notify counsel, prior to conducting the presentence interview of the defendant, of the date, time and place of the interview. If counsel cannot attend an interview, the information provided by the defendant shall be made available to counsel upon request in accordance with LR Cr P 32.2.

LR Cr P 32.2. Disclosure of Presentence Reports, Statement of Reasons and Probation Records

(a) Disclosure of Presentence Reports.

Disclosure of presentence reports is governed by 18 U.S.C. § 3552(d) and FR Cr P 32. Except as specifically provided by statute, rule, regulation, or guideline promulgated by the Administrative Office of the United States Courts, or LR Cr P 32.3, no confidential records of the court maintained by the probation office, including presentence reports and probation or supervised release records, shall be producible except as set forth below or by written petition to the court, particularizing the need for specific information. When a demand for disclosure of presentence and probation records is made by way of subpoena or other formal process to a probation officer, the probation officer may petition in writing seeking

instructions from the court regarding a response to the demand for disclosure. No disclosure shall be made except upon order of the court.

Presentence reports prepared by the probation office, as well as objections to the report filed by counsel, shall be filed electronically under seal via the Case Management/Electronic Case Filing System (CM/ECF). These documents will be made part of the case record for the purposes of appeal. The probation officer is authorized to provide a copy of the presentence report, without the officer's recommendation as to the sentence, to the defendant's appellate counsel. In addition, the probation officer is authorized to forward a copy of the presentence report, without the officer's recommendation as to the sentence, to counsel in revocation proceedings upon request without further order of the court. The copy of the presentence report shall be used by counsel for the purpose of the revocation proceeding only. Further, the probation officer, upon request, is authorized to provide a copy of the presentence report to another federal probation officer without further order of the court.

(b) Disclosure of Special Conditions Within Presentence Reports.

When the presentence report is disclosed to the parties and the court, the probation office should include any recommended special conditions in the body of the report, as well as the reasons for the recommendation of each condition. However, LR Cr P 32.2(a) allows the court to limit such disclosure through an order of the court.

(c) Statement of Reasons.

The Clerk is directed to SEAL the Statement of Reasons in all criminal cases before this court and shall forward a SEALED copy to counsel of record and to the probation office in this District. The probation office shall forward the Statement of Reasons to the United States Sentencing Commission and the Bureau of Prisons. The probation office is further directed to make the sealed Statement of Reasons an attachment to, and part of, any copy of the presentence report made available to the Bureau of Prisons, the Fourth Circuit Court of Appeals and appellate counsel for the defendant. In addition, the probation office is authorized to forward a copy of the Statement of Reasons to counsel in revocation proceedings upon request and without further order of the court. The copy of the Statement of Reasons shall be used by counsel for the purpose of the revocation proceeding only.

(d) Disclosure of Probation Office Recommendation.

The probation officer shall not disclose to anyone other than the court the officer's recommendation as to the sentence.

LR Cr P 32.3. Standard Conditions of Probation and Supervised Release in all Criminal Cases

In addition to the Standard Conditions of Supervised Release and Probation promulgated by the Administrative Office of the United States Courts (National Form AO 245B), the following six conditions are forthwith adopted as standard conditions of probation and supervised release for all defendants sentenced in criminal cases in the District.

- (1) If the offender is unemployed, the probation officer may direct the offender to register and remain active with Workforce West Virginia.
- (2) Offenders shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. Offenders shall not use any method or device to evade a drug screen.
- (3) As directed by the probation officer, the defendant will make co-payments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.
- (4) A term of community service is imposed on every offender on supervised release or probation. Fifty hours of community service is imposed on every offender for each year the offender is on supervised release or probation. The obligation for community service is waived if the offender remains fully employed or actively seeks such employment throughout the year.
- (5) The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers), and shall reside in a residence free from such items.
- (6) The defendant shall not purchase, possess, or consume any organic or synthetic intoxicants, including bath salts, synthetic cannabinoids, or other designer stimulants.

LR Cr P 32.4. Standard and Optional Conditions of Probation and Supervised Release in all Sex Offense Cases

The following standard and optional conditions of probation or supervised release shall be included in the Judgment as appropriate in all cases where the offense of conviction, or a defendant's prior state or federal conviction, would qualify as a "sex offense" as defined in

the Sex Offender Registration and Notification Act (SORNA), 42 U.S.C. § 16911(5) or otherwise result in a reporting obligation by the defendant to any state or federal sex offender registry. Within those conditions requiring an offender to obtain approval by the probation officer for certain actions, the court retains the ultimate authority to grant the approval requested, along with the right to review the probation officer's decision upon the offender's written request.

(a) Standard Conditions.

- (1) The defendant shall have no direct or indirect contact, at any time, for any reason, with the victim(s) identified in the presentence report or the victim's family.
- (2) The defendant shall submit to an evaluation by a qualified mental health professional, approved by the probation officer, who is experienced in treatment of sexual offenders. The defendant shall take all medications reasonably related to treatment of his or her condition, complete all treatment recommendations and abide by all rules, requirements and conditions imposed by the professional. The defendant must do so until discharged from treatment by the professional. Prior to being required to submit any proposed course of treatment, the defendant or the United States may seek review by the presiding district judge of any facet of the prescribed course of treatment. The United States and the defendant shall also have the right to seek review by the presiding district judge of any continuation or discontinuation of such treatment.
- (3) The defendant shall submit to risk assessments, psychological and physiological testing, which may include, but is not limited to, a polygraph examination or other specific tests to monitor the defendant's compliance with probation or supervised release treatment conditions, at the direction of the probation officer.
- (4) The defendant's residence and employment shall be approved by the probation officer. Any proposed change in residence or employment must be provided to the probation officer at least 10 days prior to the change and pre-approved before the change may take place.
- (5) The defendant shall not access or possess any material depicting sexually explicit conduct as defined in 18 U.S.C. § 2256(2)(A), including any photograph, film, video, picture, or computer or computer generated image or picture, nor shall the defendant knowingly enter, or knowingly remain in, any location, without the prior approval of the probation officer, where such materials can be accessed, obtained or viewed, including pictures, photographs, books, writings, drawings, videos or video games. [The rationale for amending this condition broadens the condition to include any

sexually explicit material and not just possession of child pornography, which is already a prohibited crime. A sex offender who continues to have exposure to any pornography is continuing to engage in “fantasy sex,” which may lead to high-risk behavior. He or she would also not be addressing his or her intimacy deficits appropriately. Intimacy deficits are a well-researched risk factor for sexual recidivism.]

- (6) The defendant shall not use, purchase, possess, procure or otherwise obtain any computer or electronic device that can be linked to any computer networks, bulletin boards, internet, internet service providers or exchange formats involving computers unless approved by the probation officer for such purposes as looking for employment opportunities and submitting applications to prospective employers through the internet; defendant’s lawful gainful employment by a business entity; use by an immediate family member living in defendant’s same household or for other legitimate purposes. Such computers, computer hardware or software possessed solely by the defendant is subject to searches and/or seizures by the probation office.
- (7) The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) and/or register as directed by the probation officer. The defendant shall register with any local and/or State Sex Offender Registration agency in any state or federal territory where the defendant resides, is employed, carries on a vocation, or is a student, or was convicted of a qualifying offense, pursuant to state law.
- (8) The defendant shall provide the probation officer access to any requested financial records and authorize the release of any financial information.
- (9) The defendant shall not purchase, possess, or consume alcohol, and the defendant shall not frequent any businesses whose primary function is to serve alcohol beverages. [Substance abuse is considered to be an acute risk factor for sex offenders. Drug and alcohol use have long been considered a “disinhibitor,” and problems with drugs or alcohol are generally regarded as elevating an individual’s risk for sexual recidivism. The sex offender, more than any other type of criminal on supervision, needs to be alert, in control, and ready to execute avoidance and escape plans whenever he or she encounters a high-risk situation.]

(b) Optional Conditions.

- (1) The term “minor” with respect to any condition of supervised release refers to one who is under the age of eighteen (18) years.

- (2) The defendant shall not associate or have verbal, written, telephonic or electronic communications with any minor except: 1) in the presence of the parent or legal guardian of said minor; 2) on the condition that the defendant notifies the parent or legal guardian of the defendant's sex offender conviction(s); and 3) with written approval from the probation officer. This provision does not encompass minors working as waiters, cashiers, ticket vendors, and similar service personnel with whom the defendant must deal in order to obtain ordinary and usual commercial services.
- (3) The defendant shall not loiter within 100 feet of any parks, school property, playgrounds, arcades, amusement parks, daycare centers, swimming pools, community recreation fields, zoos, youth centers, video arcades, carnivals, circuses or other places that are primarily used or can reasonably be expected to be used by minors without prior written permission of the probation officer.
- (4) The defendant shall not purchase, possess or control cameras, camcorders, or movie cameras without prior approval of the probation officer. The defendant may only use and possess cell phones that are limited by design to vocal telephone communication without the capability to access the internet or store or create images or video without prior approval of the probation officer.
- (5) The defendant shall notify employers, family, friends and others with whom the defendant has regular contact of defendant's conviction(s) as a sex offender and that the defendant is being supervised by a probation officer.
- (6) The defendant shall not engage in any forms of exhibitionism, voyeurism, obscene phone calls or other lewd or lascivious behavior toward a minor, nor engage in "grooming" behavior that is apt to attract, seduce or reduce sexual resistance or inhibitions of a minor.
- (7) The defendant shall not own, use or have access to the services of any commercial mail receiving agency or storage unit nor shall the defendant open or maintain a post office box or storage unit without the prior approval of the probation officer. The defendant shall provide the probation officer with a list of all P.O. boxes and/or storage units the defendant can access.
- (8) The defendant shall not possess sadomasochistic or similar bindings or handcuffs, or like forms of restraint.
- (9) The defendant shall not possess minor's clothing, toys, games, or the like without permission of the probation officer.

- (10) The defendant shall not be employed in any position or participate as a volunteer in any activity that involves contact with minors without written permission from the probation officer. The defendant may not engage in an activity that involves being in a position of trust or authority over any minor.
- (11) The defendant shall participate in the District's computer and internet monitoring program and pay any costs associated therewith and abide by all special conditions therein, as directed by the probation officer. Participation in this program is contingent upon all program criteria being met.
- (12) The defendant shall not possess pictures of minors, unless the pictures are of the defendant's children.

LR Cr P 32.1.1. Modification or Revocation of Probation or Supervised Release

(a) Petition for Modification or Revocation.

- (1) A petition for modification or revocation of probation or supervised release shall be set forth on the form adopted for that purpose by the Administrative Office of the United States. The petition shall be presented to the sentencing judge. The sentencing judge shall determine whether the petition shall be filed.
- (2) The petition shall set forth the facts allegedly constituting the violation of probation or supervised release. The petition shall also seek either a summons or an arrest warrant, modification of the terms of release, or no action.
- (3) A petition ordered filed shall be served upon the probationer or releasee, the attorney for the government, and last known counsel of record except that in all cases in which prior counsel was appointed pursuant to the Criminal Justice Act, the Office of the Federal Public Defender shall be served in lieu of service upon prior counsel. When the court orders an arrest warrant to be issued, the petition shall be served upon the probationer or releasee after arrest, but in no event later than the initial appearance.

