

**LOCAL RULES**  
**OF THE**  
**UNITED STATES DISTRICT COURT**  
**FOR THE**  
**SOUTHERN DISTRICT OF WEST VIRGINIA**

Effective September 1, 1994

<b>ENTERED</b>	
SEP 1 1994	
NO. _____	ORDER BOOK
_____	PAGE _____

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

IN RE: AMENDED LOCAL RULES FOR THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF  
WEST VIRGINIA

O R D E R

This Court having reviewed the report on Local Rules submitted by the Court's duly appointed Committee on Local Rules for the United States District Court for the Southern District of West Virginia, and having given appropriate public notice of the proposed Local Rules on June 15, 1994, and an opportunity to comment thereon for a period of thirty days; and the Court having considered all comments so received whether within or after the thirty-day comment period; it is, pursuant to the authority vested in the Court by Rule 83 of the Federal Rules of Civil Procedure,

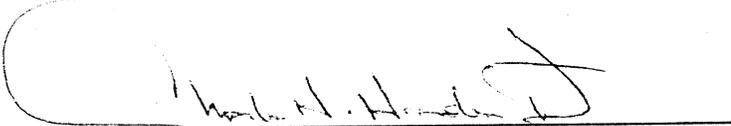
ORDERED that the attached amended Local Rules be hereby approved and adopted as the Local Rules of the United States District Court for the Southern District of West Virginia.

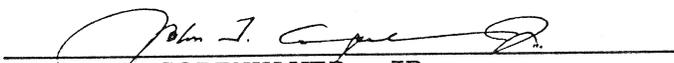
It is further ORDERED that these Rules shall take effect on September 1, 1994, and shall govern all proceedings in cases thereafter commenced, and, insofar as just and practicable, all proceedings in cases then pending.

It is further ORDERED that these Rules be promulgated and be made available to the officers and members of the bar of this Court.

The Clerk shall forward a copy of this Order and the attached amended Local Rules to the Fourth Circuit Judicial Council and to the Director of the Administrative Office of the United States Courts.

ENTER:

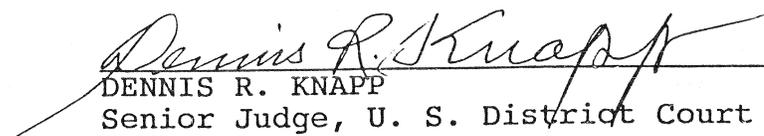
  
CHARLES H. HADEN II  
Chief Judge, U. S. District Court

  
JOHN T. COPENHAVER, JR.  
United States District Judge

  
ROBERT J. STAKER  
United States District Judge

  
ELIZABETH V. HALLANAN  
United States District Judge

  
DAVID A. FABER  
United States District Judge

  
DENNIS R. KNAPP  
Senior Judge, U. S. District Court

**LOCAL RULES OF THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**Preface**

The United States District Court for the Southern District of West Virginia ("court") adopts the following Local Rules of General Practice and Procedure ("LR Gen P"), Local Rules of Civil Procedure ("LR Civ P"), Local Rules of Criminal Procedure ("LR Cr P"), Local Rules of Magistrate Judge Procedure ("LR Mag J P"), and Local Rules Relating to Bankruptcy Referrals and Appeals ("LR Br R & A"). These Local Rules shall govern the conduct and management of the business, operations, and proceedings of the court.

In the absence of any controlling statute or rule, or directive by the Administrative Office of the United States Courts, or agreement by a majority of the district judges of this court, the chief judge is authorized and empowered to implement these Local Rules.

These Local Rules are intended to supplement and complement the Federal Rules of Civil Procedure ("FR Civ P"), the Federal Rules of Criminal Procedure ("FR Cr P"), the Federal Rules of Bankruptcy Procedure ("FR Br P"), and controlling statutes, and are to be applied, construed and enforced to avoid inconsistency with those controlling statutes and other rules.

These Local Rules shall be construed and applied to provide fairness and simplicity in procedure; avoid unjustifiable delay; secure just, expeditious and inexpensive determination of all actions and proceedings; and promote the efficient administration of justice.

A district judge may, in the interest of orderly, expeditious and efficient administration of justice, allow departures from these Local Rules when warranted by particular facts and circumstances.

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**I. LOCAL RULES OF GENERAL PRACTICE AND PROCEDURE.**

**Article 1. Principal Offices, Divisions and Sessions of the Court.**

**LR Gen P 1.01. 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 United States Courthouse, 500 Quarrier Street, Charleston, West Virginia. The mailing address is P. O. Box 2546, Charleston, West Virginia 25329.

**LR Gen P 1.02. Divisions.**

The Southern District of West Virginia is composed of twenty-three counties. Each of these counties is assigned to one of five 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:

<u>Division</u>	<u>Address</u>	<u>Counties Composing Division</u>
Beckley	Federal Building and Courthouse, Neville Street & Woodlawn Avenue, Beckley, West Virginia Mailing address: P. O. Drawer 5009 Beckley, West Virginia 25801	Fayette, Greenbrier, Nicholas, Raleigh and Wyoming
Bluefield	Federal Building and Courthouse, 601 Federal Street, Bluefield, West Virginia Mailing address: Federal Station P. O. Box 4128 Bluefield, West Virginia 24702	Mercer, Monroe, McDowell and Summers

Charleston	United States Courthouse, 500 Quarrier Street, Charleston, West Virginia Mailing address: P. O. Box 2546 Charleston, West Virginia 25329	Boone, Clay, Kanawha, Logan Putnam and Roane
Huntington	Sidney L. Christie Federal Building, 845 Fifth Avenue, Huntington, West Virginia Mailing address: P. O. Box 1570 Huntington, West Virginia 25716	Cabell, Lincoln, Mason, Mingo and Wayne
Parkersburg	Federal Building and Courthouse, 425 Juliana Street, Parkersburg, West Virginia Mailing address: P. O. Box 1526 Parkersburg, West Virginia 26102	Jackson, Wirt and Wood

The court will occasionally convene in Lewisburg to deal with matters falling within either the Beckley or Bluefield Division.

**LR Gen P 1.03. 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), FR Cr P 56, and other controlling statutes and rules.

