

II. LOCAL RULES OF CRIMINAL PROCEDURE

LR Cr P 5.1. Initial Appearance

(a) Pretrial Services Interview.

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

(b) Disclosure of Pretrial Services Information.

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

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

- (1) The defendant shall not violate any local, state or federal laws;
- (2) The defendant shall not possess a firearm, destructive device or other dangerous weapon, and shall reside in a residence free from such items;
- (3) The defendant's travel is restricted to the Southern District of West Virginia unless otherwise permitted by the court;
- (4) The defendant shall submit to random urine screens, as directed by the probation department or the court, for detection of use of controlled substances; and
- (5) The defendant shall not contact, either directly or indirectly, any victim or potential witnesses in the case, except through counsel (for witness/victim protection where needed).

(d) **Modification of Conditions of Pretrial Release.**

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

LR Cr P 7.1. Assignment of Cases

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

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

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

LR Cr P 10.1. Arraignment and Plea

(a) **Notice of Date and Time.**

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

(b) **Notice of Motion to Dismiss.**

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

- (c) No Further Notice.

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

LR Cr P 12.1. Pretrial Motions

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

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

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

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

- (c) Time for Response to Pretrial Motions.

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

- (d) Pretrial Hearing.

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

- (e) Courtroom Technology.

If any courtroom technology is required, counsel must request any such technology for use at trial or other proceeding and make a certification that the court's technology staff has been notified. The certification regarding such notification shall be filed with the clerk no later than 7 days before the scheduled commencement of the trial or other proceeding.

LR Cr P 16.1. Arraignment and Standard Discovery Requests

(a) Standard Discovery Request Form.

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

(b) Reciprocal Discovery.

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

(c) Time for Government Response.

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

(d) Time for Reciprocal Discovery Response.

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

(e) Defense Discovery Request Deemed Speedy Trial Motion.

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

(f) Duty to Supplement.

All duties of disclosure and discovery in this rule are continuing. The parties must produce any additional discovery as soon as they receive it, and in no event later than the time for such disclosure as required by law, rule of criminal procedure, or order of the court, and without the necessity of further request by the opposing party.

LR Cr P 18.1. Principal Offices

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

LR Cr P 18.2. Divisions

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

Division 1: Bluefield

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

Division 2: Charleston

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

Division 3: Huntington

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

Division: 5: Beckley

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

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

LR Cr P 23.1. Opening Statements in Criminal Trials

At the commencement of trial in a criminal action, the government and the defendant may make non-argumentative opening statements as to their theories of the case and the manner

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

LR Cr P 24.1. Confidentiality of Juror Information

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

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

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

LR Cr P 30.1. Jury Instructions

In all criminal cases, counsel for the defendant and for the government shall submit jury instructions to the court prior to the commencement of a jury trial, or earlier if ordered by

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

LR Cr P 31.1. Contact with Jurors

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

LR Cr P 32.1. Presentence Interview

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

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

(a) Disclosure of Presentence Reports.

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

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

report, without the officer's recommendation as to the sentence, to counsel in revocation proceedings upon request without further order of the court. The copy of the presentence report shall be used by counsel for the purpose of the revocation proceeding only. Further, the probation officer, upon request, is authorized to provide a copy of the presentence report to another federal probation officer without further order of the court.

(b) Disclosure of Special Conditions Within Presentence Reports.

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

(c) Statement of Reasons.

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

(d) Disclosure of Probation Office Recommendation.

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

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

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

- (1) If the offender is unemployed, the probation officer may direct the offender to register and remain active with Workforce West Virginia.

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

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

The following standard and optional conditions of probation or supervised release shall be included in the Judgment as appropriate in all cases where the offense of conviction, or a defendant's prior state or federal conviction, would qualify as a "sex offense" as defined in the Sex Offender Registration and Notification Act (SORNA), 42 U.S.C. § 16911(5) or otherwise result in a reporting obligation by the defendant to any state or federal sex offender registry. Within those conditions requiring an offender to obtain approval by the probation officer for certain actions, the court retains the ultimate authority to grant the approval requested, along with the right to review the probation officer's decision upon the offender's written request.