(b) Disclosure of Evidence.

The probation officer shall, without further request by the probationer, or releasee, or his/her counsel, disclose to the probationer or releasee or his/her counsel, all evidence against the probationer or releasee regarding the violations contained in the petition, including any potential oral statement and any potentially exculpatory material. Any information disclosed by the probation officer to an attorney for the

government shall be promptly disclosed by the probation officer to probationer or releasee or to his/her counsel.

(c) Recommendation for Revocation of Probation or Supervised Release.

If after a hearing the defendant is found to have violated the terms of probation or supervised release, the probation officer may make a recommendation to the court. The reasons supporting the recommendation shall be disclosed to the parties if such reasons are evidence against the probationer or releasee, as shall any response by the probation officer to recommendations by counsel.

(d) Request for Modification of the Terms of Probation or Supervised Release.

No terms of probation or supervised release shall be modified upon a waiver of counsel by the probationer or releasee unless and until the probationer or releasee shall have consulted with counsel regarding the advisability of waiving counsel. Any such waiver of counsel must certify that the probationer or releasee consulted with counsel prior to executing such waiver. In the alternative, waiver of counsel may be made by the probationer or releasee before a magistrate judge.

LR Cr P 44.1. Admission of Attorneys

(a) Admission as Member of Bar or Court.

Any person who is admitted to practice before the Supreme Court of Appeals of West Virginia and who is in good standing as a member of its bar is eligible for admission as a member of the bar of this court. An eligible attorney may be admitted as a member of the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the register of attorneys with the person admitted. If the motion for admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorneys' register, and pay the clerk the admission fee. Once admitted under this provision, the person need not have an office for the practice of law in West Virginia to appear and practice in this court.

Any person who has been subject to disciplinary suspension or disbarment by the West Virginia Supreme Court of Appeals but has been readmitted to practice by the Supreme Court and is in good standing as a member of its bar, is eligible for re-admission as a member of the bar of this court. The attorney may be re-admitted as a member of the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the register of attorneys with the person re-admitted. If the motion for re-admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorney's register, and pay the clerk the admission fee.

(b) Sponsorship of Visiting Attorneys by Members of Court.

The Sponsoring Attorney must be a member of the bar of this court, have an office for the practice of law in West Virginia, and practice law primarily in West Virginia.

(c) Appearance by Assistant United States Attorneys and Assistant Federal Public Defenders.

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

(d) Appearance by Federal Government Attorneys.

Federal government attorneys who are not members of the bar of this court need not complete the Statement of Visiting Attorney. In cases where the United States Attorney is associated with other government attorneys in proceedings involving the Federal government, the United States Attorney (except in student loan collection cases), in addition to other Federal government attorneys, shall sign all pleadings, notices, and other papers filed and served by the United States. All pleadings, notices, and other papers involving the Federal government may be served on the United States Attorney in accordance with the service requirements of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

LR Cr P 44.2. Legal Assistance by Law Students

(a) Written Consent.

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

(b) Responsibilities of Attorneys of Record.

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

(c) Eligibility Requirements.

To be eligible to appear pursuant to this rule, the law student must:

- (1) be enrolled in a law school approved by the American Bar Association;
- (2) have successfully completed legal studies for at least 4 semesters, or the equivalent if the school is on some basis other than a semester basis;
- (3) be certified by the dean of his or her law school as being of good character and competent legal ability. The dean's certification shall be filed with the clerk. This certification may be withdrawn by the dean at any time without notice or hearing and without any showing of cause by notifying the clerk in writing, or it may be terminated by the court at any time without notice of hearing and without any showing of cause. Unless withdrawn or terminated, the certification shall remain in effect for 18 months after it has been filed with the clerk or until the law student has been admitted as a permanent member of the bar of this court, whichever is earlier;
- (4) certify in writing to the clerk that he or she has read the Rules of Professional Conduct and the Standards of Professional Conduct promulgated and adopted by the Supreme Court of Appeals of West Virginia;
- (5) be introduced to the court by a permanent member of the bar of this court; and
- (6) neither ask for nor receive any compensation or remuneration of any kind for services from the party assisted, but this shall not prevent an attorney, legal services program, law school, public defender agency, the State of West Virginia, or the United States from paying compensation to the law student, nor from making appropriate charges for such services.

LR Cr P 44.3. Representation of Parties

Every party to proceedings in this court, except parties appearing *pro se*, shall be represented by a member of the bar of this court and may be represented by a Visiting Attorney and Sponsoring Attorney as provided in these rules. A corporation or unincorporated association cannot appear *pro se*.

LR Cr P 44.4. Withdrawal and/or Termination of Representation

No attorney who has entered an appearance in any criminal action shall withdraw the appearance or have it stricken from the record, except by order. **A defense attorney in any criminal case shall continue the representation until relieved by order of this court or the Court of Appeals. A motion to withdraw shall be accompanied by a notice of appearance of substitute counsel. In the absence of the appearance of substitute counsel, a motion to withdraw shall set forth sufficient information to enable the court to rule.**

LR Cr P 44.5. Pro se Appearances

A party who represents himself or herself shall file with the clerk his or her complete name and address where pleadings, notices, orders, and other papers may be served on him or her, and shall include his/her telephone number. A *pro se* party must advise the clerk promptly of any changes in name, address, and telephone number.

LR Cr P 44.6. Admission of Visiting Attorneys

(a) Procedure for Admission.

Any person who has not been admitted to practice before the Supreme Court of Appeals of West Virginia, but who is a member in good standing of the bar of the Supreme Court of the United States, the bar of the highest court of any other state in the United States, or the bar of the District of Columbia, shall be permitted to appear as a Visiting Attorney in a particular case in association with a Sponsoring Attorney as herein provided. The Sponsoring Attorney must be a member of the bar of this court, have an office for the practice of law in West Virginia, and practice law primarily in West Virginia. The Visiting Attorney shall file with the clerk, at or before his or her initial appearance (including signing a pleading), the Statement of Visiting Attorney adopted by order of this court, which is available from the clerk and on the court's website, and shall pay the Visiting Attorney fee. The Statement shall designate a Sponsoring Attorney, upon whom pleadings, notices, and other papers may be served. The Sponsoring Attorney shall consent to the designation and shall thereafter sign all papers that require the signature of an

attorney. Any paper filed by a Visiting Attorney not in compliance with this Rule may be stricken from the record after 14 days written notice transmitted to the Visiting Attorney at his or her address as known to the clerk. Upon compliance with this rule and introduction of the Visiting Attorney to the court by the Sponsoring Attorney, the Sponsoring Attorney, with the consent of the court, may be excused from further attendance during the proceedings and the Visiting Attorney may continue to appear in that particular case.

(b) Motion Not Required.

Filing a properly completed Statement of Visiting Attorney and paying the Visiting Attorney fee constitute all steps necessary to qualifying as a Visiting Attorney for a particular case and no motion to appear as a Visiting Attorney is required.

(c) Payment of Visiting Attorney Fee.

(1) Fee Payable to Clerk.

The court will charge a Visiting Attorney fee, payable to the Clerk, United States District Court, in an amount to be set by order. Pursuant to Judicial Conference policy, the fees will be used only for "purposes which inure to the benefit of the members of the bench and the bar in the administration of justice." Other than library materials, the fees will not be used to supplement appropriated funds and will not be used to pay for materials or supplies available from statutory appropriations. The fees will be placed in a fund administered by the clerk as custodian of the fund. Disbursements will be made only at the direction of a committee, the members of which will be appointed by the Chief Judge, in accordance with a written plan.

(2) West Virginia State Bar *Pro Hac Vice* Fee.

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

(d) Exceptions to Payment of Visiting Attorney Fee.

(1) Miscellaneous Cases.

A Visiting Attorney who files a miscellaneous case which does not require judicial action (e.g., one filed in order to obtain a subpoena) is exempt from paying the Visiting Attorney fee, from associating with a Sponsoring Attorney, and from filing the Statement of Visiting Attorney. A Visiting Attorney who files a miscellaneous case which does require judicial action

(e.g., motion to compel testimony at a deposition) must comply with Rule 44.6.

(2) Federal Government Attorneys.

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

(3) Law Students.

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

(e) Waiver of Payment of Visiting Attorney Fee.

A Visiting Attorney and his/her Sponsoring Attorney may file a motion requesting a waiver of the Visiting Attorney fee in a particular case or cases, for good cause shown. The motion will be decided by the judge assigned to the case; the motion should be filed within 21 days of the assignment of the case to the judge. If a waiver is granted, the Visiting Attorney will pay such Visiting Attorney fee in an amount as ordered by the presiding district judge.

(f) Revocation of Visiting Attorney Privilege.

For good cause, the presiding district judge may revoke the privilege of an attorney to be a Visiting Attorney in one or more specified cases.

LR Cr P 44.7. Code of Professional Conduct

In all appearances, actions and proceedings within the jurisdiction of this court, attorneys shall conduct themselves in accordance with the Rules of Professional Conduct and the Standards of Professional Conduct promulgated and adopted by the Supreme Court of Appeals of West Virginia.

LR Cr P 44.8. Bias and Prejudice

The United States District Court for the Southern District of West Virginia aspires to achieve absolute fairness in the determination of cases and matters before it and expects the highest standards of professionalism, human decency, and considerate behavior toward others from its judicial officers, lawyers, and court personnel, as well as from all witnesses, litigants, and other persons who come before it. As to matters in issue before the court, conduct and statements toward one another must be without bias with regard to such factors

as gender, race, ethnicity, religion, handicap, age, and sexual orientation when such conduct or statements bear no reasonable relationship to a good faith effort to argue or present a position on the merits. Judicial officers must ensure that appropriate action is taken to preserve a neutral and fair forum for all persons. Nothing in this Local Rule, however, is intended to infringe unnecessarily or improperly upon the otherwise legitimate rights, including the right of freedom of speech, of any person, nor to impede or interfere with the aggressive advocacy of causes and positions by lawyers and litigants.

LR Cr P 46.1. Release from Custody

- (a) General Requirements. Every bond must be executed by the defendant and principal obligor or one or more qualified sureties, if applicable, as provided in this rule.
- (b) Corporate Sureties.
 - (1) A corporate surety must be qualified to write bonds under 31 U.S.C. §§ 9301–9309 and approved by the Secretary of the Treasury of the United States.
 - (2) The representative of the corporate surety that signs the bond must attach to the bond a power of attorney that establishes the representative’s authority to bind the corporate surety.
- (c) Real-Property Bond.
 - (1) A person may serve as a surety on a real-property bond only by court order. A person seeking permission to serve as a surety on a real property bond must:
 - (A) offer as security real property located in the State of West Virginia, or other property as approved by a judge of this court, of an unencumbered value equal to or greater than the stated amount of the bond;
 - (B) be competent to convey the real property; and
 - (C) submit an affidavit and supporting documents including: (i) a legal description of the real property; (ii) a complete list of all encumbrances and liens on the real property; (iii) a current appraisal of the real property by a qualified appraiser; (iv) a waiver of inchoate rights; (v) a certification that the real property is not exempt from execution; and (vi) proof of payment of property taxes.