**Article 2. Attorneys; Representation of Parties; Pro Se Appearances; and Law Students.**

**LR Gen P 2.01. Permanent Members of Bar of Court.**

Any person admitted to practice before the Supreme Court of Appeals of West Virginia and in good standing as a member of its bar is eligible for admission as a permanent member of the bar of this court. An eligible attorney may be admitted as a

permanent member of the bar of this court upon motion of a permanent member who shall sign the register of attorneys with the person admitted. If the motion for admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorneys' register, and pay the clerk the admission fee.

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

**LR Gen P 2.02. Visiting Attorneys.**

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 permanent member of the bar of this court as herein provided. The visiting attorney shall file with the clerk, at or before his or her initial appearance, a statement identifying by name and address the bar of which he or she is a member in good standing and designating some permanent member of the bar of this court who has an office for the practice of law in this district upon whom pleadings, notices and other papers may be served. The permanent member of the bar of this court so designated 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 fifteen days' written

notice mailed 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 permanent member of this court's bar, 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.

**LR Gen P 2.03. Representation of Parties and Pro Se Appearances.**

Every party to proceedings in this court, except parties appearing pro se, shall be represented by a permanent member of the bar of this court and may be represented by a visiting attorney as provided in LR Gen P 2.02. Although the United States Attorney may be associated with other government attorneys in proceedings involving the government, the United States Attorney (except in student loan collection cases), in addition to other government attorneys, shall sign all pleadings, notices and other papers filed and served by the United States. All pleadings, notices and other papers involving the government may be served on the United States Attorney in accordance with the service requirements of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. Parties appearing pro se shall, at their first appearance, file with the clerk their complete names and addresses where pleadings, notices and other papers may be served upon them, and their telephone numbers.

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

**LR Gen P 2.04. Legal Assistance By Law Students.**

(a) 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.

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

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

- (1) be enrolled in a law school approved by the American Bar Association;
- (2) have successfully completed legal studies for at least four semesters, or the equivalent if the school is on some basis other than a semester basis;

(3) be certified by the dean of his or her law school as being of good character and competent legal ability. The dean's certification shall be filed with the clerk. This certification may be withdrawn by the dean at any time without notice or hearing and without any showing of cause by notifying the clerk in writing, or it may be terminated by the court at any time without notice of hearing and without any showing of cause. Unless withdrawn or terminated, the certification shall remain in effect for eighteen months after it has been filed 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;

(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.

**Article 3. Conduct; Examination of Witnesses; Contacts with Jurors; and Verification of Pleadings.**

**LR Gen 3.01 Ethical Considerations.**

The Code of Professional Conduct of the American Bar Association, the Model Federal Rules of Disciplinary Enforcement as adopted by this court, and the Code of Professional Conduct as adopted by the Supreme Court of Appeals of West Virginia provide the basic ethical considerations and disciplinary rules for the conduct of attorneys

practicing in this court. In all appearances, actions and proceedings within the jurisdiction of this court, attorneys shall conduct themselves in accordance with the Model Federal Rules of Disciplinary Enforcement and the Codes of Professional Conduct, and shall be subject to the statutes, rules and orders applicable to the procedures and practice of law in this court. These codes, rules and orders provide minimal standards for the conduct of attorneys and the court encourages attorneys to conform their conduct to the highest of ethical standards.

Judges and others serving in a judicial capacity are expected to comply with the American Bar Association's Code of Judicial Conduct.

**LR Gen P 3.02. 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 Gen P 3.03. 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 Gen P 3.04. Contacts 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 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 Gen P 3.05. 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.

**Article 4. Contempt.**

**LR Gen P 4.01. Initiation of Civil Contempt Proceedings.**

A proceeding to adjudicate a person in civil contempt of court shall be commenced by the service of a notice of motion or order to show cause. The affidavit upon which the notice of motion or order to show cause is based shall 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 Gen P 4.02. 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 three days before the trial date; otherwise he or she will have waived a trial by jury.

**LR Gen P 4.03. 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 (1) reciting the verdict or findings of fact upon which the adjudication is based; (2) setting forth the amount of the damages to which the complainant is entitled;

(3) fixing the fine, if any, imposed by the court (with the fine to include the damages) and naming the person to whom the fine shall be payable; (4) stating any other conditions necessary to purge the contempt; and (5) 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, in the discretion of the court, may have judgment against the complainant for his or her costs and disbursements and a reasonable attorney's fee.

#### **Article 5. Photographing and Broadcasting of Court Proceedings.**

##### **LR Gen P 5.01. Photography In and Broadcasting From Courtroom.**

The taking of photographs in the courtroom, or in the corridors immediately adjacent, during judicial proceedings or during any recess, and the transmitting or sound recording of proceedings for broadcast by radio or television, is not permitted. Upon approval of the court and under its supervision, proceedings, other than judicial

proceedings, designed and conducted as ceremonies, such as administering oaths of office to appointed officials of the court, presentation of portraits, naturalization proceedings, and similar ceremonial occasions, may be photographed in or broadcast from the courtroom.

**LR Gen P 5.02. Impoundment of Photography and Broadcasting Equipment.**

The marshal may impound any camera, recording, broadcasting and other related equipment brought into the courtroom or the adjacent corridors in violation of LR Gen P 5.01. The impounded equipment shall be returned to its owner or custodian after the proceedings have concluded.

**Article 6. Bonds; Proceedings in Forma Pauperis; Complaints Under Social Security Act; and Land Condemnation Actions.**

**LR Gen P 6.01. Approval of Bonds by the Clerk.**

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

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

**LP Gen P 6.02. Proceedings in Forma Pauperis.**

The court may authorize the commencement, prosecution or defense of any civil or criminal action or proceeding, or any appeal, without prepayment of fees and costs or security, by a person who makes an affidavit that he or she is unable to pay costs or give security as provided in 28 U.S.C. §1915.

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

**LR Gen P. 6.03. Complaints Filed Pursuant to Social Security Act.**

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

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

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

**LR Gen P 6.04. 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 at its March, 1975,

session are adopted for use in this jurisdiction. Copies of the guidelines are available in the clerk's office.

**Article 7. Entry of Judgments and Orders; Custody and Disposition of Exhibits; Filing and Removal of Papers; and Court Library.**

**LR Gen P 7.01. Entry of Judgments and Orders.**

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

**LR Gen P. 7.02. Custody and Disposition of Exhibits.**

After being marked for identification, exhibits of a documentary nature admitted in evidence or made a part of the record in any case pending or tried in this court shall be placed in the custody of the clerk unless otherwise ordered. All other exhibits, models and materials admitted in evidence that cannot be stored conveniently in the clerk's facilities shall be retained in the custody of the attorney or party producing them at trial unless otherwise ordered, and the attorney or party shall execute a receipt therefor. All exhibits admitted in evidence in a criminal case that are in the nature of controlled substances, legal or counterfeit money, firearms, dangerous devices or contraband of any kind, shall be retained by the United States Marshal or his or her designee pending disposition of the case and any appeal, and until the court authorizes destruction or other disposal of such exhibits.