- (a) Standard Conditions.
 - (1) The defendant shall have no direct or indirect contact, at any time, for any reason, with the victim(s) identified in the presentence report or the victim's family.
 - (2) The defendant shall submit to an evaluation by a qualified mental health professional, approved by the probation officer, who is experienced in

treatment of sexual offenders. The defendant shall take all medications reasonably related to treatment of his or her condition, complete all treatment recommendations and abide by all rules, requirements and conditions imposed by the professional. The defendant must do so until discharged from treatment by the professional. Prior to being required to submit any proposed course of treatment, the defendant or the United States may seek review by the presiding district judge of any facet of the prescribed course of treatment. The United States and the defendant shall also have the right to seek review by the presiding district judge of any continuation or discontinuation of such treatment.

- (3) The defendant shall submit to risk assessments, psychological and physiological testing, which may include, but is not limited to, a polygraph examination or other specific tests to monitor the defendant's compliance with probation or supervised release treatment conditions, at the direction of the probation officer.
- (4) The defendant's residence and employment shall be approved by the probation officer. Any proposed change in residence or employment must be provided to the probation officer at least 10 days prior to the change and pre-approved before the change may take place.
- (5) The defendant shall not access or possess any material depicting sexually explicit conduct as defined in 18 U.S.C. § 2256(2)(A), including any photograph, film, video, picture, or computer or computer generated image or picture, nor shall the defendant knowingly enter, or knowingly remain in, any location, without the prior approval of the probation officer, where such materials can be accessed, obtained or viewed, including pictures, photographs, books, writings, drawings, videos or video games. [The rationale for amending this condition broadens the condition to include any sexually explicit material and not just possession of child pornography, which is already a prohibited crime. A sex offender who continues to have exposure to any pornography is continuing to engage in "fantasy sex," which may lead to high-risk behavior. He or she would also not be addressing his or her intimacy deficits appropriately. Intimacy deficits are a well-researched risk factor for sexual recidivism.]
- (6) The defendant shall not use, purchase, possess, procure or otherwise obtain any computer or electronic device that can be linked to any computer networks, bulletin boards, internet, internet service providers or exchange formats involving computers unless approved by the probation officer for such purposes as looking for employment opportunities and submitting applications to prospective employers through the internet; defendant's lawful gainful employment by a business entity; use by an immediate family member living in defendant's same household or for other legitimate purposes. Such computers, computer hardware or software possessed solely

by the defendant is subject to searches and/or seizures by the probation office.

- (7) The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) and/or register as directed by the probation officer. The defendant shall register with any local and/or State Sex Offender Registration agency in any state or federal territory where the defendant resides, is employed, carries on a vocation, or is a student, or was convicted of a qualifying offense, pursuant to state law.
- (8) The defendant shall provide the probation officer access to any requested financial records and authorize the release of any financial information.
- (9) The defendant shall not purchase, possess, or consume alcohol, and the defendant shall not frequent any businesses whose primary function is to serve alcohol beverages. [Substance abuse is considered to be an acute risk factor for sex offenders. Drug and alcohol use have long been considered a “disinhibitor,” and problems with drugs or alcohol are generally regarded as elevating an individual’s risk for sexual recidivism. The sex offender, more than any other type of criminal on supervision, needs to be alert, in control, and ready to execute avoidance and escape plans whenever he or she encounters a high-risk situation.]

(b) Optional Conditions.

- (1) The term “minor” with respect to any condition of supervised release refers to one who is under the age of eighteen (18) years.
- (2) The defendant shall not associate or have verbal, written, telephonic or electronic communications with any minor except: 1) in the presence of the parent or legal guardian of said minor; 2) on the condition that the defendant notifies the parent or legal guardian of the defendant’s sex offender conviction(s); and 3) with written approval from the probation officer. This provision does not encompass minors working as waiters, cashiers, ticket vendors, and similar service personnel with whom the defendant must deal in order to obtain ordinary and usual commercial services.
- (3) The defendant shall not loiter within 100 feet of any parks, school property, playgrounds, arcades, amusement parks, daycare centers, swimming pools, community recreation fields, zoos, youth centers, video arcades, carnivals, circuses or other places that are primarily used or can reasonably be expected to be used by minors without prior written permission of the probation officer.