- (2) Within 14 days after the court approves the real-property bond, the surety must file with the court a copy of a notice of encumbrance filed by the surety with the county recorder or registrar of titles that identifies the bond as an encumbrance on the real property.
- (3) A real-property bond will be released only by court order.
- (d) Cost Bonds. The court may, on motion or on its own, order a party to file a bond or other security for costs in an amount, and subject to conditions, specified by the court.
- (e) Cash bonds. Deposit of cash bonds is governed by LR Civ P 67.1. Withdrawal of cash bonds is governed by LR Civ P 67.2.
- (f) Personal Recognizance Bond. On a personal recognizance bond, the defendant promises to comply with all conditions imposed by the court. A defendant that fails to comply with a condition or fails to appear will be subject to penalties as authorized by statute.
- (g) Objections. Any party may object to the issuance of a bond.
- (h) All bonds must receive court approval.

LR Cr P 49.1. Filing Papers

Except as otherwise permitted or required by the Federal Rules, these Local Rules, or order, the original of all papers not electronically filed shall be filed with the court at the clerk's office at the point of holding court in which the particular action or proceeding is docketed. In emergency situations, due to travel conditions, time limitations or other factors, filings may be made at any of the clerk's offices, in which event the papers so filed shall be forwarded by the receiving clerk's office to the clerk's office at the point of holding court in which the particular action or proceeding is docketed. When electronically filing documents with the clerk's office, a paper courtesy copy to the assigned judicial officer is not required except where any motion, memorandum, response, or reply, together with documents in support thereof, is 50 pages or more in length.

LR Cr P 49.2. Filing by Facsimile or Electronic Means

- (a) The clerk's office will not accept any facsimile transmission for filing unless ordered by the court.
- (b) Pursuant to FR Cr P 49(d), the clerk's office will accept pleadings or documents filed, signed or verified by electronic means that are consistent with the technical

standards, if any, established by the Judicial Conference of the United States. A pleading or document filed by electronic means in compliance with this Rule constitutes a written paper for the purpose of applying these Rules and the Federal Rules of Criminal Procedure. All electronic filings shall be governed by the court's Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means for Criminal Cases, the provisions of which are incorporated by reference, and which may be amended from time to time by the court.

- (c) Documents filed by an attorney must include the attorney's registration number. Attorneys who are licensed in West Virginia must provide their West Virginia license number as their attorney-registration number. Visiting Attorneys licensed in a state other than West Virginia must provide the state of licensure and the license number as their attorney-registration number.
- (d) Service of Documents through the Court's Electronic Transmission Facilities: A party may serve a paper under FR Cr P 49(b) by using the court's electronic transmission facilities in accordance with the court's Administrative Procedures for Electronic Case Filing. If a document is served electronically, the notice of electronic filing generated by the court's electronic transmission facilities constitutes a certificate of service with respect to those persons to whom electronic notice of the filing is sent, and no separate certificate of service need be filed with respect to those persons.

Because the electronic notification also identifies parties and/or attorneys that are NOT registered users of the system, the filer is responsible for serving copies of pleadings on unregistered users by other means. A certificate of service must be electronically filed with the Court when a document is served by other than electronic means.

LR Cr P 49.1.1. Privacy Protection for Filings Made with the Court

- (a) Documents.

In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002 and its amendments, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all pleadings filed with the court, including exhibits thereto, whether filed, electronically or in paper, unless otherwise ordered by the court.

- (1) Social Security numbers. If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.

- (2) Names of minor children. If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- (3) Dates of birth. If an individual's date of birth must be included in a pleading, only the year should be used.
- (4) Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal or may file a reference list under seal. This document shall be retained by the court as part of the record. The court will require the party to file a redacted copy for the public file.

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

- (b) Transcripts of Hearings.

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

LR Cr P 53.1. Photography in and Broadcasting from Courtroom

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

LR Cr P 53.2. Impoundment of Photography and Broadcasting Equipment

The United States Marshal may impound any camera, recording, broadcasting and other related equipment brought into the courtroom or the adjacent corridors in violation of LR Cr P 53.1. The impounded equipment shall be returned to its owner or custodian after the proceedings have concluded.

LR Cr P 55.1. Custody and Disposition of Exhibits

(a) During Trial or Hearing.

- (1) Custody of the Clerk. Unless the court otherwise orders, all marked and identified exhibits of a documentary nature that are admitted into evidence during trial or hearing, and that are suitable for filing and transmission to the court of appeals as a part of the record on appeal, must be placed in the custody of the clerk of court.
- (2) Custody of the Parties. Unless the court otherwise orders, all marked and identified exhibits, models and materials of unusual bulk or weight admitted into evidence during trial that cannot be conveniently stored in the clerk's facilities will be retained in the custody of the party offering them. The party will execute a receipt for the exhibits and will grant the reasonable request of any party to examine or reproduce the exhibit for use in the proceeding. With approval of the court, photographs may be substituted for said exhibits once they have been introduced into evidence.
- (3) Custody of the United States Marshal. Unless the court otherwise orders, all marked and identified exhibits admitted into evidence that are sensitive in nature will be retained in the custody of the United States Marshal, who shall execute a receipt therefor. Such exhibits will include, but not be limited to, the following types of sensitive exhibits or evidence: controlled substances, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, and counterfeit money. With approval of the court, photographs may be substituted for said exhibits once they have been introduced into evidence.

(b) After Trial or Hearing.

- (1) Custody of the Clerk. Where the clerk of court does take custody of exhibits that are documentary in nature under subsection 55.1.a.1 of this rule, such exhibits may not be taken from the custody of the clerk until final disposition of the matter, except upon order of the court and execution of a receipt that identifies the exhibits taken, which receipt will be filed in the

case. Copies approved by counsel and unrepresented parties must be filed in place of the original exhibits.

After final judgment and one year after the time for motion for new trial and appeal has passed, or upon the filing of a stipulation waiving and abandoning the right to appeal and to move for a new trial, the clerk is authorized, without further court order, to return all exhibits to the parties or their counsel.

- (2) Custody of the Parties. Unless the court orders otherwise, the party offering exhibits of the kind described in subsection 55.1.a.2 of this rule will retain custody of them and be responsible for preserving them in their condition as of the time admitted.
- (3) Custody of the United States Marshal. Where the United States Marshal does take custody of exhibits under subsection 55.1.a.3 of this rule, such exhibits will be returned to the offering party following the trial or hearing for preservation in their condition as of the time admitted.
- (4) Retention of and Access to Exhibits by the Parties. Upon reasonable request, parties are to make available any and all exhibits in their custody for use by this court or by any appellate court for a period of two years after the conclusion of the case and any direct appeal. For the purpose of this rule, the “conclusion of the case and any direct appeal” refers to the time when a conviction becomes final for the purposes of 28 U.S.C. § 2255.

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

In its discretion, on a case-by-case basis, the court may provide the Clerk with alternative procedures for custody and instruction for disposition of specific exhibits.

LR Cr P 55.2. Removal of Papers from Custody of Clerk

Papers on file in the office of the clerk shall be produced pursuant to subpoena from a court of competent jurisdiction directing their production.

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

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

LR Cr P 56.1. Sessions

The court is considered open and in continuous session in all divisions of the district on all business days throughout the year in accordance with the provisions of 28 U.S.C. § 139, FR Cr P 56, and other controlling statutes and rules.

LR Cr P 57.1. Courthouse Security

(a) Entry of Federal Courthouse Buildings.

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

(b) Persons Requiring Access.

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

(c) Weapons.

The United States Marshal and Deputy United States Marshals may possess and oversee possession of firearms or other weapons in the building. Only members of the United States Marshals Service and those specifically designated by that service may possess firearms and other weapons in the space occupied and controlled by this court.

(d) Identification Card.

All employees will use an identification card issued by the employee's agency. Employees will be required to display or show the identification card to the court security officers to pass through the security screening post. If an employee fails to present their issued identification card, he or she must successfully pass through the security screening post.

(e) **Wireless Communication Devices.**

Only attorneys, court reporters, probation officers, and court interpreters conducting official business in a federal courthouse in this District are permitted limited use of wireless communication devices. Audio or video recording or the taking of any photographs with such devices while in the courthouse is prohibited. Wireless communication devices must be turned off or rendered silent while in a courtroom. Wireless communication devices are not permitted in a grand jury room while the grand jury is in session unless utilized by an agent or representative of the United States Attorney's Office for evidence presentation. Each judicial officer may modify this rule as circumstances warrant.

Any other individual who brings a wireless communication device into a federal courthouse in this District, excepting federal employees, elevator response personnel and PBX telephone technicians, will be required by the court security officers to deposit such device in storage facilities as provided at the front entry of the building, to be retrieved upon leaving the courthouse.

Appropriate signage will be posted outside the courthouse and at the security posts, published on the court's external web site and in notices provided to jurors.

The court authorizes the United States Marshal to allow wireless communication devices for emergency situations as deemed appropriate.

LR Cr P 58.1. Authority of Magistrate Judges in Misdemeanor Cases

Magistrate judges are specially designated to try persons accused of, and sentence persons convicted of, misdemeanors committed within the Southern District of West Virginia, as provided in 18 U.S.C. § 3401.

LR Cr P 58.2. Assignment of Misdemeanors and Petty Offenses

Upon the filing of an information, complaint, or violation notice, or the return of an indictment, all misdemeanor and petty offense cases shall be assigned to a magistrate judge, who shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and FR Cr P 58.

LR Cr P 58.3. Petty Offenses

(a) Schedule of Petty Offenses.

The Appendix to the Local Criminal Rules contains a Schedule of Petty Offenses. The Schedule, which may be modified by the Chief Judge, lists petty offenses, as defined in 18 U.S.C. § 19, that occur within the territorial jurisdiction of the United States, whether originating under federal statute or regulation or under applicable state statute by virtue of the Assimilated Crimes Act, 18 U.S.C. § 13.

(b) Forfeiture of Collateral in Lieu of Appearance.

A defendant charged with a petty offense listed in the Schedule may post the collateral for that offense, in lieu of appearing before a magistrate judge to answer the charge, unless the offense is noted as “mandatory appearance” or the arresting or citing officer deems the offense to be “aggravated.” Posting the collateral signifies that the defendant does not contest the charge or request a hearing before the designated magistrate judge. The posted collateral shall be administratively forfeited.

(c) Failure to Post Collateral.

If a defendant does not post the collateral and fails to appear before the designated magistrate judge for trial on the cited petty offense(s), the collateral amount listed for the offense on the Schedule shall be forfeited to the United States. Forfeiture of the collateral shall be tantamount to a finding of guilty. Failure by a defendant to appear to answer an offense for which appearance is mandatory, or an offense that is aggravated, may result in an arrest warrant being issued for the defendant.

(d) Certification of Convictions of Traffic Violations.

Either the clerk or the designated magistrate judge shall certify to the proper authority the record of any conviction of a traffic violation, as required by the applicable state statutes.

(e) Arrest.

Nothing contained in this Local Rule shall prohibit a law enforcement officer from arresting an offender for committing any offense, including petty offenses for which collateral may be posted and forfeited, and upon arrest, taking the person charged without unnecessary delay before the nearest magistrate judge.