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

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

After final judgment and 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 order, to return all exhibits in civil, criminal and bankruptcy cases to the parties or their counsel.

**LR Gen P 7.03. Filing of Papers.**

Except as otherwise permitted or required by the Federal Rules, these local rules, or order, the original of all papers 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.

**LR Gen P 7.04. 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 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 Gen P 7.05. 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.

## II. LOCAL RULES OF CIVIL PROCEDURE.

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## **II. LOCAL RULES OF CIVIL PROCEDURE.**

### **Article 1. Definitions; Stipulations; Extensions of Answer Date; and Waiver of Service.**

#### **LR Civ P 1.01. Definitions.**

For the purpose of these Local Rules of Civil Procedure:

(a) "Judicial officer" means a district judge or, when authorized by a district judge, a statute, the Federal Rules of Civil Procedure, or these Local Rules of Civil Procedure, a magistrate judge.

(b) "Business days" means days counted under FR Civ P 6 when the period of time prescribed or allowed under the Federal Rules of Civil Procedure is less than 11 days.

(c) "Days" when not preceded by the adjective "business" means days counted under FR Civ P 6 when the period of time prescribed or allowed under the Federal Rules of Civil Procedure is 11 or more days.

#### **LR Civ P 1.02. 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 1.03. 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 2.01(a) 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 1.04. Waiver of Service.**

A plaintiff who intends to obtain service of summons on a defendant under the provisions of FR Civ P 4(d)(2) shall, within 10 business 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 effected 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)(2) 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 five days after its return.

**Article 2. Conferences.**

**LR Civ P 2.01. Scheduling Conferences.**

(a) Convening of scheduling conferences; removed and transferred actions. Except in actions exempted by paragraph (g) of this rule or by standing order, a judicial officer shall 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.

A judicial officer shall establish the date, time and place of the scheduling conference. As soon as practicable, but in no event later than 5 business days after the appearance of a defendant, the clerk shall mail a notice of the conference to all counsel then of record and to each then unrepresented party for whom an address is available from the record. The notice shall also establish the date by which a meeting of the parties must be held pursuant to 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 mailed to all parties or their attorneys no later than 5 business 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 three 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 5.01; and

(5) prepare an agenda of matters to be discussed at the scheduling conference.

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

(c) Written report on the meeting of the parties; cancellation of scheduling conference. Counsel and all unrepresented parties who were present or represented at the meeting are jointly responsible for submitting to the court, no later than 14 days before the date set for the scheduling conference, a written report on their meeting.

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 2.02. If the case is so assigned, the scheduling order, notwithstanding paragraph (e) of this rule, may be limited to establishing time limits and addressing other matters that should not await the first case-management conference. The factors to be considered by the judicial officer in determining whether the case is complex include:

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

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

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

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

(i) involve little or no discovery,

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

(iii) generally fall into identifiable and easily managed patterns;

(5) the extent to which individualized 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). The order shall advise the parties that the term "complete discovery" as used in FR Civ P 16(b) means that all discovery, objections, motions to compel and all other motions and replies relating to discovery must be filed in time for the parties objecting or responding to have

opportunity under the Federal Rules of Civil Procedure to make responses. Unless otherwise ordered, the term "all discovery" as used in the preceding definition of "complete discovery" includes the disclosures required by FR Civ P 26(a)(1) and (2), but not the disclosures required by FR Civ P 26(a)(3), and includes discovery under FR Civ P 26(a)(5).

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

(2) Subject to subparagraph (3), stipulations to modify disclosure or discovery procedures or limitations will be valid and enforced if they are in writing, signed by the parties making them or their counsel, filed promptly 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) such other categories of actions as may be exempted by standing order.

**LR Civ P 2.02. Case-Management Conferences in Complex Cases.**

(a) Conduct of case-management conferences. Case-management conferences shall be presided over by a judicial officer who, in furtherance of the scheduling order required by LR Civ P 2.01(e), may:

- (1) explore the possibility of settlement;
- (2) identify the principal issues in contention;
- (3) prepare a specific discovery schedule and plan that may
  - (i) identify and limit the discovery available to avoid unnecessary, unduly burdensome or expensive discovery,
  - (ii) sequence discovery into two or more stages, and
  - (iii) include time limits for the completion of discovery;
- (4) establish deadlines for filing motions and a schedule for their disposition;
- (5) consider the bifurcation of issues for trial as set forth in 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 3 business days before the case-management conference.

(c) Number of case-management conferences and conference orders. The judicial officer may convene as many case-management conferences as appropriate.

After a case-management conference, the judicial officer shall enter an order reciting the action taken. The order shall control the subsequent course of the action and may be modified in the same manner as a scheduling order under LR Civ P 2.01(f).

**LR Civ P 2.03. Pretrial Conferences in Non-Complex Cases.**

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

(b) Pretrial conference orders. After a pretrial conference, the judicial officer shall enter an order reciting the action taken. The order shall control the subsequent course of the action and may be modified in the same manner as a scheduling order under LR Civ P 2.01(f).

**LR Civ P 2.04. 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 3 business 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; and

(11) 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 immediately available by telephone.

(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 2.05. Authority Regarding Settlement, Stipulations and Admissions at Conferences.**

At least one of the attorneys for each party and all unrepresented parties participating in any conference before trial shall have authority to make decisions as to settlement,

stipulations and admissions on all matters that the participants reasonably anticipate may be discussed.

**LR Civ P 2.06. Sanctions.**

Counsel and parties are subject to sanctions for failures and lack of preparation specified in FR Civ P 16(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 P 2.01(b) and (c).

**Article 3. Discovery.**

**LR Civ P 3.01. 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) and LR Civ P 2.01(b).

(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 40 days prior to the discovery completion date; and

(3) all parties shall provide no later than 20 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) Discovery event limitations. Unless otherwise ordered or stipulated, discovery under FR Civ P 26(a)(5) shall be limited as follows: 10 depositions upon oral examination or written questions by all plaintiffs; 10 depositions upon oral examination or written questions by all defendants; 10 depositions upon oral examination or written questions by all third-party defendants; 25 written interrogatories, including all discrete subparts, by any party upon any other party; and 25 requests for admission by any party upon any other party.

