PART TWO

LOCAL RULES OF CRIMINAL PRACTICE

CITE THE LOCAL CRIMINAL RULES AS:

LCrR (e.g., LCrR12.1)

Effective April 1, 2011

TABLE OF CONTENTS

PART TWO LOCAL RULES OF CRIMINAL PROCEDURE

LCrR6.1

DISCLOSURE OF GRAND JURY TESTIMONY

Prosecuting attorneys representing the United States and any attorney representing a defendant or any defendant proceeding pro se in a criminal case before this Court who has, pursuant to Rules 6, 16(a)(I)(B) and 26.2 of the Federal Rules of Criminal Procedure; the provisions of 18 U.S.C. § 3500; or the doctrine of Brady v. Maryland, 373 U.S. 83 (1963), received a transcript of recorded testimony of any witness before a grand jury either by and through an order of this Court or the open file policy of the United States Attorney shall handle the grand jury transcripts of recorded testimony strictly in accordance with the following instructions:

(a) Except as otherwise provided for by Rule 6, Federal Rules of Criminal Procedure, disclosure is to be made only to counsel of record of a defendant or to any defendant proceeding pro se in the criminal action.

(b) No counsel of record of a defendant or a defendant proceeding pro se in the criminal action may reproduce any transcript of testimony described herein.

(c) Within fourteen days following the termination of the criminal action, inclusive of any period allowed for appeal, recipients of transcripts of testimony from prosecuting attorneys for the Government shall deliver to the prosecuting attorney for the Government the transcripts to be held in accordance with Rule 6 of the Federal Rules of Criminal Procedure.

(d) The transcripts may be used solely for evidentiary purposes in the criminal action.

(e) Except to the limited extent that disclosure to the defendant-client or to secretarial assistants may be essential in the preparation of motions and briefs or in the preparation for trial in the criminal case, no recipient shall disclose the contents of any transcript of testimony to any non-recipient.

(f) Recipients of transcripts of testimony shall immediately inform any and all persons assisting them in a criminal action of the contents of this rule.

The U.S. Attorney shall provide a copy of this local rule to attorneys or defendants proceeding pro se who obtain copies of Grand Jury material pursuant to this rule.

LCrR12.1

PRETRIAL MOTIONS IN CRIMINAL CASES

(a) **Time for Filing.** The time for filing pretrial motions and responses thereto shall be set by the Court at arraignment in all cases in which a defendant pleads not guilty.

(b) **Extensions of Time for Filing.** Motions for an extension of time to file pretrial motions must be made within the time set for the filing of motions and will be granted only upon a showing of good cause for delay.

(c) **Motions Adopting Other Motions.** Motions adopting motions filed by codefendants must clearly identify by character and date of filing the motions adopted. General adoptions which do not identify specifically the motions adopted may be summarily denied by the Court.

LCrR16.1

DISCOVERY MOTIONS

Discovery motions filed by a defendant who is represented by counsel must include a statement that counsel has fully reviewed the government's case file before bringing the motion or a statement that such file is not available for counsel's review. The filing of a discovery motion which does not include such certification may cause the Court to deny the motion, to disapprove payment to court-appointed counsel in regard to a motion made unnecessary by examination of the file, or to impose other sanctions under LCrR57.3 in the discretion of the Court.

LCrR24.1

JURIES

(a) **Examination of Jurors.**

(1) The Court will conduct the examination of prospective jurors.

(2) When the Court's examination is completed, attorneys and parties appearing *pro se* may request that the Court ask additional questions to the prospective jurors.

(b) **Contacts Prohibited.**

(1) All parties, witnesses, and attorneys shall avoid any extra-judicial contact or communication with a grand juror or member of a petit jury venire or panel who has been or may be selected in a case in which that person is involved. No person may have any extra-judicial contact or communication, either directly or indirectly, with a grand juror, member of a petit jury venire or panel which may reasonably have the effect of influencing, or which is intended to influence, the grand juror, potential petit juror, or sitting petit juror.

(2) Attorneys for parties shall inform their clients and witnesses of this rule.

(3) No person shall approach a juror, either directly or through any member of the juror’s immediate family, in an effort to secure information concerning the juror's

background.

(4) No provision of this rule is intended to prohibit communication with a petit juror after the juror has been dismissed from further service, so long as the communication does not tend to harass, humiliate, or intimidate the juror in any fashion.

(c) **Disclosure of Names and Addresses of Prospective Jurors.**

(1) The names of prospective jurors for any session of court or for a specific case may not be disclosed prior to their reporting for duty except in compliance with instructions of the Court. The Clerk will make available to counsel for the parties, and to any parties appearing *pro se*, a list which sets forth the name, general address, and occupation of each potential juror when court is opened for the session for which the jurors have been summoned.

(2) The names, addresses, and telephone numbers of persons who have served as jurors may not be disclosed by the Clerk's Office without court permission.

LCrR26.1

DOCUMENTS, OTHER THAN EXHIBITS, USED AT TRIAL

When counsel expects to examine or cross-examine a witness concerning a document which will not be offered as an exhibit, counsel shall have at trial a copy of the document for use by the Judge.