LR Cr P 59.1. General Authority of Magistrate Judges

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

LR Cr P 59.2. Statutory Duties

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

LR Cr P 59.3. Duties Under the Federal Rules of Criminal Procedure

Magistrate judges are authorized or specially designated to perform all duties attributed to magistrate judges by the Federal Rules of Criminal Procedure.

LR Cr P 59.4. Miscellaneous Duties

Magistrate judges are also authorized to:

- (a) exercise general supervision of criminal calendars, conduct calendar and status calls, conduct hearings, and determine motions to expedite or postpone the trial of cases for the district judges;
- (b) conduct pretrial conferences, scheduling conferences, and related pretrial proceedings;
- (c) conduct arraignments in criminal cases not triable by a magistrate judge and take not guilty pleas in such cases;
- (d) with the consent of the parties, conduct arraignments in criminal cases not triable by a magistrate judge, receive a defendant's guilty plea, and submit proposed findings of fact and recommendations as to whether the presiding district judge should accept the guilty plea, and find the defendant guilty;

- (e) impanel grand juries, conduct hearings as to prospective jurors who fail to appear for grand jury duty, determine the qualification of specific grand jurors to participate in the investigation of particular matters, determine motions to quash grand jury subpoenas, and receive grand jury returns;
- (f) with the consent of the parties, conduct voir dire and preside over the selection of petit juries;
- (g) accept waivers of indictment;
- (h) conduct necessary proceedings leading to the potential revocation of probation or supervised release;
- (i) issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses, or evidence for court proceedings;
- (j) order the exoneration or forfeiture of bonds;
- (k) conduct proceedings for initial commitment of narcotic addicts under Title III of the Narcotic Addict Rehabilitation Act, 42 U.S.C. §§ 3401 *et seq.*;
- (l) order the examination of a defendant to determine his or her mental competence to understand the nature and consequences of the proceeding against the defendant or to assist properly in his or her defense, and conduct hearings on a defendant's mental competence, and to determine if a defendant is presently suffering from a mental disease or defect which would give rise to the defense of insanity, or which is inconsistent with the mental state required for the offense charged, all as provided in 18 U.S.C. § 4241 *et seq.*;
- (m) supervise proceedings conducted pursuant to letters rogatory as provided in 28 U.S.C. § 1782(a);
- (n) issue orders of withdrawal of funds from the court registry pursuant to 28 U.S.C. § 2042;
- (o) conduct extradition proceedings in accordance with 18 U.S.C. § 3184;
- (p) issue orders or warrants authorizing acts necessary in the performance of the duties of administrative and regulatory agencies and departments of the United States; and
- (q) serve with designated committees or other judicial officers, participate in promulgation of local rules and procedures, administration of the forfeiture of

collateral system, and other functions of court governance as approved by the Chief Judge.

LR Cr P 59.5. Assignment of Matters to Magistrate Judges by Division

To the extent not provided for in these Local Rules and the Federal Rules of Criminal Procedure, criminal cases shall be assigned to the magistrate judge for the division in which the alleged offense(s) occurred. In the case of offense(s) which allegedly occurred in more than 1 division, the case shall be assigned to the magistrate judge for the division in which the majority of the allegedly criminal conduct occurred.

LR Cr P 59.6. Other Duties Assigned and Matters Referred

Individual district judges may, in their discretion, assign or request magistrate judges to perform such other duties as are not inconsistent with the Constitution and laws of the United States, including but not limited to conducting hearings, including evidentiary hearings, and submitting proposed findings of fact and recommendations for the disposition of motions to dismiss or quash an indictment or information, and to suppress evidence.

ATTACHMENT 4

Forms Referenced in the Local Rules

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): _____

Brief description of cause: _____

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

Southern

District of

West Virginia, Division:

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES AND COSTS

v.

CASE NUMBER:

I, _____ declare that I am the (check appropriate box)

- plaintiff/petitioner/movant appellant other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 U.S.C. §1915, I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion/notice of appeal.

In support of this application, I answer the following questions under penalty of perjury:

- 1. Are you currently incarcerated? Yes (If "Yes," go to # 3) No (If "No," go to # 2)

If "Yes," state the place of your incarceration _____

Are you employed at the institution? _____ Do you receive any payment from the institution? _____

Have the institution fill out the Certificate portion of this application and attach a ledger sheet from the institution(s) of your incarceration showing at least the past six months' transactions.

- 2. Are you currently employed? Yes (If "Yes," go to # 2.a) No (If "No," go to # 2.b)

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

- 3. In the past 12 twelve months have you received any money from any of the following sources?

- a. Business, profession or other self-employment Yes No
b. Rent payments, interest or dividends Yes No
c. Pensions, annuities or life insurance payments Yes No
d. Disability or workers compensation payments Yes No
e. Gifts or inheritances Yes No
f. Any other sources Yes No

If you answered "Yes" to any portion of question #3, describe each source of money and state the amount received and what you expect you will continue to receive.

-
-
4. Do you have **any** cash or checking or savings accounts? Yes No

If "Yes," state the total amount. _____

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or any other thing of value? Yes No

If "Yes," describe the property and state its value.

6. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

7. I do hereby stipulate that the recovery, if any, obtained in this action shall be paid to the Clerk of Court, who shall pay therefrom, all unpaid costs taxed against plaintiff and pay the balance to plaintiff and/or his/her attorney, if any.

I declare under penalty of perjury that the above information is true and correct.

Date

Signature of Applicant

CERTIFICATE

(Incarcerated applicants only)
(To be completed by the institution of incarceration)

I certify that the applicant named herein has the sum of \$ _____ on account to his/her credit at (name of institution) _____. I further certify that the applicant has the following securities to his/her credit _____.

I further certify that during the past six months the applicant's average balance was \$ _____, and the average of monthly deposits was \$ _____.

Date

Signature of Authorized Officer

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
v.)	Civil Action No.
_____)	
<i>Defendant</i>)	

WAIVER OF THE SERVICE OF SUMMONS

To: _____
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

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

AT

**NOTICE OF CERTIFICATION FOR
USE OF COURTROOM TECHNOLOGY**

V.

NUMBER

Comes now the _____, by counsel, and do(es) hereby certify pursuant to
that the court's technology staff was contacted by telephone or in person,
to arrange for the use of courtroom technology _____ action set for _____.

Anticipated Equipment Usage (select all that apply):

- VCR/DVD Player
- Document Camera
- Laptop
- Annotation System
- I request training/testing of anticipated equipment before the date of the use.
- I do not require training/testing.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT [SELECT ONE]

[Redacted]

Plaintiff,

COMPLAINT FOR REVIEW OF THE
DECISION OF THE COMMISSIONER
OF SOCIAL SECURITY

v.

NANCY A. BERRYHILL,
Acting Commissioner of Social Security,

CIVIL ACTION

[Redacted]

Defendant.

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

I. Plaintiff is a resident of the County of [Redacted] and the State of [Redacted]. The last four digits of the Plaintiff's social security number are [Redacted].

II. Plaintiff complains that the Commissioner's final decision dated [Redacted] adversely affects the plaintiff in whole or in part. The Commissioner's final decision notifying plaintiff of right to sue bears the following caption:

[Redacted]

Name of Claimant

[Redacted]

Claim for (Disability, Survivor's Benefits, Etc.)

[Redacted]

Name of Wage Earner

[Redacted]

Last four digits of Wage Earners Social Security Number

III. Please check the type of claim you are filing.

Claim Type		For Clerk's Office Use Only
<input type="checkbox"/>	Health Insurance-Aged	COA: 42:1395(ff) NOS: 861
<input type="checkbox"/>	Black Lung	COA: 30:0923 NOS: 862
<input type="checkbox"/>	Child Disability Claim	COA: 42:0405wc NOS: 863
<input type="checkbox"/>	Widow or Widower Claim	COA: 42:0405ww NOS: 863
<input type="checkbox"/>	Supplemental Security Income Claim (Title XVI)	COA: 42:1383 NOS: 863/864
<input type="checkbox"/>	Disability Insurance Benefits Claim (Title II)	COA: 42:0405id NOS: 864
<input type="checkbox"/>	Retirement & Survivor Benefits	COA: 42:0405(g) NOS: 865

IV. Plaintiff has exhausted administrative remedies in this matter and this court has jurisdiction for judicial review pursuant to 42 U.S.C § 405(g) and/or 1383(c)(3).

WHEREFORE, plaintiff seeks judicial review by this court and the entry of a judgment for such relief as may be proper, including costs.

V. Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. **I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.**

If the plaintiff is <i>not</i> represented by an attorney, complete the following:
Name of plaintiff
Street address
City/State/Zip Code
Telephone number
E-mail address
Signature of plaintiff, if no attorney

If filed by an attorney, complete the following:
Name of attorney
Street address
City/State/Zip Code
Telephone number
E-mail address
Signature of attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT

ORDER AND NOTICE

V.

CIVIL ACTION

Pursuant to LR Civ P 16.1, it is ORDERED that the following dates are hereby fixed as the times by or on which certain events must occur:

Motions under FR Civ P 12(b), together with supporting briefs, memoranda, affidavits, or other such matter in support thereof. (All motions unsupported by memoranda will be denied without prejudice pursuant to LR Civ P 7.1 (a).)

Last day for Rule 26(f) meeting.

Last day to file report of Rule 26(f) meeting -- See Scheduling Order Worksheet, available on the Court's website and at LR Civ P 16.1.

Scheduling/status conference with the Court and lead counsel at _____ in _____, unless otherwise directed. Be prepared to discuss the following:

- (a) the discovery to be completed and the amount of time necessary for its completion;
- (b) the further formulation and simplification of issues, including possible elimination of claims or defenses;
- (c) the possibility of entering into stipulations regarding issues for trial;

- (d) the possibility of obtaining admissions regarding facts and documents; and
- (e) other matters that will assist the parties in reaching a final resolution of this matter.

Entry of Scheduling Order.

Last day to serve F R Civ P 26(a) disclosures.

NOTICE

The provision of F R Civ P 14 and 15 with respect to the time in which to file third-party claims and to amend pleadings without leave of court are not affected by this Order and Notice.

Pursuant to LR Civ 16.1 and 73.1, the parties are informed of their opportunity to consent to the exercise by a magistrate judge of civil jurisdiction over the case, including entry of judgment, as authorized by 28 U.S.C. § 636. The parties may consent by filing a Consent to Jurisdiction by a United States Magistrate Judge (FR Civ P Form 34), or by so indicating on the Report of Parties' Planning Meeting and Scheduling Order Worksheet, all of which are available on the court's website.

The Clerk is requested to transmit this Order and Notice to all counsel of record and to any unrepresented parties.

ENTER:

United States District/Magistrate Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT**

v.

CIVIL ACTION NO.

Guideline for parties and attorneys:
The parties are advised to use the *Worksheet for Report of Parties' Planning Meeting* (located on the Court's website at www.wvsd.uscourts.gov) and the suggested guidelines contained in the form's comments.

REPORT OF PARTIES' PLANNING MEETING

1. Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, a meeting was held on _____ . Those participating were:

_____ for plaintiff(s)

_____ for defendant(s) _____

_____ for defendant(s) _____

_____ for defendant(s) _____



2. Pre-Discovery Initial Disclosures. The parties will exchange by _____ the information required by Fed. R. Civ. P. 26 (a)(1).