(d) Further discovery. After the opportunities for discovery pursuant to paragraph (c), stipulation of the parties or order have been exhausted, any requests that the parties may make for additional depositions, interrogatories, or requests for admissions shall be 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 3.02. Uniform Definitions in Discovery Requests.**

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

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

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

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

(1) "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise);

(2) "document" is synonymous in meaning and equal in scope to the usage of this term in 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

- (i) type of document,
- (ii) general subject matter,
- (iii) author(s), addressee(s), and recipient(s), and
- (iv) date the document was prepared;

(5) "plaintiff," "defendant," a party's full or abbreviated name, or a pronoun referring to a party, 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 3.03. Court Filings and Costs.**

(a) Nonfiling 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 and any notice thereof, 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(c) 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(c) 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(c) or 34 without paying the reasonable copying costs.

**LR Civ P 3.04. 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 3.05. 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 request 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 3.06. 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. 3.07. 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.

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

(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.

**Article 4. Motion Practice.**

**LR Civ P 4.01. Motion Practice.**

(a) Motions and supporting memoranda. All motions shall be concise, shall state the relief requested precisely, shall be filed timely but not prematurely, and, except for nondispositive motions other than a motion for sanctions, shall be accompanied by a supporting memorandum of not more than 20 pages in length, double-spaced, and by copies of depositions (or pertinent portions thereof), admissions, documents, affidavits, and other such materials upon which the motion relies. Nothing in this rule prevents a party from filing a memorandum in support of a nondispositive motion. Examples of nondispositive motions for which a supporting memorandum is not required unless ordered are motions for enlargement or extensions of time under FR Civ P 6, motions to amend clerical errors in pleadings, and motions to compel. A judicial officer for good cause shown may allow a supporting memorandum to exceed 20 pages. A dispositive motion or a motion for sanctions unsupported by a memorandum will be denied without prejudice. In addition to filing and serving on opposing counsel and unrepresented parties, counsel shall deliver to the assigned judicial officer copies of each motion, supporting memorandum, and supporting documents or materials.

(b) 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.

(c) Memoranda in response to motions and reply memoranda. Memoranda and other materials in response to motions shall be filed with copies delivered to the assigned judicial officer 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 with copies delivered to the assigned judicial officer and served on opposing counsel and unrepresented parties within 7 business days from the date of service of the memorandum in response to the motion.

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

(e) Action on motions. All motions shall be decided expeditiously to facilitate compliance with the deadlines established by the scheduling order. Failure of a judicial officer to rule on a dispositive motion may be good cause for modification of a scheduling order pursuant to LR Civ P 2.01(f)(1) upon motion of a party.

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

(f) Hearings on motions. The judicial officer may require or permit hearings on motions, and the hearings may be by telephone.

**Article 5. Alternative Dispute Resolution (Mediation Program); Neutral Evaluation Program.**

**LR Civ P 5.01. Alternative Dispute Resolution (Mediation Program); Neutral Evaluation Program.**

(a) Designation and notice. The mediation program shall be a mandatory program involving those cases selected by the assigned judicial officer for mediation. Any party may suggest mediation by presenting to the clerk, for delivery to the assigned judicial officer, a completed mediation suggestion form (Form 1, Appendix of Forms). Such a suggestion by one party will not be disclosed to anyone except the judicial officer deciding eligibility for mediation. After a case has been selected for mediation, notice shall be sent to all counsel of record and any unrepresented parties, and the matter shall proceed to mediation unless good cause can be shown by any party why the case should not be mediated.

(b) Scheduling. After the judicial officer has determined that a case shall be mediated, notice shall be sent to all counsel of record and any unrepresented parties setting the date, time and location of the mediation conference. Each notice shall be issued by the assigned judicial officer as a court order. A model order is set forth in the Appendix of Forms (Form 2). A request for a scheduling change must be based on good cause and made by motion timely filed.

(c) Selection of mediator. The court shall establish and maintain a register of qualified attorneys who have volunteered to serve without compensation as mediators. For a particular case, the mediator shall be selected in one of the following ways:

(1) the assigned judicial officer may select, in rotation from the register of mediators, the mediator who will serve unless disqualified or unavailable. If the mediator so selected is disqualified or unavailable, the process will be repeated until a mediator is chosen; or

(2) the assigned judicial officer may select a panel of three mediators from the register who will be available to serve unless disqualified or unavailable. The plaintiff's side and the defendant's side shall each strike one mediator with the one remaining being named the mediator for that case. Several plaintiffs or several defendants, including third-party defendants, may be considered as a single party for purposes of exercising strikes or the assigned judicial officer may, in his or her discretion, expand the panel and allow additional strikes to be taken in cases involving multiple parties and claims. The order of striking shall be determined by lot.

(d) Preparation for mediation. Attendance at the mediation conference is mandatory for all trial counsel and the parties or their representatives who have full authority to make final and binding decisions. Failure to attend may result in appropriate sanctions. At least 10 business days prior to the mediation conference, all parties shall submit to the clerk and all other parties a written factual presentation, not to exceed 5 pages, with any pertinent supporting documents (including, at a minimum, the party's pleadings) attached. The submission shall be prominently and clearly identified as "MEDIATION MATERIALS - NOT TO BE FILED." The clerk shall promptly transmit, without filing, the written factual presentation and supporting documents to the assigned mediator.

(e) Post-mediation report. At the conclusion of each mediation conference, the mediator shall report to the assigned judicial officer whether the case was mediated successfully and, if not, make any suggestions for early resolution of the case. A form for the report is set forth in the Appendix of Forms (Form 3). A copy of the post-mediation report shall be sent by the mediator to all counsel of record and any unrepresented parties but shall not be filed. The mediator shall not refer to or discuss with the judicial officer any information divulged by any party or counsel during the mediation conference unless authorized by that party or counsel.

(f) Confidentiality. All proceedings of the mediation conference, including any statement made by any party, attorney or other participant, shall be privileged and not reported, recorded, placed in evidence, made known to the assigned judicial officer or jury, or construed for any purpose as an admission against interest. No party shall be bound by anything done or said at the mediation conference unless a settlement is reached, in which event the agreement upon a settlement shall be reduced to writing and shall be signed by all parties to the agreement.