LCrR32.1

MOTION FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL

The filer of a motion to extend the time to file a notice of appeal pursuant to Federal Rule of Appellate Procedure 4(b)(4) shall ensure that a notice of appeal has been filed or will be filed contemporaneously with the filing of the motion to extend time.

LCrR32.2

SENTENCING PROCEDURES

(a) Sentencing proceedings shall be scheduled by each District Judge no earlier than 75 calendar days following a defendant's entry of a guilty plea or a verdict of guilty.

(b) The presentence investigation report, including sentencing guideline

computations, shall be completed and disclosed to the parties not less than 35 calendar days before the scheduled sentencing proceeding, unless the minimum period is waived by the Defendant. The presentence investigation report shall be deemed to have been disclosed

(1) when a copy of the report is delivered to the parties,
(2) one day after the report's availability for inspection is orally communicated to the parties, or
(3) three days after a copy of the report or notice of its availability is mailed to the parties.

(c) If a party reasonably disputes sentencing factors or material facts found in the presentence investigation report, or seeks the inclusion of additional factors or material facts, that party should notify the probation officer and the other party of such dispute, in writing, within 14 days after disclosure of the presentence investigation report. It is the obligation of the complaining party to seek resolution of such factors or material facts through the probation officer prior to filing the pleading referenced in paragraph (d) below. A conference among the probation officer and the parties is mandatory when factors or material facts are in dispute. Resolution of disputed factors or material facts should be resolved to the extent possible, and informal procedures, to include telephone conferences, for this resolution process are permissible. A party with no disputes or objections should file a statement with the United States Probation Office, articulating that position.

(d) Within 20 calendar days after disclosure of the presentence investigation report, any party, Defendant and/or Government, having an unresolved dispute shall file a pleading entitled, "Position of Parties with Respect to Sentencing Factors," in accordance with Policy Statements §§ 6A1.2 and 6A1.3 of the United States Sentencing Commission Guidelines Manual or any other rules issued by the United States Sentencing Commission. This pleading shall serve as a notice of any factor important to the sentencing determination that is reasonably in dispute. This pleading shall be accompanied by a written statement certifying that the party has conferred with opposing counsel and the probation officer in a good faith effort to resolve the disputed matter(s). This pleading shall be filed with the Clerk of Court and contemporaneously served upon the United States Probation Officer and opposing counsel. The absence of a filing by either party, at this time, will be reported to the Court by the probation office and administratively handled by the United States Probation Office as no dispute.

(e) Not later than seven calendar days before the sentencing hearing, the United States Probation Office shall deliver to the Sentencing Judge the presentence investigation report, including sentencing guideline computations, together with an addendum setting forth any unresolved objections, the grounds for those objections, and

the probation officer's comments on the objections. At the same time, the probation officer must furnish the revisions of the presentence investigation report and the addendum to the Defendant, defense counsel, and the attorney for the Government.

(f) The presentence investigation report may be accepted by the Court as accurate if there are no unresolved factual disputes or objections. However, the Court, for good cause, may allow a new objection at any time prior to imposition of sentence. In resolving disputed facts, the Court may consider any reliable information presented by the Defendant, the Government or the probation officer. At the sentencing hearing, the Court must rule on any unresolved objections to the presentence investigation report. For each matter controverted, the Court must make either a finding on the allegation or a determination that no finding is necessary because the controverted matter will not be taken into account in, or will not affect, sentencing. A written record of these findings and determinations must be appended to any copy of the presentence investigation report made available to the Bureau of Prisons.

(g) Copies of the presentence investigation report having been duly disclosed, shall remain in the possession of the Defendant, defense counsel, and the attorney for the Government. All parties are admonished to maintain the strict and essential standards of confidentiality. The report is to be maintained as a confidential court document. No further copies or dissemination of the report shall be made. Unauthorized copying or disclosure will be treated as an act of contempt and will be punished accordingly.

LCrR32.3

CONFIDENTIALITY OF PRESENTENCE INVESTIGATION REPORTS

(a) Presentence investigation reports prepared by the probation office and any response or objection thereto shall be filed under seal in the Office of the Clerk of Court and shall be visible only to court personnel, attorneys of record in the particular case to which the report relates, and defendants to whom the particular report relates. Such records shall not be made available to the public.

(b) In the event of an appeal, records relating to the presentence investigation report shall be transmitted to the United States Court of Appeals for the Fourth Circuit under seal, and it is requested that such records be accorded the same degree of confidentiality upon appeal as they are afforded in this District.

(c) Copies of the presentence report, having been duly disclosed, shall remain in the possession of the Defendant, defense counsel, and the attorney for the government.

All parties are admonished to maintain the strict and essential standards of confidentiality. No further copies or dissemination of the report shall be made. Unauthorized copying or disclosure will be treated as an act of contempt and will be punished accordingly.

(d) The probation office shall, upon request, provide a copy of the report to counsel for the Defendant and the Government.