3. Plaintiff(s) should be allowed until _____ to join additional parties and until _____ to amend the pleadings. Defendant(s) should be allowed until _____ to join additional parties and until _____ to amend the pleadings.

4. Discovery Plan. The parties jointly propose to the court the following discovery plan [Use separate paragraphs or subparagraphs as necessary if the parties disagree.]:

a. Discovery will be needed on the following subjects:

b. The parties have reviewed Local Rule 26.5 and have discussed how the preservation, discovery, and disclosure of electronically stored information (“ESI”) should be handled, including the following:

i. It is likely that one or more parties will seek discovery of electronically stored information such as emails, files or documents stored on a server or computer, or other electronic documents.

Yes No

(If No, no other fields in Section 4.b. need to be completed.)

The parties have generally agreed upon a format for production of ESI, as follows:

ii. The parties believe it is possible that metadata may be relevant in this case, such as the date stamp when an electronic document was created or modified.

Yes No

The parties have generally agreed upon a format for production of such metadata, as follows:

iii. At this time, the parties have agreed on what ESI is “reasonably accessible” as defined in R. 26(b)(2)(B).

Yes No

If no, identify the nature of any dispute:

iv. Have the parties agreed on any search protocol for review of electronic data including methods to filter the data?

Yes No

If yes, please describe:

If no, please identify what issues remain outstanding:

v. Are there any unresolved issues pertaining to the preservation of ESI? If so, please describe:

vi. Other. Identify all other outstanding issues or disputes concerning ESI:

c. The parties agree to file a joint motion for the entry of a protective order and to complete and submit with the motion the court's preferred Agreed Protective Order found online at www.wvsc.uscourts.gov.

Yes No

If no, please explain:

d. The parties agree to file a joint motion for the entry of an Order Governing the Inadvertent Disclosure of Documents or Other Material and to complete and submit with the motion the court's preferred Agreed Order Governing the Inadvertent Disclosure of Documents or Other Material found online at www.wvsc.uscourts.gov.

Yes No

If no, please explain:

e. The parties agree to file a joint motion for the entry of an Agreed Order Setting Deposition Protocol and to complete and submit with the motion the court's optional Order Setting Deposition Protocol available online at www.wvsc.uscourts.gov.

Yes No

f. The last day to serve discovery requests is _____. The last date on which to take a discovery deposition is 45 days after the last date to serve discovery requests. The last date on which to take a discovery deposition is known as the “discovery completion date.” [Discovery on _____ to be completed by _____.]

g. The parties adopt the discovery limits set forth in the Federal Rules of Civil Procedure.

Yes No

If the parties and attorneys believe that more discovery is needed, the basis for that belief is:

h. The parties believe that this case requires additional judicial oversight such as special case management procedures or regularly held conferences.

Yes No

If yes, please describe why the case requires additional judicial oversight and the type of oversight requested:

i. Reports from retained experts under Rule 26(a)(2) due:

By the party bearing the burden of proof on an issue:_____.

By the party not bearing the burden of proof on an issue:_____.

Expert witness disclosures intended solely to contradict or rebut evidence on the same issue identified by another party:_____.

5. Magistrate judges will resolve all discovery disputes. The parties _____ to have a United States Magistrate Judge conduct any further proceedings in this case, including trial, and order the entry of a final judgment.

6. Mediation shall take place on or before _____.
7. Potential dispositive motions shall be filed by _____, with responses and replies filed according to the Local Rules.
8. The parties request a pretrial conference in _____.

The Plaintiff(s) shall submit a proposed pretrial order to Defendant(s) on or before _____.

The Defendants shall compile a proposed integrated pretrial order and submit it to chambers of the presiding judicial officer on or before _____.

9. Where applicable, proposed jury instructions shall be exchanged and transmitted to chambers of the presiding judicial officer in Microsoft Word format on or before _____.
10. Where applicable, findings of fact and conclusions of law shall be exchanged and transmitted to chambers of the presiding judicial officer in Microsoft Word format on or before _____.
11. A final settlement conference will take place on _____.
12. The case should be ready for trial by _____, and at this time is expected to take approximately _____ days.

The parties _____ a conference with the court before entry of the scheduling order.

WORKSHEET FOR REPORT OF PARTIES' PLANNING MEETING

Case Style: _____

Case No. _____ Type of trial requested: _____

Date case filed/removed = **A**: _____ Date 1st defendant appears = **X**: _____

Date of scheduling conference: _____ Date of Joinder and amendments: _____ ?

Last date to serve discovery requests = **Y**: _____ ?

Last date to take a discovery deposition = **Z**: _____ ?

Number of discovery requests and depositions: _____

Rule 26(a)(2) disclosures re experts:

By party bearing burden of proof: _____ ?

By party not bearing burden of proof: _____ ?

Rebuttal expert disclosures: _____ ?

The parties _____ to a magistrate judge conducting all proceedings.

Mediation (select one):

Date by which mediation will take place: _____ ?

At least one party believes that mediation is inappropriate in this action.

Dispositive motions - not Rule 12 (select one):

Date due: _____ ?

It is unlikely that dispositive motions will be filed in this action.

Date of settlement meeting and Rule 26(a)(3) disclosures: _____ ?

Plaintiff(s) portion of Pretrial Order due to defendant(s): _____ ?

Integrated Pretrial Order due: _____ ?

Pretrial conference requested for: _____ ?

Proposed charge to the jury due: _____ ?

-OR-

Proposed findings of fact/conclusions of law due: _____ ?

Final settlement conference date requested: _____ ?

Trial date requested: _____ ?

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT**

v.

CIVIL ACTION

ORDER SETTING DEPOSITION PROTOCOL

The parties have agreed to a protocol governing the taking of depositions in this case. Therefore, it is **ORDERED** that the following protocol shall be followed with all depositions conducted herein:

A. Deposition Notices

This Order applies to all depositions in this matter, which shall be noticed and conducted pursuant to Fed. R. Civ. P. 30 and this Order.

B. Number of Depositions Allowed

The parties agree that each party will be permitted to take ____ depositions without seeking leave of court.

C. Duration of Deposition

The presumptive time limitations on depositions imposed by Fed. R. Civ. P. 30(d)(1) shall apply in this litigation unless the parties agree to a different time limitation, or the court establishes a different time limitation upon good cause shown. Any agreement by the parties to alter the presumptive time limits shall be in writing and submitted to the court as a stipulation.

D. Scheduling of Depositions

1. The parties shall meet and confer to establish by mutual agreement a schedule for depositions in this litigation. The parties shall consider: (a) the availability of documents from among those produced by the parties and third parties; (b) the objective of not subjecting any person to repeated depositions; and (c) the need to preserve relevant testimony. The scheduling of depositions should be coordinated to the extent possible.

2. As a general rule, a witness should not be deposed on the same subject more than once. A party seeking to take a second deposition of a witness shall provide the opposing party the basis for its request. Second depositions shall be permitted only upon agreement of the parties or an order of this court issued for good cause shown. Second depositions should not be cumulative or repetitive. The parties _____ that second depositions taken specifically for the purpose of admission at trial may be taken without leave of court, so long as the depositions are scheduled in accordance with the provisions of this Order and do not delay the scheduled trial date. Defendant may select as a corporate designee under Rule 30(b)(6) a witness who has or will also testify in his or her individual capacity. A witness testifying as a Rule 30(b)(6) designee is testifying in the place of the corporation and not in his or her individual capacity. Therefore, the fact that an individual has testified as a Rule 30(b)(6) corporate representative does not prohibit that individual from being deposed a second time in his or her individual capacity.

3. Each party shall be notified at least ____ days in advance of a deposition, unless the parties agree otherwise, or the Scheduling Order does not permit, or the court enters an order that alters the notice period. A notice of the deposition of a party or party's designated witness, which requires the deponent to bring documents to the deposition, shall be served at least ____ days in advance.

E. Location of Depositions

The parties shall endeavor to schedule all depositions at locations within a reasonable distance from the residence of the deponent, or at such location agreed upon by all counsel involved and the deponent.

F. Treatment of Confidential Information

1. A party may designate as confidential any portion of a witness's deposition testimony regarding, concerning, or revealing the contents of any document designated as "**CONFIDENTIAL**" under the Protective Order entered in this litigation, or any other subject that qualifies as confidential under the Protective Order. While a deponent is being examined about information subject to the Protective Order, persons to whom disclosure is not authorized shall be excluded. The terms of the Protective Order shall apply to that portion of any transcript or recording designated as confidential under this paragraph, as well as to any confidential document attached to the deposition transcript as an exhibit. The confidentiality designation may be made by any party or their counsel either during the deposition or within the time period allowed under Fed. R. Civ. P. 30(e) for a witness to review and change the transcript or recording; the entirety of the affected transcript shall be maintained by all parties as "**CONFIDENTIAL**" during such period.

2. Before confidential portions of a deposition transcript or confidential exhibits are filed with the Court or used at a hearing or trial, the party or attorney wishing to file or use the

confidential transcript portions or exhibits shall follow the directives contained in Section II of the Protective Order (entitled “Post-Discovery Phase”).

F. Conduct of Depositions

4. Each party should designate one attorney to conduct the principal examination of each deponent.

5. The attorney conducting a deposition must provide opposing counsel with at least one copy of each exhibit marked at such deposition, simultaneous with the marking of such exhibit.

G. Deposition Disputes

1. The parties shall meet and confer in to resolve disputes concerning the timing or scheduling of depositions. If the parties are unable to resolve a dispute after good faith efforts, they may present the issue to the court for resolution.

2. Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule, require rescheduling of the deposition, or possibly result in the need to conduct a supplemental deposition, shall be presented to the presiding Magistrate Judge by telephone. In the event the Magistrate Judge is not available, then disputes may be presented to the presiding District Judge. In the event neither the Magistrate Judge nor the District Judge are available, all efforts shall be made to continue the deposition with full reservation of rights of the interrogation for a ruling at the earliest possible time.

The Clerk is hereby directed to send copies of this Order upon its entry to counsel of record.

ENTER:

Parties and Counsel:

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT**

v.

CIVIL ACTION

PROTECTIVE ORDER

By signing this Protective Order, the parties have agreed to be bound by its terms and to request its entry by the presiding district or magistrate judge. It is hereby **ORDERED** as follows:

I. DISCOVERY PHASE

A. If a party, or a non-party producing information in this civil action, or an attorney for the party or non-party, has a good faith belief that certain documents or other materials (including digital information) subject to disclosure pursuant to a request or court order, are confidential and should not be disclosed other than in connection with this action and

pursuant to this Protective Order, the party, non-party, or attorney shall clearly mark each such document or other material as “**CONFIDENTIAL.**” The individual or entity designating the document or materials as “**CONFIDENTIAL**” must take care to limit any such designation to specific documents or materials that qualify for protection under the appropriate standards. Mass, indiscriminate, or routine designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g. to unnecessarily encumber or delay the case development process or impose unnecessary expense and burden on another party) expose the designating individual or entity to sanctions. If it comes to the attention of the designating individual or entity that a document or other material has been improperly marked as “**CONFIDENTIAL,**” the designating individual or entity must promptly notify all parties that the erroneous designation is being withdrawn and must replace the improperly designated document or material with a copy that is not marked “**CONFIDENTIAL**”.