(g) Neutral evaluation program. An informal neutral evaluation program shall be made available by the court for the presentation of the legal and factual bases of a case to a judicial officer at a non-binding conference to facilitate settlement.

**Article 6. Trial.**

**LR Civ P 6.01. Cases to be Tried by a Jury; Proposed Jury Instructions.**

Not less than 3 business 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 6.02. Cases to be Tried by the Court; Proposed Findings of Fact and Conclusions of Law.**

Within 7 business days after the final pretrial conference, counsel and unrepresented parties shall submit to the judicial officer 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 6.03. Trial Schedule Conflicts.**

A district judge with more than one case scheduled and ready for trial on the same day shall inform the parties in any remaining cases on the calendar which will not be reached that they may consent to a trial before a magistrate judge. If all parties do not consent, the district judge may, before rescheduling, attempt to secure another district judge to try the next scheduled case.

**LR Civ P 6.04. 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 March 21, 1983, 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 6.05. 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.

**Article 7. Posttrial.**

**LR Civ P 7.01. Fees and Costs.**

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

The prevailing party shall prepare a bill of costs as soon as possible 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 specific objections to any item of costs filed by the prevailing party, the clerk shall set the matter for hearing or may assess costs based on the papers submitted.

**Article 8. Dismissal of Actions; Deposits.**

**LR Civ P 8.01. 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 thirty days after the date of the notice unless good cause for its retention on the docket is shown. In the absence of good cause shown within that period of time, the judicial officer may dismiss the action. The clerk shall mail a certified copy of any order of dismissal to all counsel and unrepresented parties.

This rule does not modify or affect provisions for dismissal of actions under FR Civ P 41 or any other authority.

**LR Civ P 8.02. Deposits in Court Pursuant to FR Civ P 67.**

The clerk shall invest funds deposited into the court's registry in an interest-bearing account or instrument as ordered.

Any order obtained by a party that directs the clerk to invest funds deposited in the registry of the court in an interest-bearing account or instrument pursuant to 28 U.S.C. §2041 shall include the following:

- (a) the amount to be invested;
- (b) a designation of the type of account or instrument in which the funds shall be invested; and
- (c) wording which directs the clerk to deduct from the income earned on the investment a fee authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office.

**III. LOCAL RULES OF CRIMINAL PROCEDURE**

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### III. LOCAL RULES OF CRIMINAL PROCEDURE

#### Article 1. Arraignment; Discovery; and Pleas.

##### LR Cr P 1.01. Arraignment and Standard Discovery Requests.

(a) At arraignment on an indictment, counsel for the defendant and the government may make standard requests for discovery as contained in the Arraignment Order and Standard Discovery Request form (Form 4, Appendix of Forms). The form shall be signed by counsel for the defendant and the government and entered by the magistrate judge.

(b) If counsel for the defendant requests discovery under FR Cr P 16(a)(1)(C), (D) or (E), in an Arraignment Order and Standard 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) Unless the parties agree otherwise, or the court so orders, within 10 days of the Standard Discovery Request, the government must provide the requested material to counsel for the defendant and file a written response to each of defendant's requests with the clerk.

(d) All reciprocal discovery due the government must be provided by defendant within 10 days of the receipt of the materials and the filing and serving of responses in paragraph (c).

(e) Defendant must file all additional motions within 10 days of providing materials and filing and serving of responses in paragraph (c).

(f) If defendant does not make the standard request for discovery pursuant to paragraph (a), the magistrate judge shall, at arraignment, set a date within 20 days of arraignment for filing of defendant's pretrial motions.

(g) The government shall have 7 days to respond to motions filed by defendant under paragraphs (e) and (f).

(h) At arraignment, the magistrate judge shall establish a date and time for a pretrial hearing before the assigned district judge. The pretrial hearing shall 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 will require the taking of evidence, the parties must notify the district judge in advance.

(i) 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.

(j) All duties of disclosure and discovery in this rule are continuing, and the parties must produce any additional disclosure and discovery as soon as it is received.

**LR Cr P 1.02. Notice of Arraignments; Pleas and Motions to Dismiss.**

(a) It is the duty of the government to give defendant timely notice of defendant's arraignment on and plea to the indictment. A copy of the notice shall be furnished concurrently to defendant's counsel, if his or her 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 shall give notice of the arraignment and plea to counsel who appeared for defendant before the magistrate judge.

When the United States Attorney has knowledge that a defendant is without counsel, that fact shall be promptly brought to the attention of the appropriate judicial officer so that consideration may be given to early provision of counsel.

(b) The United States Attorney shall serve on defendant's counsel or on an unrepresented defendant a notice of a motion to dismiss a complaint pending before a judicial officer.

(c) 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.

## **Article 2. Trial.**

### **LR Cr P 2.01. 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 2.02. 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.

### **ARTICLE 3. Sentencing.**

#### **LR Cr P 3.01. Petition for Disclosure of Presentence or Probation Records.**

Except as provided in LR Cr P 3.02, no confidential records of the court maintained by the probation office, including presentence and probation supervision records, shall be producible except 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 process to a probation officer, the probation officer may petition in writing seeking instructions from the court regarding a response to the subpoena.

No disclosure shall be made except upon order of the court.

**LR Cr P 3.02. Guideline Sentencing Implementation and Presentence Investigation Reports.**

Notwithstanding the general restrictions on disclosure of confidential records maintained by the probation office as set forth in LR Cr P 3.01, the following shall control disclosure of presentence investigation reports governed by the Sentencing Reform Act of 1984, 18 U.S.C. § 3551 et seq.:

(a) Not less than 20 days prior to sentencing, the probation officer shall disclose the presentence investigation report to the defendant and to counsel for the defendant and to the government. Within 10 days thereafter, the parties by counsel shall communicate to the probation officer any objections they may have as to material information, sentencing classifications, sentencing guideline ranges and policy statements contained in or omitted from the report. The communication shall be in writing with a copy served upon opposing counsel or an unrepresented defendant contemporaneously with service upon the probation officer.

(b) After receiving objections, the probation officer may conduct further investigation and make revisions to the presentence report that may be necessary. The officer may require counsel to meet with the officer to discuss unresolved factual and legal issues.

(c) Not less than 5 days prior to sentencing, the probation officer shall submit the presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth objections that have not been resolved, together with the officer's comments and recommendations. The probation officer shall certify that the contents of the report, including revisions and the addendum, have been disclosed to the defendant

and to counsel for the defendant and the government, and that the addendum fairly states any remaining objections.