- (4) The defendant shall not purchase, possess or control cameras, camcorders, or movie cameras without prior approval of the probation officer. The defendant may only use and possess cell phones that are limited by design to vocal telephone communication without the capability to access the internet or store or create images or video without prior approval of the probation officer.
- (5) The defendant shall notify employers, family, friends and others with whom the defendant has regular contact of defendant's conviction(s) as a sex offender and that the defendant is being supervised by a probation officer.
- (6) The defendant shall not engage in any forms of exhibitionism, voyeurism, obscene phone calls or other lewd or lascivious behavior toward a minor, nor engage in "grooming" behavior that is apt to attract, seduce or reduce sexual resistance or inhibitions of a minor.
- (7) The defendant shall not own, use or have access to the services of any commercial mail receiving agency or storage unit nor shall the defendant open or maintain a post office box or storage unit without the prior approval of the probation officer. The defendant shall provide the probation officer with a list of all P.O. boxes and/or storage units the defendant can access.
- (8) The defendant shall not possess sadomasochistic or similar bindings or handcuffs, or like forms of restraint.
- (9) The defendant shall not possess minor's clothing, toys, games, or the like without permission of the probation officer.
- (10) The defendant shall not be employed in any position or participate as a volunteer in any activity that involves contact with minors without written permission from the probation officer. The defendant may not engage in an activity that involves being in a position of trust or authority over any minor.
- (11) The defendant shall participate in the District's computer and internet monitoring program and pay any costs associated therewith and abide by all special conditions therein, as directed by the probation officer. Participation in this program is contingent upon all program criteria being met.
- (12) The defendant shall not possess pictures of minors, unless the pictures are of the defendant's children.

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

(a) Petition for Modification or Revocation.

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

(b) Disclosure of Evidence.

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

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

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

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

No terms of probation or supervised release shall be modified upon a waiver of counsel by the probationer or releasee unless and until the probationer or releasee shall have consulted with counsel regarding the advisability of waiving counsel.

Any such waiver of counsel must certify that the probationer or releasee consulted with counsel prior to executing such waiver. In the alternative, waiver of counsel may be made by the probationer or releasee before a magistrate judge.

LR Cr P 44.1. Admission of Attorneys

(a) Admission as Member of Bar or Court.

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

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

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

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

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

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

(d) Appearance by Federal Government Attorneys.

Federal government attorneys who are not members of the bar of this court need not complete the Statement of Visiting Attorney. In cases where the United States

Attorney is associated with other government attorneys in proceedings involving the Federal government, the United States Attorney (except in student loan collection cases), in addition to other Federal government attorneys, shall sign all pleadings, notices, and other papers filed and served by the United States. All pleadings, notices, and other papers involving the Federal government may be served on the United States Attorney in accordance with the service requirements of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

LR Cr P 44.2. Legal Assistance by Law Students

(a) Written Consent.

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

(b) Responsibilities of Attorneys of Record.

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

(c) Eligibility Requirements.

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

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

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

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

LR Cr P 44.3. Representation of Parties

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

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

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

LR Cr P 44.5. Pro se Appearances

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

LR Cr P 44.6. Admission of Visiting Attorneys

(a) Procedure for Admission.

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

(b) Motion Not Required.

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

(c) Payment of Visiting Attorney Fee.

(1) Fee Payable to Clerk.

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

made only at the direction of a committee, the members of which will be appointed by the Chief Judge, in accordance with a written plan.

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

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

(d) Exceptions to Payment of Visiting Attorney Fee.

(1) Miscellaneous Cases.

A Visiting Attorney who files a miscellaneous case which does not require judicial action (e.g., one filed in order to obtain a subpoena) is exempt from paying the Visiting Attorney fee, from associating with a Sponsoring Attorney, and from filing the Statement of Visiting Attorney. A Visiting Attorney who files a miscellaneous case which does require judicial action (e.g., motion to compel testimony at a deposition) must comply with Rule 44.6.

(2) Federal Government Attorneys.

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

(3) Law Students.

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

(e) Waiver of Payment of Visiting Attorney Fee.

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

(f) Revocation of Visiting Attorney Privilege.