B. If a party or an attorney for a party disputes whether a document or other material should be marked “**CONFIDENTIAL,**” the parties and/or attorneys shall attempt to resolve the dispute with the designating individual or entity. If they are unsuccessful, the party or attorney challenging the “**CONFIDENTIAL**” designation shall do so by filing an appropriate motion.

C. No party or attorney or other person subject to this Protective Order shall distribute, transmit, or otherwise divulge any document or other material which is marked “**CONFIDENTIAL,**” or the contents thereof, except in accordance with this Protective Order. Court personnel are not subject to this Protective Order while engaged in the performance of their official duties.

D. Any document or other material which is marked “**CONFIDENTIAL**,” or the contents thereof, may be used by a party, or a party’s attorney, expert witness, consultant, or other person to whom disclosure is made, only for the purpose of this action. Nothing contained in this Protective Order shall prevent the use of any document or other material which is marked “**CONFIDENTIAL**,” or the contents thereof, at any deposition taken in this action.

E. If a party or attorney wishes to disclose any document or other material which is marked “**CONFIDENTIAL**,” or the contents thereof, to any person actively engaged in working on this action (e.g., expert witness, paralegal, associate, consultant), the person making the disclosure shall do the following:

1. Provide a copy of this Protective Order to the person to whom disclosure is made;
2. Inform the person to whom disclosure is made that s/he is bound by this Protective Order;
3. Require the person to whom disclosure is made to sign an acknowledgment and receipt of this Protective Order;
4. Instruct the person to whom disclosure is made to return any document or other material which is marked “**CONFIDENTIAL**,” at the conclusion of the case, including notes or memoranda made from “**CONFIDENTIAL**” material; and
5. Maintain a list of persons to whom disclosure was made and the “**CONFIDENTIAL**” materials which were disclosed to that person.

II. POST-DISCOVERY PHASE

A. If any party, non-party, or attorney wishes to file, or use as an exhibit or as evidence at a hearing or trial, any “**CONFIDENTIAL**” document or material, s/he must provide reasonable notice to the party that produced the document or material. The parties and/or attorneys shall then attempt to resolve the matter of continued confidentiality by either (a) removing the “**CONFIDENTIAL**” marking, or (b) creating a mutually acceptable redacted version that suffices for purposes of the case. If an amicable resolution proves unsuccessful,

the parties and/or attorneys may present the issue to the court for resolution. The proponent of continued confidentiality will have the burden of persuasion that the document or material should be withheld from the public record in accordance with (a) Local Rule of Civil Procedure 26.4, (b) the Administrative Procedures for Electronic Filing in the Southern District of West Virginia § 12, and (c) controlling precedent. *See, e.g., Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8–9 (1986); *Virginia Dep't. of State Police v. Washington Post*, 386 F. 3d 567, 575 (4th Cir. 2004).

B. Within thirty days after the conclusion of the action, each party shall gather the “**CONFIDENTIAL**” materials, copies thereof, and related notes and memoranda, including materials given by that party to any other individual, and shall return them to the party or attorney who originally disclosed them, with a certificate of compliance with the terms of this Protective Order, unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction in lieu of return; or (3) as to documents bearing the notations, summations, or other mental impressions of a receiving party or the party’s expert witness or consultant, that party elects to destroy the documents and certifies to the producing party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including drafts of preliminary reports submitted by an expert or consultant, which includes information produced as “**CONFIDENTIAL**,” so long as that work product does not duplicate verbatim substantial portions or the text or images of confidential documents. Any such work product retained by an attorney shall continue to be “**CONFIDENTIAL**” and shall be subject to this protective order. The attorney may use his or her work product in other litigation provided that the attorney does not use or disclose the confidential documents.

The Clerk is instructed to provide a copy of this Order to counsel of record and any unrepresented party.

ENTER:

Parties and Counsel:

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT**

v.

CIVIL ACTION

**ORDER GOVERNING THE INADVERTENT DISCLOSURE
OF DOCUMENTS OR OTHER MATERIAL UNDER RULE 502(b)**

Consistent with Federal Rule of Evidence 502(b) and Federal Rule of Civil Procedure 26(b), the Court hereby **ORDERS** that the following procedures shall govern the inadvertent production of privileged or confidential documents:

I. CLAWBACK OF PRIVILEGED OR PROTECTED DOCUMENTS

A. If a party discloses information (the “Disclosing Party”) in connection with the pending litigation that the Disclosing Party thereafter claims to be privileged or protected by the attorney-client privilege or work product protection (“Protected Information”), the disclosure of that Protected Information shall not constitute a waiver or forfeiture—in this or

any action—of any claim of privilege or work product protection that the Disclosing Party would otherwise be entitled to assert with respect to the Protected Information and its subject matter if (i) the Disclosing Party took reasonable steps to prevent disclosure and (ii) the Disclosing Party promptly took reasonable steps to rectify the error. For purposes of this Order, the term “promptly” shall mean within ___ days of the discovery of the inadvertent disclosure.

B. If a party receiving information (the “Receiving Party”) has reason to believe that the information is subject to an attorney-client privilege or work product protection, the Receiving Party shall promptly notify the Disclosing Party of the potential inadvertent disclosure. Nothing in this Order overrides any attorney's ethical responsibilities to refrain from examining or disclosing materials that the attorney knows, or reasonably should know, to be privileged.

C. When a Disclosing Party asserts a privilege or work product protection over inadvertently disclosed Protected Information, the parties shall follow the procedure set forth in Fed. R. Civ. P. 26(b)(5)(B) and in accordance with the following provisions:

1. The Disclosing Party shall, within ___ days of the discovery of the inadvertent disclosure, notify the Receiving Party, in writing, that it has disclosed Protected Information without intending a waiver by the disclosure. The Disclosing Party must explain in the notification as specifically as possible why the Protected Information is privileged or protected. The Disclosing Party shall identify the Protected Information by Bates-stamped number. If the Protected Information is not Bates-stamped, the Disclosing Party shall identify the Protected Information in a manner that reasonably permits the Receiving Party to easily locate the Protected Information at issue.

2. Upon receiving notification of the inadvertent disclosure, the Receiving Party must—unless it challenges the claim of attorney-client privilege or work product protection or the Disclosing Party’s right to clawback the Protected Information in accordance with Paragraph 3—promptly (i) notify the Disclosing Party that it will make best efforts to identify and return, sequester, or destroy (or in the case of electronically stored information, delete) the Protected Information and any reasonably accessible copies it has, and (ii) provide a certification that it will cease further review, dissemination, and use of the Protected Information. For purposes of this Order, Protected Information that has been stored on a source of electronically stored information that is not reasonably accessible, such as backup storage media, is sequestered. If such data is retrieved, the Receiving Party must promptly take steps to delete or sequester the restored protected information. For purposes of this Order, Protected Information that has been stored on a source of electronically stored information that is not reasonably accessible, such as backup storage media, is sequestered. If such data is retrieved, the Receiving Party must promptly take steps to delete or sequester the restored protected information.

3. Any challenge to a Disclosing Party’s request to clawback Protected Information shall be raised, in writing, by the Receiving Party within ___ days after being notified of the Disclosing Party’s request to clawback the Protected Information. The parties shall promptly meet and confer, in person or by telephone, to determine if the challenge can be resolved without judicial intervention. If the parties are unable to resolve the dispute, the Disclosing Party shall move the Court for a Protective Order compelling the return or destruction of the information claimed to be Protected Information. The Motion for a Protective Order, response to the motion, and reply memorandum may be filed under seal, if appropriate. Pending

resolution of the Motion for a Protective Order, the Receiving Party must not use the challenged information in any way or disclose it to any person other than those required by law to be served with a copy of the sealed Motion for Protective Order.

4. The parties may stipulate to extend the time periods set forth in Paragraphs 1 and 3 of this Order.

5. The Disclosing Party retains the burden—upon challenge pursuant to Paragraph 3—of establishing the privileged or protected nature of the Protected Information and the right to clawback the Protected Information.

6. Nothing in this Order limits the right of any party to petition the Court for an *in camera* review of the Protected Information.

7. This Order does not preclude a party from voluntarily waiving the attorney-client privilege or work product protection. The provisions of Fed. R. Evid. 502(a) apply when the Disclosing Party uses or indicates that it may use information produced under this Order to support a claim or defense.

II. DISCLOSURE OF DOCUMENTS INADVERTENTLY NOT DESIGNATED AS CONFIDENTIAL

In the event that a Disclosing Party mistakenly produces confidential information without a confidentiality designation as permitted by the Protective Order entered in this litigation, the following procedures shall apply:

A. The Disclosing Party shall, within ____ days of the discovery of the production, notify the Receiving Party in writing, identifying the confidential information by Bates-stamped number. If the confidential information is not Bates-stamped, the Disclosing Party shall identify the confidential information in a manner that reasonably permits the Receiving Party to easily locate the confidential information at issue. Within ____ days thereafter, the Disclosing Party

shall provide a replacement copy of the confidential information, marked “**CONFIDENTIAL**” and properly Bates-stamped with the original number, if applicable. The Receiving Party shall promptly destroy or return the confidential information mistakenly produced without a confidentiality designation, including any copies it has, and replace it with the confidential information properly designated as confidential.

B. If a Receiving Party disputes the Disclosing Party’s claim of confidentiality, the Receiving Party may move the Court to challenge the confidential designation in accordance with the provisions of the Protective Order entered in this case. If a Receiving Party elects to file such a motion, the Receiving Party may retain possession of the confidential information, but shall treat it in accordance with the terms of the Protective Order pending resolution of the motion. If the Receiving Party's motion is denied, the parties shall promptly comply with Paragraph II. A. of this Order.

C) The production of such document does not constitute a waiver of any claim of confidentiality as set forth in the Protective Order in this matter, unless otherwise determined by the court.

The Clerk is hereby directed to send copies of this Order to counsel of record and any unrepresented party.

ENTER:

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT**

v.

CIVIL ACTION

**AGREED ORDER GOVERNING THE INADVERTENT DISCLOSURE
OF DOCUMENTS OR OTHER MATERIAL UNDER RULE 502(d)**

Pursuant to Federal Rule of Evidence 502(d) and the agreement of the parties, the Court hereby **ORDERS** that the following procedures shall govern the inadvertent production of privileged or confidential documents:

I. CLAWBACK OF PRIVILEGED OR PROTECTED DOCUMENTS

A. Subject to the provisions of this Order, if a party discloses information (the “Disclosing Party”) in connection with the pending litigation that the Disclosing Party thereafter claims to be privileged or protected by the attorney-client privilege or work product protection (“Protected Information”), the disclosure of that Protected Information shall not constitute or be deemed a waiver or forfeiture—in this or any other action—of any claim of privilege or work

product protection that the Disclosing Party would otherwise be entitled to assert with respect to the Protected Information and its subject matter.

