

**United States District Court**  
**for the**  
**Western District of Tennessee**

**LOCAL RULES**

**Effective March 25, 2004**

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE

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## LOCAL RULES

### **CRIMINAL**

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**LR6.1  
TIME**

Time shall be computed under these rules as specified in Fed. R. Civ. P. 6.

**LR7.1  
EXTENSIONS OF TIME TO RESPOND TO MOTIONS**

- (a) Extensions of Time to Respond to Motions. Extensions of time to respond to motions shall be granted only for good cause and by motion pursuant to LR7.2 and will not be granted by stipulation.

**LR7.2  
MOTIONS IN CIVIL CASES**

- (a) Filing, Service and Response.

(1) Motions. The clerk shall accept for filing only those motions in civil cases that are accompanied by a supporting memorandum of facts and law, and (except in the case of an ex parte motion) a certificate of service of the motion and memorandum upon all other parties to the action. The motion shall contain a brief statement of its bases. In the case of a motion for summary judgment, the memorandum shall comply with the additional requirements of subsection (d).

(A) All motions, except motions pursuant to Fed. R. Civ. P. 12, 56, 59 and 60 shall be accompanied by a proposed order.

(B) Consultation by Counsel. All motions, including discovery motions but not including motions pursuant to Fed. R. Civ. P. 12, 56, 59 and 60 shall be accompanied by a certificate of counsel (with one copy) affirming that, after consultation between the parties to the controversy, they are unable to reach an accord as to all issues or that all other parties are in agreement with the action requested by the motion. Failure to file an accompanying certificate of consultation may be deemed good grounds for denying the motion.

The certificate must contain the names of participating counsel and the date and manner of consultation<sup>1</sup>. The burden will be on counsel filing the motion to initiate the conference upon giving reasonable notice of the time, place and specific nature of the conference. If an opposing counsel or party refuses to cooperate in the conduct of a conference, counsel must file a certificate to that effect, setting out counsel's efforts to comply with this rule.

- (2) Responses. The response to the motion and its supporting memorandum, unless the motion is pursuant to Fed. R. Civ. P. 12(b) or 56, shall be filed within fifteen days after service of the motion and shall be accompanied by a proposed order. Failure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion. In the case of a motion for summary judgment and a motion to dismiss pursuant to Fed. R. Civ. P. 12(b), a response must be filed within thirty days after service of the motion. Responses shall contain a brief reply to the grounds of the motion and a supporting memorandum of facts and law, and, in the case of motions for summary judgment, the additional submissions required by subsection (d).
- (b) Submission of Motion. Upon the filing of a motion and the timely filing of the response, if any, the motion shall be submitted to the court for a ruling unless a hearing has been requested and granted.
- (c) Hearing on Motion. If counsel desires a hearing on the motion before the court, counsel shall request the hearing in the motion or response. If the court determines that a hearing would be helpful or necessary, the court will set the date and time of the hearing and the clerk will notify all counsel.
- (d) Summary Judgment Motions.
  - (1) Except for good cause shown, motions for summary judgment shall be filed at least forty-five days before the trial setting, unless required to be filed earlier by Fed. R. Civ. P. 16(b) scheduling order.
  - (2) Motion. On every motion for summary judgment, in addition to citations to appropriate legal authorities, the proponent of the motion shall designate in the accompanying memorandum by serial numbering each material fact upon which the proponent relies in support of the motion and shall affix to the memorandum

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<sup>1</sup>LR 7.2(a)(1)(B) amended by Administrative Order 2001-16, filed September 18, 2001 striking the second sentence of the second paragraph, commencing "If counsel are residents of the same county..." through the fourth sentence which ends, "consultation may be by telephone or letter."

copies of the precise portions of the record relied upon as evidence of each material fact. If the proponent contends that the opponent of the motion cannot produce evidence to create a genuine issue of material fact, the proponent shall affix to the memorandum copies of the precise portions of the record relied upon as evidence of this assertion.