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

LR Cr P 44.7. Code of Professional Conduct

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

LR Cr P 44.8. Bias and Prejudice

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

LR Cr P 46.1. Release from Custody

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

- (A) offer as security real property located in the State of West Virginia, or other property as approved by a judge of this court, of an unencumbered value equal to or greater than the stated amount of the bond;
 - (B) be competent to convey the real property; and
 - (C) submit an affidavit and supporting documents including: (i) a legal description of the real property; (ii) a complete list of all encumbrances and liens on the real property; (iii) a current appraisal of the real property by a qualified appraiser; (iv) a waiver of inchoate rights; (v) a certification that the real property is not exempt from execution; and (vi) proof of payment of property taxes.
- (2) Within 14 days after the court approves the real-property bond, the surety must file with the court a copy of a notice of encumbrance filed by the surety with the county recorder or registrar of titles that identifies the bond as an encumbrance on the real property.
- (3) A real-property bond will be released only by court order.
- (d) **Cost Bonds.** The court may, on motion or on its own, order a party to file a bond or other security for costs in an amount, and subject to conditions, specified by the court.
- (e) **Cash bonds.** Deposit of cash bonds is governed by LR Civ P 67.1. Withdrawal of cash bonds is governed by LR Civ P 67.2.
- (f) **Personal Recognizance Bond.** On a personal recognizance bond, the defendant promises to comply with all conditions imposed by the court. A defendant that fails to comply with a condition or fails to appear will be subject to penalties as authorized by statute.
- (g) **Objections.** Any party may object to the issuance of a bond.
- (h) All bonds must receive court approval.

LR Cr P 49.1. Filing Papers

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

in which the particular action or proceeding is docketed. When electronically filing documents with the clerk's office, a paper courtesy copy to the assigned judicial officer is not required except where any motion, memorandum, response, or reply, together with documents in support thereof, is 50 pages or more in length.

LR Cr P 49.2. Filing by Facsimile or Electronic Means

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

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

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

(a) Documents.

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

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

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

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

(b) Transcripts of Hearings.

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

LR Cr P 53.1. Photography in and Broadcasting from Courtroom

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

LR Cr P 53.2. Impoundment of Photography and Broadcasting Equipment

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

LR Cr P 55.1. Custody and Disposition of Exhibits

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

approval of the court, photographs may be substituted for said exhibits once they have been introduced into evidence.

(b) After Trial or Hearing.

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

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

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

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

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

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

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

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

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

LR Cr P 56.1. Sessions

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

LR Cr P 57.1. Courthouse Security

(a) Entry of Federal Courthouse Buildings.

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

(b) Persons Requiring Access.

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

(c) Weapons.

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

(d) Identification Card.

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

(e) Wireless Communication Devices.

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

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

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

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

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

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

LR Cr P 58.2. Assignment of Misdemeanors and Petty Offenses

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

LR Cr P 58.3. Petty Offenses

(a) Schedule of Petty Offenses.

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

(b) Forfeiture of Collateral in Lieu of Appearance.

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

(c) Failure to Post Collateral.

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

(d) Certification of Convictions of Traffic Violations.

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

(e) Arrest.

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

LR Cr P 59.1. General Authority of Magistrate Judges

A magistrate judge is a judicial officer of the district court. A magistrate judge of this district is designated to perform, and may be assigned, any duty allowed by law to be

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

LR Cr P 59.2. Statutory Duties

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

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

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

LR Cr P 59.4. Miscellaneous Duties

Magistrate judges are also authorized to:

- (a) exercise general supervision of criminal calendars, conduct calendar and status calls, conduct hearings, and determine motions to expedite or postpone the trial of cases for the district judges;
- (b) conduct pretrial conferences, scheduling conferences, and related pretrial proceedings;
- (c) conduct arraignments in criminal cases not triable by a magistrate judge and take not guilty pleas in such cases;
- (d) with the consent of the parties, conduct arraignments in criminal cases not triable by a magistrate judge, receive a defendant's guilty plea, and submit proposed findings of fact and recommendations as to whether the presiding district judge should accept the guilty plea, and find the defendant guilty;
- (e) impanel grand juries, conduct hearings as to prospective jurors who fail to appear for grand jury duty, determine the qualification of specific grand jurors to participate in the investigation of particular matters, determine motions to quash grand jury subpoenas, and receive grand jury returns;

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

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

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

than 1 division, the case shall be assigned to the magistrate judge for the division in which the majority of the allegedly criminal conduct occurred.

LR Cr P 59.6. Other Duties Assigned and Matters Referred

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