B. The Disclosing Party shall, within ___ days of the discovery of the inadvertent disclosure, notify the party receiving the Protected Information (“the Receiving Party”), in writing, that it has disclosed Protected Information without intending a waiver by the disclosure. The Disclosing Party must explain in the notification as specifically as possible why the Protected Information is privileged or protected. The Disclosing Party shall identify the Protected Information by Bates-stamped number. If the Protected Information is not Bates-stamped, the Disclosing Party shall identify the Protected Information in a manner that reasonably permits the Receiving Party to easily locate the Protected Information at issue.

C. Upon receiving notification of the inadvertent disclosure, the Receiving Party must—unless it contests the claim of attorney-client privilege or work product protection in accordance with Paragraph D—promptly (i) notify the Disclosing Party that it will make best efforts to identify and return, sequester, or destroy (or in the case of electronically stored information, delete) the Protected Information and any reasonably accessible copies it has, and (ii) provide a certification that it will cease further review, dissemination, and use of the Protected Information. For purposes of this Order, Protected Information that has been stored on a source of electronically stored information that is not reasonably accessible, such as backup storage media, is sequestered. If such data is retrieved, the Receiving Party must promptly take steps to delete or sequester the restored protected information.

D. Any challenge to the Disclosing Party’s claim of privilege or work product protection shall be made, in writing, by the Receiving Party within ___ days after being notified of the Disclosing Party’s request to clawback the Protected Information. The parties shall promptly

meet and confer, in person or by telephone, to determine if the challenge can be resolved without judicial intervention. If the parties are unable to resolve the dispute, the Disclosing Party shall move the Court for a Protective Order compelling the return or destruction of the information claimed to be Protected Information. The Motion for a Protective Order, response to the motion, and reply memorandum may be filed under seal, if appropriate. The Receiving Party may not assert as a ground for compelling disclosure of the information the fact or circumstance of its disclosure. Pending resolution of the Motion for a Protective Order, the Receiving Party must not use the challenged information in any way or disclose it to any person other than those required by law to be served with a copy of the sealed Motion for Protective Order.

E. The parties may stipulate to extend the time periods set forth in Paragraph B and D of this Order.

F. Nothing in this Order overrides any attorney's ethical responsibilities to refrain from examining or disclosing materials that the attorney knows, or reasonably should know, to be privileged and to inform the Disclosing Party that such materials have been produced.

G. The Disclosing Party retains the burden—upon challenge pursuant to Paragraph D—of establishing the privileged or protected nature of the Protected Information.

H. Nothing in this Order limits the right of any party to petition the Court for an *in camera* review of the Protected Information.

I. This Order does not preclude a party from voluntarily waiving the attorney-client privilege or work product protection. The provisions of Fed. R. Evid. 502(a) apply when the Disclosing Party uses or indicates that it may use information produced under this Order to support a claim or defense.

J. The provisions Fed. R. Evid. 502(b)(2) are inapplicable to the production of Protected Information under this Order.

II. DISCLOSURE OF DOCUMENTS INADVERTENTLY NOT DESIGNATED AS CONFIDENTIAL

In the event that a Disclosing Party mistakenly produces confidential information without a confidentiality designation as permitted by the Protective Order entered in this litigation, the following procedures shall apply:

A. The Disclosing Party shall, within ___ days of the discovery of the production, notify the Receiving Party in writing, identifying the confidential information by Bates-stamped number. If the confidential information is not Bates-stamped, the Disclosing Party shall identify the confidential information in a manner that reasonably permits the Receiving Party to easily locate the confidential information at issue. Within ___ days thereafter, the Disclosing Party shall provide a replacement copy of the confidential information, marked “**CONFIDENTIAL**” and properly Bates-stamped with the original number, if applicable. The Receiving Party shall promptly destroy or return the confidential information mistakenly produced without a confidentiality designation, including any copies it has, and replace it with the confidential information properly designated as confidential.

B. If a Receiving Party disputes the Disclosing Party’s claim of confidentiality, the Receiving Party may move the Court to challenge the confidential designation in accordance with the provisions of the Protective Order entered in this case. If a Receiving Party elects to file such a motion, the Receiving Party may retain possession of the confidential information, but shall treat it in accordance with the terms of the Protective Order pending resolution of the motion. If the Receiving Party’s motion is denied, the parties shall promptly comply with Paragraph II. A. of this Order.

C. The production of such document does not constitute a waiver of any claim of confidentiality as set forth in the Protective Order in this matter, unless otherwise determined by the court.

The Clerk is hereby directed to send copies of this Order to counsel of record and any unrepresented party.

ENTER:

UNITED STATES DISTRICT COURT

for the

_____ District of _____

v.

)
)
)
)
)

Case No.: _____

BILL OF COSTS

Judgment having been entered in the above entitled action on _____ against _____,
 Date
 the Clerk is requested to tax the following as costs:

Fees of the Clerk	\$ _____
Fees for service of summons and subpoena	_____
Fees for printed or electronically recorded transcripts necessarily obtained for use in the case	_____
Fees and disbursements for printing	_____
Fees for witnesses (<i>itemize on page two</i>)	_____
Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case.	_____
Docket fees under 28 U.S.C. 1923	_____
Costs as shown on Mandate of Court of Appeals	_____
Compensation of court-appointed experts	_____
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828	_____
Other costs (<i>please itemize</i>)	_____
TOTAL	\$ _____

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

Declaration

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill has been served on all parties in the following manner:

Electronic service First class mail, postage prepaid

Other: _____

s/ Attorney: _____

Name of Attorney: _____

For: _____ Date: _____

Name of Claiming Party

Taxation of Costs

Costs are taxed in the amount of _____ and included in the judgment.

By: _____

Clerk of Court

Deputy Clerk

Date

UNITED STATES DISTRICT COURT

Witness Fees (computation, cf. 28 U.S.C. 1821 for statutory fees)

NAME , CITY AND STATE OF RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
					TOTAL		

NOTICE

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:

“Sec. 1924. Verification of bill of costs.”

“Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.”

See also Section 1920 of Title 28, which reads in part as follows:

“A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.”

The Federal Rules of Civil Procedure contain the following provisions:

RULE 54(d)(1)

Costs Other than Attorneys’ Fees.

Unless a federal statute, these rules, or a court order provides otherwise, costs — other than attorney’s fees — should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 day’s notice. On motion served within the next 7 days, the court may review the clerk’s action.

RULE 6

(d) Additional Time After Certain Kinds of Service.

When a party may or must act within a specified time after service and service is made under Rule5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a).

RULE 58(e)

Cost or Fee Awards:

Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney’s fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.



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

Withdrawal Payee Information
Attn: Finance Department

CONFIDENTIAL DOCUMENT
Do not file this form on the court's electronic case filing system.

Under Local Civil Rule of Procedure 67.2(b), a party seeking to withdraw funds from the court registry must file in paper form a completed copy of this form with the clerk before any funds will be disbursed.

Case Number:

Case Title:

Moving Party:

Full Name of Payee	Address of Payee (No P.O. Boxes)	Social Security Number or Employer Identification Number of Payee

Note: The information collected on this form is provided to the depository institution pursuant to I.R.S. Ruling 76-50. This information is used for administrative purposes only and will be kept confidential.

Date: _____

Attorney or Unrepresented Party

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT [REDACTED]

[REDACTED]

v.

CIVIL ACTION [REDACTED]

[REDACTED]

CONSENT TO JURISDICTION
BY A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of Title 28, United States Code, Section 636(c), the undersigned party or parties to the above-captioned civil matter hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including trial, and order the entry of final judgment.

[REDACTED]

Date

[REDACTED]

Signature

Note: Return this form to the Clerk of the Court if you consent to jurisdiction by a United States magistrate judge. Do not send a copy of this form to any district judge or magistrate judge.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT [REDACTED]

[REDACTED]

EXHIBIT LIST - CIVIL

V.

CIVIL ACTION [REDACTED]

[REDACTED]

PRESIDING JUDGE OR MAGISTRATE JUDGE:	PLAINTIFF ATTORNEY(S):	DEFENDANT ATTORNEY(S):
[REDACTED]	[REDACTED]	[REDACTED]
PROCEEDING DATE(S):	COURT REPORTER:	COURTROOM DEPUTY:
[REDACTED]	[REDACTED]	[REDACTED]

PLFT. NO.	DEFT. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION	LOCATION

	v.		CASE NUMBER

**CUSTODY ACKNOWLEDGMENT AND RECEIPT
(PROCEEDING TO CONTINUE)**

Pursuant to LR Civ P 79.1 and by execution of this **Custody Acknowledgment and Receipt**, the undersigned hereby assumes and retains custody of those exhibits designated herein as being located with

Date: _____

Name (*please print*):

Signature:

Representative of _____

**CUSTODY ACKNOWLEDGMENT AND RECEIPT
(PROCEEDING CONCLUDED)**

Pursuant to LR Civ 79.1 and by execution of this **Custody Acknowledgment and Receipt**, the undersigned hereby assumes and retains custody of those exhibits designated herein as being

Date: _____

Name (*please print*):

Signature:

Representative of _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT

**STATEMENT OF VISITING ATTORNEY
AND DESIGNATION OF LOCAL COUNSEL**

V.

CASE NUMBER

Name of Visiting Attorney and firm name

State Bar ID number

Name of party represented

Name and address of the Bar(s) of which the Visiting Attorney is a member in good standing

Visiting Attorney's office address

Visiting Attorney's office telephone number

Office fax number

Email address

WV

Name of Sponsoring Attorney and firm name

WV Bar ID number

Sponsoring Attorney's office address

Sponsoring Attorney's office telephone number

Office fax number

Email address

VISITING ATTORNEY’S CERTIFICATION

I hereby certify that I am a member in good standing of the Bar(s) listed in the Statement of Visiting Attorney and that I have never been convicted of a felony. I further certify that I have paid the West Virginia State Bar its prescribed pro hac vice fee for this case, and complied with the West Virginia State Bar’s requirements for attorneys admitted pro hac vice.

Date

Signature of Visiting Attorney

SIGN HERE

SPONSORING ATTORNEY’S CERTIFICATION

I hereby certify that I am admitted to practice before the Supreme Court of Appeals of West Virginia, I am a member in good standing of the West Virginia State Bar, and I am a member of the bar of this Court. I further certify that I have an office for the practice of law in West Virginia, and I practice law primarily in West Virginia. I agree that pleadings, notices, and other papers may be served on me in this case. I consent to being the Sponsoring Attorney for the above-named Visiting Attorney and I shall hereafter sign all papers that require the signature of an attorney.

Date

Signature of Sponsoring Attorney

SIGN HERE

**** ELECTRONIC FILING REQUIREMENT ****

Electronic filing is required in the United States District Court for the Southern District of West Virginia. Please refer to the Court's website at www.wvsd.uscourts.gov under **CM/ECF Information > Electronic Filing > Administrative Procedures for Electronic Case Filing in the SDWV** for guidance. Specific requirements regarding logins and passwords and the registration process may be found at **Section 6. Login and Password; Registration.**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA

v.

Criminal No. _____

**ARRAIGNMENT ORDER AND
STANDARD DISCOVERY REQUESTS**

I. ARRAIGNMENT ORDER

[Defendant present] At _____, on _____, 20____, came the United States of America by _____, Assistant United States Attorney, and also came the defendant in person, and by ____ **court-appointed** ____ **retained** counsel, _____, for the purpose of an arraignment.