(d) With the exception of an objection under paragraph (a) that has not been resolved, the presentence investigation report may be accepted by the court as accurate. For good cause, however, the court may allow additional objections to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the court may consider relevant information without regard to its admissibility under the rules of evidence, provided it otherwise has sufficient indicia of reliability.

(e) The time requirements of this rule may be modified by the court for good cause, except that the 20-day period in paragraph (a) may not be reduced to a period of less than 10 days prior to sentencing without the consent of the defendant.

(f) Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under FR Cr P 32. Subject to the limitations in FR Cr P 32(c)(3)(A) and (B), upon request of counsel, the probation officer shall provide to counsel all underlying public-record information pertaining to the defendant that was gathered by documents obtained and used in the preparation of the presentence report.

(g) The presentence report shall be deemed to have been disclosed (1) when a copy of the report is physically delivered to counsel, or (2) 3 days after a copy of the report is mailed to counsel. When the defendant is unrepresented or is represented by standby counsel, delivery or mailing shall be made to the defendant.

**LR Cr P 3.03. Pretrial Services and Presentence Interviews.**

Probation and pretrial service officers, to the extent practicable, shall attempt notification of counsel prior to conducting pretrial service interviews. Probation and pretrial service officers shall notify counsel, prior to conducting the presentence interview of the defendant, of the 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.

IV. LOCAL RULES OF MAGISTRATE JUDGE PROCEDURE

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#### **IV. LOCAL RULES OF MAGISTRATE JUDGE PROCEDURE**

##### **Article 1. Authority of United States Magistrate Judges.**

##### **LR Mag J P 1.01. General Jurisdiction of Magistrate Judges.**

(a) Magistrate judges are authorized or specially designated to perform the duties prescribed by 28 U.S.C. § 636 (a), (b), (c), (f) and (g) 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.

(b) Magistrate judges are specially designated to try persons accused of, and sentence persons convicted of, misdemeanor offenses as provided in 18 U.S.C. § 3401.

(c) Magistrate judges are authorized to perform the duties imposed upon district judges by Rules Governing Section 2254 Cases in the United States District Courts (28 U.S.C. § 2254) and by Rules Governing Section 2225 Cases in the United States District Courts (28 U.S.C. § 2225) in accordance with Rule 10 of those rules and 28 U.S.C. § 636.

##### **LR Mag J P 1.02. Other Duties of Magistrate Judges.**

(a) Magistrate judges are also authorized to:

(1) exercise general supervision of civil and criminal calendars, conduct calendar and status calls, conduct informal hearings aimed at resolving 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 evaluated and alternative dispute resolution mechanisms considered;

(3) conduct pretrial conferences, scheduling conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;

(4) conduct arraignments in criminal cases not triable by the magistrate judge and take not guilty pleas in such cases;

(5) impanel grand juries and, in accordance with FR Cr P 6(f) receive grand jury returns;

(6) accept waivers of indictment pursuant to FR Cr P 7(b);

(7) with the consent of the parties, conduct voir dire and select petit juries for the court in civil and criminal cases;

(8) accept petit jury verdicts in civil cases in the absence of the district judge;

(9) conduct necessary proceedings leading to the potential revocation of probation or supervised release;

(10) 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 needed for court proceedings;

(11) order the exoneration or forfeiture of bonds;

(12) conduct proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. §§ 4311(d) and 12309;

(13) conduct examinations of judgment debtors in accordance with FR Civ P 69;

(14) conduct proceedings for initial commitment of narcotic addicts under Title III of the Narcotic Addict Rehabilitation Act, 42 U.S.C. §§ 3401 et seq.;

(15) supervise proceedings conducted pursuant to letters rogatory in civil and criminal cases as provided for in 28 U.S.C. § 1782(a);

(16) issue orders of withdrawal of funds from the court registry pursuant to 28 U.S.C. § 2042;

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

(18) issue orders or warrants authorizing acts necessary in the performance of the duties of administrative and regulatory agencies and departments of the United States Government; and

(19) serving with designated committees or other judicial officers, coordinate the court's efforts in such fields as the promulgation of local rules and procedures and the administration of the forfeiture of collateral system.

(b) Individual district judges at each location of court may, in their discretion, request magistrate judges to perform such duties as are not inconsistent with the Constitution and laws of the United States.

## **Article 2. Assignment of Matters to Magistrate Judges.**

### **LR Mag J P 2.01. General.**

To the extent not provided for in these Local Rules of Magistrate Judge Procedure, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, Rules Governing § 2254 Cases in the United States District Courts, and Rules Governing Proceedings in the United States District Courts under § 2255, the method for assignment

of duties to a magistrate judge shall be made in accordance with orders of the court or by special designation of a district judge.

**LR Mag J P 2.02 Misdemeanor Cases.**

Upon the filing of an information, complaint, or violation notice, or the return of an indictment, all misdemeanor and other 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 Mag J P 2.03. Referral of Discovery Matters; Prisoner and Detention Matters; and Social Security Appeals.**

(a) Discovery Matters. Nondispositive discovery and pretrial motions relating to discovery practice are referred to magistrate judges in the divisions in which they are filed, with review of magistrate judges' decisions as provided for in FR Civ P 72(a).

(b) Prisoner and Detention Matters. Dispositive motions arising from habeas corpus petitions and related post conviction filings pursuant to 28 U.S.C. §§ 2254, 2255 and 2241, prisoner petitions and motions for modification or reduction of sentences filed pursuant to 18 U.S.C. § 3582 (c)(2) may be referred for report and recommendation to magistrate judges in the division in which they are filed, with review of magistrate judges' actions as provided for in FR Civ P 72(b).

(c) Social Security Appeals. Appeals of administrative decisions under the Social Security Act are referred to magistrate judges, with review of decisions as provided for in FR Civ P 72(b).

**LR Mag J P 2.04. Motions for Attorney Fees.**

Motions or petitions for attorney fees arising out of suits for judicial review of administrative determinations under the Social Security Act and applications for fees and other expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), are referred for disposition to magistrate judges.

**LR Mag J P 2.05. Referrals by Standing Order.**

Magistrate judges shall perform such further duties as may be assigned by standing orders of the court.