LCrR44.1

REPRESENTATION OF CERTAIN DEFENDANTS

The Court's Plan for Furnishing Representation and Services to defendants who are financially unable to obtain an adequate defense, pursuant to the Criminal Justice Act of 1964, as amended, is a public document available through the Office of the Clerk of this Court. The Court's plan as it now exists and as it is hereinafter amended shall have the same force and effect as a local rule of this Court. When deemed appropriate by the Court, the Court may appoint an attorney to represent a defendant even though such attorney's name does not appear on the panel of attorneys drawn pursuant to the plan.

LCrR50.1

PROMPT DISPOSITION OF CRIMINAL CASES

The Court's Plan for Prompt Disposition of Criminal Cases in compliance with the Speedy Trial Act of 1974 (18 U.S.C. §§ 3161, et seq.), and the Federal Juvenile Delinquency Act (18 U.S.C. §§§§ 5036, 5037), as approved by the Judicial Council, is a public document available through the Office of the Clerk of this Court. The Court's Plan for the Prompt Disposition of Criminal Cases as it now exists and as it is hereafter amended and approved by the Judicial Council shall have the same force and effect as a local rule of this Court.

LCrR57.1

INCORPORATION OF CERTAIN LOCAL RULES OF CIVIL PRACTICE

Local Rules of Civil Practice 1.1, 5.1, 5.2, 5.3, 6.1, 6.2, 7.1, 7.2, 47.1, 65.1.1, 72.1, 77.1, 77.3, 79.1, 79.2, 79.4, 83.1, 83.2, 83.5, 83.7, 83.8, and 83.10a-m shall apply fully to criminal proceedings, and shall be interpreted consistent with the Federal Rules of

Criminal Procedure and other Local Rules of Criminal Practice.

LCrR57.2

FAIR TRIAL DIRECTIVES

(a) **Prohibited Statements; Attorney's Obligations.**

(1) An attorney participating in or associated with a grand jury or other investigation of a criminal matter shall not make or participate in making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication and which does more than state without elaboration:

(i) Information contained in a public record.

(ii) That the investigation is in progress.

(iii) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(iv) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(v) A warning to the public of any dangers.

(2) An attorney associated with the prosecution or defense of a criminal case to be tried by a jury shall not make or participate in making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication which relates to:

(i) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(ii) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(iii) The existence or contents of any confession, admission, or statement given by the accused or the accused’s refusal or failure to make a statement.

(iv) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(v) The identity, testimony, or credibility of a prospective witness.

(vi) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(3) Section (a)(2) above does not preclude an attorney from announcing:

(i) The name, age, residence, occupation, and family status of the accused.

(ii) Any information necessary to aid in the apprehension of an accused or to warn the public of any dangers.

(iii) A request for assistance in obtaining evidence.

(iv) The identity of the victim of the crime.

(v) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(vi) The identity of investigating and arresting officers or agencies and the length of the investigation.

(vii) The nature, substance, or text of the charge.

(viii) Quotations from or references to public records of the court in the case.

(ix) The scheduling or result of any step in the judicial proceedings.

(x) That the accused denies the charges.

(4) The foregoing provisions of this rule do not preclude an attorney from replying to charges of misconduct publicly made against the attorney or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(b) **Attorney's Employees and Associates.** An attorney must exercise reasonable care to prevent employees and associates from making any extrajudicial statement which the attorney would be prohibited from making under this rule.

LCrR57.3

SANCTIONS

(a) **Imposition of Sanctions.** If an attorney or a party fails to comply with a local rule of this Court, the Court may impose sanctions against the attorney or party, or both. The Court may make such orders as are just under the circumstances of the case, including the following:

(1) an order that designated matters or facts shall be taken as established for purposes of the action;

(2) an order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;

(3) an order striking out pleadings or parts thereof, or staying proceedings until the rule is complied with, or dismissing the action or any part thereof, or rendering a judgment by default against the failing party;

(4) an order imposing costs, including attorney's fees, against the party, or the party's attorney, who has failed to comply with a local rule.

(b) **Sanctions Within the Discretion of the Court.** The imposition of sanctions for violation of a local rule is discretionary with the Court. In considering the imposition of sanctions, the Court may consider whether a party's failure was substantially justified or whether other circumstances make the imposition of sanctions inappropriate.

LCrR 58.1

PAYMENT OF FIXED SUM IN LIEU OF APPEARANCE IN CERTAIN MISDEMEANOR CASES

Pursuant to Fed. R. Crim.P. 58(d) and in the interest of justice and good court administration, collateral may be posted in lieu of the appearance of an offender for certain misdemeanors under federal statutes and regulations or state statutes made applicable by the Assimilative Crimes Statute (18 U.S.C. § 13). There shall be maintained in the Office of the Clerk a list of the misdemeanors and fines applicable thereto for which forfeiture of collateral security may be posted.

The posting of collateral signifies that the defendant does not contest the charge nor request a trial. Such collateral shall be administratively forfeited to the United States. Forfeiture of collateral in lieu of personal appearance is not permitted for any listed offense denominated a "mandatory appearance" offense, for an aggravated or major offense, or for multiple offenses arising out of the same facts or sequence of events.

The Clerk shall certify the record of any forfeiture of collateral for a traffic violation to the proper state authority.