After the Court interrogated the defendant and was satisfied that the defendant had received a copy of the indictment, and had read and understood the contents thereof, and that his/her attorney had explained the nature of the charges to him/her, the defendant entered a voluntary plea of **NOT GUILTY** to the indictment.

[Defendant not present] At _____, on _____, 20____, came the United States of America by _____, Assistant United States Attorney, and also came _____, ____ **court-appointed** ____ **retained** counsel for the defendant, who had previously waived his/her right to be present at the arraignment, which waiver was accepted. A **NOT GUILTY** plea to the indictment was entered for the defendant, pursuant to the waiver.

IT IS ORDERED that this case be set for trial to a jury at _____ a.m. on _____, 20____, in _____, before the Honorable _____.

IT IS FURTHER ORDERED that if any courtroom technology is required for use at trial or other proceeding, counsel shall notify the court's technology staff. A certification that the court's technology staff has been notified shall be filed with the clerk no later than 7 days before the scheduled commencement of the trial or other proceeding.

IT IS FURTHER ORDERED that a pretrial hearing on motions in this case be held on _____, 20____, at _____ a.m. ____p.m. in _____. Pursuant to Rule 12.1(d) of the Local Rules of Criminal Procedure for the Southern District of West Virginia, counsel must notify the presiding judge whether either party will seek to present evidence at the pretrial hearing on motions. Further, counsel must immediately notify the presiding judge if agreement has been reached on all pretrial issues, rendering the pretrial hearing on motions unnecessary.

IT IS FURTHER ORDERED that if Standard Discovery Requests are elected, then pretrial motions are due on or before _____, 20____, with copies provided to the presiding judge's chambers. Proposed Voir Dire Questions and Jury Instructions are due to the presiding judge on or before _____, 20_____.

On or before _____, 20____, counsel is requested to provide a list of prospective witnesses to chambers for use in voir; such list need not be served on opposing counsel.

The defendant ____did execute ____did not execute a waiver of right to be present at hearings on motions prior to trial.

With respect to a defendant represented by court-appointed counsel, IT IS FURTHER ORDERED that the defendant is given the right to subpoena witnesses to testify in this case on the date of trial, and the costs incurred by the process and fees of the witnesses so subpoenaed be paid in the same manner in which similar costs and fees are paid in the case of witnesses so subpoenaed on behalf of the government.

II. CUSTODIAL/NON-CUSTODIAL STATUS

(Check applicable sections)

_____A. The defendant was previously ordered detained pending trial.

_____B. The government has moved for a detention hearing, and the Court hereby **ORDERS** that a detention hearing be held on _____, 20____, at _____. The defendant is remanded to the temporary custody of the United States Marshal pending the detention hearing.

_____C. The defendant was previously released on a ____surety ____non-surety bond in the amount of \$ _____ with special conditions as set forth in the Order Setting Conditions of Release, and it is **ORDERED** that said bond and Order shall continue.

_____D. The defendant is hereby **ORDERED** released upon execution of a ____surety ____non-surety bond in the amount of \$ _____, as set forth in the Order Setting Conditions of Release.

_____E. The defendant is hereby **ORDERED** detained as set forth in the Detention Order.

III. STANDARD DISCOVERY REQUEST FORM
(Initial "A" or "B")

_____A. The defendant has elected to utilize the Standard Discovery Requests, as set forth in Rule 16.1 of the Local Rules of Criminal Procedure for the Southern District of West Virginia.

_____B. The defendant has elected **NOT** to utilize the Standard Discovery Requests, as set forth in Rule 12.1 of the Local Rules of Criminal Procedure for the Southern District of West Virginia. Accordingly, the defendant is hereby **ORDERED** to file all pretrial motions together with supporting memoranda fourteen (14) days before the hearing on pretrial motions, not later than _____, 20____, and to provide copies to the presiding judge's chambers. Responses shall be filed within seven (7) days, not later than _____, 20____, with copies provided to the presiding judge's chambers.

Whereupon, the following **Standard Discovery Requests** were made:

1. On Behalf of the Defendant, the Government Is Requested to:
(defense counsel must initial all applicable sections)

_____a. Disclose to defendant the substance of any relevant oral statement made by the defendant, before or after arrest, in response to interrogation by a person the defendant knew was a government agent if the government intends to use the statement at trial. [F.R.Crim.P. 16(a)(1)(A)].

_____b. [**Individual defendant**] Disclose to defendant and make available for inspection, copying or photographing, all of the following: (I) any relevant written or recorded statement by the defendant if the statement is within the government's possession, custody, or control; and the attorney for the government knows--or through due diligence could know--that the statement exists; (ii) the portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by a person the defendant knew was a government agent; and (iii) the defendant's recorded testimony before a grand jury relating to the charged offense. [F.R.Crim.P. 16(a)(1)(B)].

_____c. [**Organization defendant**] Where the defendant is an organization, e.g., corporation, partnership, association or labor union, disclose to the defendant any statement described in F.R.Crim.P. 16(a)(1)(A) and (B), if the government contends that the person making the statement (I) was legally able to bind the defendant regarding the subject of the statement because of that person's position as the defendant's director, officer, employee, or agent; or (ii) was personally involved in the alleged conduct constituting the offense and was legally able to bind the defendant regarding that conduct because of that person's position as the defendant's director, officer, employee, or agent. [F.R.Crim.P. 16(a)(1)(C)].

_____d. Furnish the defendant with a copy of the defendant's prior criminal record that is within the government's possession, custody, or control if the attorney for the government knows--or through due diligence could know--that the record exists. [F.R.Crim.P. 16(a)(1)(D)].

_____e. Permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody, or control, and (I) the item is material to preparing the defense; (ii) the government intends to use the item in its case in chief at trial; or (iii) the item was obtained from or belongs to the defendant. [F.R.Crim.P. 16(a)(1)(E)].

_____f. Permit the defendant to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if (I) the item is within the government's possession, custody or control; (ii) the attorney for the government knows--or through due diligence could know--that the item exists; and (iii) the item is material to preparing the defense or the government intends to use the item in its case-in-chief at trial. [F.R.Crim.P. 16(a)(1)(F)].

_____g. Give to the defendant a written summary of any testimony that the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its case-in-chief at trial. If the government requests discovery under Federal Rules of Criminal Procedure 16(b)(1)(C)(ii) and the defendant complies, the government must, at the defendant's request, give to the defendant a written summary of testimony that the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial on the issue of the defendant's mental condition. The summary provided must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications. [F.R.Crim.P. 16(a)(1)(G)].

_____h. Disclose to defendant all evidence favorable to defendant, including impeachment evidence, and allow defendant to inspect, copy or photograph such evidence.

_____I. Notify defendant of all evidence the government intends to introduce pursuant to Rule 404(b) of the Federal Rules of Evidence.

_____j. Disclose to defendant all reports of government "mail cover", insofar as the same affects the government's case against the defendant or any alleged aiders and abettors or co-conspirators.

_____k. Disclose to defendant any matter as to which the government will seek judicial notice.

_____l. Disclose to defendant and make available for inspection, copying or photographing, the results of any interception of a wire, oral or electronic communication in the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence could become known, to the attorney for the government, which contains any relevant statement made by the defendant or which is material to the preparation of the defendant's defense or which is intended for use by the government as evidence in its case-in-chief at the trial. For each such interception, disclose (i) any application for an order authorizing the interception of a wire or oral communication, (ii) any affidavits filed in support thereof, and (iii) any court order authorizing such interception.

_____m. Provide notice to defendant of the government's intention to use evidence pursuant to Rule 12(b)(4)(B) of the Federal Rules of Criminal Procedure.

2. Government Responses to Defendant's Standard Discovery Requests.
(initial line)

_____ Pursuant to Local Rule 16.1(C) , the Government hereby agrees to provide the materials to the defendant not later than fourteen (14) days from the date of this Order, or as otherwise agreed by the parties, or ordered by the Court.

Further, the government must file a written response to the defendant's standard discovery requests with the Clerk within the time frame set forth above.

3. Reciprocal Discovery and Filing of Additional Motions by Defendant.

Pursuant to Local Rule 16.1, the defendant shall provide to the Government any required reciprocal discovery within **fourteen (14) days** of receipt of the requested materials and filing of the government's written response to the defendant's discovery requests.

4. Continuing Duty of Disclosure.

The defendant and the government agree that their respective duties of disclosure and discovery pursuant to this order are continuing, and that they shall produce additional responsive information as soon as it is received, and in no event later than the time for such disclosure as required by law, rule of criminal procedure, or order of court.

IV. DISCLOSURE OF JENCKS ACT, RULE 26.2 MATERIALS; AND REQUEST FOR JURY QUESTIONNAIRES

(government and defense counsel initial and fill in lines)

_____A. The defendant and the government agree that all Jencks Act and Rule 26.2, F.R.Crim.P., material will be furnished to opposing counsel _____ days prior to any hearing, trial, or other event triggering the required disclosure of such material.

_____B. The defendant and the government request that the jury questionnaires answered by the petit jurors on the current panel called in this case be made available to each party for inspection and copying, which motion is **GRANTED** by the Court.

_____C. The defendant agrees that all material provided by the government which is subject to the provisions of Rule 6(e) of the F.R.Crim.P. will be used only in the preparation of the defense and will not be copied or published to any person whose knowledge of the same is not necessary to the preparation of the defense and, further, that upon request, all copies of the same will be returned to the government or destroyed at the close of the case.

The Clerk of this Court is directed to send a copy of this Order to the defendant, counsel of record, the United States Marshal and the United States Probation Office.

ENTER: _____

UNITED STATES MAGISTRATE JUDGE

Inspected and Approved by:

Counsel for Defendant

Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

AT [REDACTED]

UNITED STATES OF AMERICA

EXHIBIT LIST - CRIMINAL

V.

[REDACTED]

CRIMINAL ACTION [REDACTED]

PRESIDING JUDGE OR MAGISTRATE JUDGE: SELECT ONE:	GOVERNMENT ATTORNEY(S):	DEFENDANT ATTORNEY(S):
PROCEEDING DATE(S):	COURT REPORTER:	COURTROOM DEPUTY:

GOVT. NO.	DEFT. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION	LOCATION

UNITED STATES OF AMERICA V.		CASE NUMBER [REDACTED]
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**CUSTODY ACKNOWLEDGMENT AND RECEIPT
(PROCEEDING TO CONTINUE)**

Pursuant to LR Cr 55.1 and by execution of this **Custody Acknowledgment and Receipt**, the undersigned hereby assumes and retains custody of those exhibits designated herein as being located with [REDACTED]

Date: [REDACTED]

Name (*please print*):

Signature:

Representative of [REDACTED]

**CUSTODY ACKNOWLEDGMENT AND RECEIPT
(PROCEEDING CONCLUDED)**

Pursuant to LR Cr 55.1 and by execution of this **Custody Acknowledgment and Receipt**, the undersigned hereby assumes and retains custody of those exhibits designated herein as being located with [REDACTED]

Date: [REDACTED]

Name (*please print*):

Signature:

Representative of [REDACTED]