**Article 3. Procedures Before the Magistrate Judges.**

**LR Mag J P 3.01. General.**

Magistrate judges shall conform to all applicable provisions of federal statutes and rules, to the general procedural rules of this court, and to the requirements specified in any order or reference from a district judge.

**LR Mag J P 3.02. Special Provisions for the Disposition of Civil Cases by a Magistrate Judge on Consent of the Parties - 28 U.S.C. § 636(c)**

(a) At the time of the filing of a complaint, the clerk shall provide to counsel for plaintiff a notice, as approved by the court, informing the parties of their right to consent to the exercise of jurisdiction by a magistrate judge. The clerk shall also append a copy of such notice to each summons in a civil action and summons will not issue by the clerk or marshal unless accompanied by a notice. The plaintiff shall append a copy of such notice with any notice and request for waiver of service. In removed cases, such notice shall be provided by the clerk to the removing party, with copies for service on other

parties. 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.

(b) Any party may deliver a consent form to the clerk. However, 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 to the magistrate judge.

(c) A district judge, for good cause on his or her own initiative or under extraordinary circumstances shown by any party, may vacate the assignment of a case to a magistrate judge.

(d) Once a case has been assigned to a magistrate judge, the magistrate judge shall have the authority to conduct any and all proceedings, including mandatory referral for alternative dispute resolution, ruling on dispositive and non-dispositive motions, and entry of final judgment.

**Article 4. Magistrate Judges Discovery Committee; Annual Report Requirement.**

**LR Mag J P 4.01. Magistrate Judges Discovery Committee; Annual Report Requirement.**

Since magistrate judges have the initial and primary responsibility for resolution of discovery disputes in civil cases, they shall constitute a committee of the court for the purpose of advising the district judges and the District's Civil Justice Expense and Delay Reduction Advisory Group on matters involving discovery. The committee shall submit a report on an annual or, if deemed necessary, more frequent basis and shall include in the report problems perceived by the committee with regard to discovery and recommended solutions. The committee's report shall include recommendations which in the opinion of the magistrate judges would assist in monitoring discovery, encourage cost-effective discovery, and improve litigation management. The clerk shall provide the assistance and support of his or her office to the committee and shall serve as its reporter.

V. Local Rules Relating to Bankruptcy Referrals and Appeals

LR Br R & A 1.01. Referral of Cases to Bankruptcy Court ..... 70

LR Br R & A 1.02. Appeal of a Bankruptcy Court Judgment, Order  
or Decree to the District Court ..... 70

V. **Local Rules Relating to Bankruptcy Referrals and Appeals**

**(NOTE: Local Rules of Bankruptcy Procedure, promulgated by the United States Bankruptcy Court for this district, should be consulted by the bankruptcy practitioner.)**

**LR Br R & A 1.01. 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 Br R & A 1.02. 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.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
DIVISION

MEDIATION SUGGESTION FORM

The cases pending in this District that I suggest be included in the mediation program are the following:

1. Style: \_\_\_\_\_  
\_\_\_\_\_

C.A. No. \_\_\_\_\_

Does opposing counsel or unrepresented party concur:

Yes \_\_\_\_\_ No \_\_\_\_\_ Unknown \_\_\_\_\_

2. Style: \_\_\_\_\_  
\_\_\_\_\_

C.A. No. \_\_\_\_\_

Does opposing counsel or unrepresented party concur:

Yes \_\_\_\_\_ No \_\_\_\_\_ Unknown \_\_\_\_\_

Nominating Counsel/Party: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Nominating Counsel/Party

Please return this form to the Clerk's office in the Division wherein the civil action is pending.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
\_\_\_\_\_ DIVISION

Plaintiff

vs.

CIVIL ACTION NO. \_\_\_\_\_

Defendant.

MEDIATION CONFERENCE ORDER

Pursuant to FR Civ P 16 and LR Civ P 5.01, Alternative Dispute Resolution (Mediation Program), and to facilitate the pretrial settlement of civil cases, the Court has determined this civil action shall be mediated. It is, therefore, **ORDERED** that this action be, and the same hereby is, scheduled for a mediation conference on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ .m., at the United States Courthouse in \_\_\_\_\_, West Virginia.

A request for a change in schedule must be made by motion timely filed stating good cause.

Attendance at the mediation conference is mandatory for all trial counsel and the parties or their representatives having full authority to make final and binding decisions for the principals. Failure to attend may result in the imposition of sanctions.

The mediator shall be selected pursuant to LR Civ P 5.01(c).

At least ten business days prior to the mediation conference, all parties shall submit to the clerk and all other parties a factual summary, not exceeding five pages, plus supporting documents, which shall include the party's pleadings. The submission of the factual presentation and documents to the clerk, who shall promptly transmit them to the assigned mediator, shall be identified prominently and clearly as "MEDIATION MATERIALS - NOT TO BE FILED." At the mediation conference, counsel will be given five to ten minutes in opening statements to clarify

any facts needing additional development. Counsel will be given up to fifteen minutes for closing arguments.

All counsel and parties must be prepared to negotiate openly and in good faith in an effort to reach a fair and reasonable settlement.

All proceedings and statements made during the mediation conference shall be privileged and confidential and shall not be disclosed by the mediator to the assigned judge, or any person, unless specifically authorized by the interested parties or their counsel.

Those individuals attending the mediation are directed to report to the Clerk's office on the date of the conference.

ENTER:

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United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
DIVISION

Plaintiff

vs.

CIVIL ACTION NO. \_\_\_\_\_

Defendant.

MEDIATION CONFERENCE REPORT

I. A mediation conference was held in this civil action on \_\_\_\_\_, in \_\_\_\_\_, West Virginia at \_\_\_\_\_ .m. As a result of this conference:

- 1. \_\_\_\_ This case was settled
- 2. \_\_\_\_ This case was not settled, and it is my recommendation that:
  - a) \_\_\_\_ An additional mediation conference be scheduled
  - b) \_\_\_\_ An early settlement conference be scheduled
  - c) \_\_\_\_ A status conference be scheduled
  - d) \_\_\_\_ A scheduling conference be scheduled
  - e) \_\_\_\_ This case should proceed within the time frame schedule previously adopted

II. The mediation conference was scheduled but did not proceed for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED:

\_\_\_\_\_  
Mediator

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

\_\_\_\_\_ DIVISION

UNITED STATES OF AMERICA

v.

Criminal No. \_\_\_\_\_

\_\_\_\_\_

ARRAIGNMENT ORDER  
AND  
STANDARD DISCOVERY REQUESTS

I. Arraignment Order

This day came the United States of America by \_\_\_\_\_ Assistant United States Attorney, and also came the Defendant, \_\_\_\_\_, in person, and by counsel, \_\_\_\_\_.

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 attorney had explained the nature of the charges to him, the defendant entered a voluntary plea of NOT GUILTY to the indictment.

IT IS ORDERED that this case be set for trial to a jury at 9:30 a.m. on \_\_\_\_\_, in \_\_\_\_\_, before the Honorable \_\_\_\_\_.

IT IS FURTHER ORDERED that a pretrial hearing on motions in this case be held on \_\_\_\_\_, at \_\_\_\_\_ in \_\_\_\_\_. Pursuant to Rule 1.01(h) of the Local Rules of Criminal Procedure for the Southern District of West Virginia, counsel must notify the District Judge whether either party will seek to present evidence at the pretrial hearing on motions. Further, counsel must immediately notify the District Judge if agreement has been reached on all pretrial issues, rendering the pretrial hearing on motions unnecessary.

The defendant did/did not execute a waiver of right to be present at the 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 case of witnesses so subpoenaed on behalf of the government.

## II. Custodial/NonCustodial Status

(Check Box Applicable)

- (i) The defendant was previously ordered detained pending trial.
- (ii) The government has moved for an order of detention pending trial, and the Court hereby ORDERS that a hearing upon the government's motion be held on \_\_\_\_\_, at \_\_\_\_\_.

The defendant is remanded to the temporary custody of the United States Marshal pending the detention hearing.

- (iii) The defendant was previously released on a surety/non-surety bond in the amount of \$\_\_\_\_\_ with special conditions as set forth therein, and it is ORDERED that said bond shall continue.
- (iv) The defendant is hereby ORDERED released upon execution of a surety/nonsurety bond in the amount of \$\_\_\_\_\_, with the following special conditions.
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.
  3. The defendant's travel is restricted to the Southern District of West Virginia.
  4. The defendant shall submit to random urine screens as directed by the United States Probation Office for detection of use of controlled substances.
  5. The defendant shall not contact, either directly or indirectly, any victim or potential witness in this case, except through counsel.



### III. Standard Discovery Request Form

(initial "a" or "b")

\_\_\_\_\_ (a) The defendant has elected not to utilize the Standard Discovery Request procedure, as set forth in Rule 1.01 of the Local Rules of Criminal Procedure.

Accordingly, the defendant is hereby ORDERED to file all pretrial motions together with supporting memoranda within twenty (20) days of this date, nor later than \_\_\_\_\_. Responses shall be filed within seven (7) days, not later than \_\_\_\_\_.

\_\_\_\_\_ (b) The defendant has elected to utilize the Standard Discovery Request procedure, as set forth in Rule 1.01 of the Local Rules of Criminal Procedure.

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 boxes)

\_\_\_\_\_ A. Disclose to defendant and make available for inspection, copying, or photographing: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; that portion of any written record containing the substance of any relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known to defendant to be a government agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. The government shall also disclose to defendant the substance of any other relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known by defendant to be a government agent if the government intends to use the statement at trial. (F.R.Crim.P. 16(a)(1)(A)).

\_\_\_\_\_ B. Where the defendant is a corporation, partnership, association or labor union, disclose to it relevant recorded testimony of any witness before the grand jury who (1) was, at the time of that testimony, an officer or employee legally capable of binding defendant to conduct constituting the offense, or (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee legally capable of binding defendant to the alleged conduct in which the witness was involved. (F.R.Crim.P. 16(a)(1)(A)).

\_\_\_\_\_C. Permit the defendant to copy defendant's prior record, if any, as is within the possession, custody, or control of the government, the existence of which is known, or by exercise of due diligence may become known, to the attorney for the government. (F.R.Crim.P. 16(a)(1)(B)).

\_\_\_\_\_D. Permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of the defense or intended for use by the government as evidence in chief at trial, or were obtained from or belong to defendant. (F.R.Crim.P. 16(a)(1)(C)).

\_\_\_\_\_E. Permit the defendant to inspect and copy or photograph results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, and which are material to the preparation of the defense or intended for use by the government as evidence in chief at the trial. (F.R.Crim.P. 16(a)(1)(D)).

\_\_\_\_\_F. Disclose to the defendant a written summary of testimony the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its case in chief. This summary shall describe the witnesses' opinions, the bases and the reasons therefor and the witnesses' qualifications. (F.R.Crim.P. 16(a)(1)(E)).

\_\_\_\_\_G. Disclose to defendant all evidence favorable to defendant, including impeachment evidence, and allow defendant to inspect, copy or photograph such evidence.

\_\_\_\_\_H. Notify defendant of all evidence the government intends to introduce pursuant to Rule 404(b) of the Federal Rules of Evidence.

\_\_\_\_\_I. 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.

\_\_\_\_\_J. Disclose to defendant any matter as to which the government will seek judicial notice.

\_\_\_\_\_K. 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 may 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 chief at the trial. For each such interception, disclose (1) any application for an order authorizing the interception of a wire or oral communication (2) any affidavits filed in support thereof and (3) any court order authorizing such interception.

\_\_\_\_L. Provide notice to defendant of the government's intention to use evidence pursuant to Rule 12(d)(2) of the Federal Rules of Criminal Procedure.

2. GOVERNMENT RESPONSES TO DEFENDANT'S STANDARD DISCOVERY REQUESTS.

(initial box)

\_\_\_\_A. Pursuant to Rule 1.01(c) of the Local Rules of Criminal Procedure, the Government hereby agrees to provide the materials to the defendant not later than:

\_\_\_\_\_.

[the local rule provides that the deadline for disclosure should ordinarily be set ten (10) 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 timeframe set forth above.

3. RECIPROCAL DISCOVERY AND FILING OF ADDITIONAL MOTIONS BY DEFENDANT.

A. Pursuant to Rule 1.01(d) of the Local Rules of Criminal Procedure, the Defendant shall provide to the Government any required reciprocal discovery within ten (10) days of receipt of the requested materials and filing of the government's written response to the defendant's standard discovery requests.

B. Pursuant to Local Rule 1.01(e) of the Local Rules of Criminal Procedure, the defendant shall file all additional motions with the Court within ten (10) 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 boxes)

\_\_\_\_\_ 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), 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