- (3) Response. In addition to citing appropriate legal authorities, the opponent of a motion for summary judgment who disputes any of the material facts upon which the proponent has relied pursuant to subsection (2) above shall respond to the proponent's numbered designations, using the corresponding serial numbering, both in the response and by affixing to the response copies of the precise portions of the record relied upon to evidence the opponent's contention that the proponent's designated material facts are at issue.
  - (4) On the copies of those portions of the record submitted in support of or in refutation of the above contentions, "highlighting" of precise portions of the record for the court is encouraged, provided that the same "highlighting" is done on copies furnished to counsel as required by these rules.
- (e) Memoranda in support of or in opposition to motions shall not exceed twenty pages without prior court approval.
- (f) Injunctions. An application for a temporary restraining order will be considered by the court upon compliance with the following:
- (1) The filing of a motion or complaint seeking such relief;
  - (2) Compliance with the notice provisions of Fed. R. Civ. P. 65; and
  - (3) Application to the judge to whom the case is assigned. Application may be made to another judge in the event the judge to whom the case is assigned is unavailable by asking the clerk to arrange for hearing before another judge.
  - (4) In the event an application for temporary restraining order is filed preceding a complaint and, accordingly, before a judge is assigned, the filing of the application will cause the random selection of a judge. If the first randomly assigned judge is unavailable, the random selection will continue until an available judge is drawn, with that judge continuing throughout the case as the assigned judge.<sup>2</sup>

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<sup>2</sup> See also LR83.3.

**LR7.3**  
**TRIAL MEMORANDA**

Counsel for the parties in all civil cases may file with the clerk and serve upon all opposing counsel a trial memorandum of facts and law not less than ten days before the case is set for trial. The memorandum shall be served upon all parties and a copy provided to the judge. Without court approval, the memorandum shall be limited to thirty-five pages in length.

The court may require trial memoranda and will, in such a case, notify counsel at least thirty days before the memoranda are due.

**LR7.4**  
**CONTINUANCES**

Continuances shall be requested at the earliest time that the necessity for the continuance appears to counsel. Requests for trial continuances in civil or criminal cases shall be by written motion or oral motion in open court except in emergencies.

**LR16.1**  
**PRETRIAL CONFERENCES: ALTERNATIVE DISPUTE RESOLUTION**

- (a) Every party shall have in attendance at all pretrial conferences an attorney or other person possessing full authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters.
  
- (b) Scheduling and Settlement Conferences in Civil Cases. All scheduling and settlement conferences may be conducted by the judge or magistrate judge to whom the case is assigned, or by another district judge or magistrate judge who agrees to conduct the conference at the request of the judge to whom the case is assigned. In compliance with Fed.R.Civ.P. 16, each judge may exempt from the scheduling conference required by that rule cases involving pro se parties, petitions for writ of habeas corpus, Social Security appeals, bankruptcy appeals, forfeiture and penalty proceedings, and reviews of other administrative proceedings.

The time and form of scheduling conferences will be determined by each judge.

- (c) Initial Conference: Alternative Dispute Resolution. At the initial scheduling conference held pursuant to Fed.R.Civ.P. 16(b), in civil cases in which all parties are represented by counsel, the possibility of settlement shall be discussed and the court will determine if a method of alternative dispute resolution should be utilized in the case. The court may order a settlement conference, an early neutral evaluation, a mini-trial, summary jury trial, or mediation by an attorney or retired judge.
- (d) Subsequent Settlement Conferences. If settlement is not achieved as a result of the initial conference, there shall be at least one additional settlement conference at a point in the litigation to be determined by the court. If any party is appearing pro se, however, the holding of the settlement conference shall be in the discretion of the court.
- (e) Mediation. As part of the scheduling/pretrial conference conducted pursuant to Fed.R.Civ.P. 16, attorneys shall be prepared to discuss the advisability of referring their case to mediation. After conferring with the attorneys for each of the parties, and upon determining that the case is an appropriate one for mediation, the Court may, in its discretion, refer the case to a settlement conference, to be conducted by a judge, or to mediation by a member of the Court's mediation panel. At any time after the initial Rule 16 scheduling conference, any party may request the Court to refer the case to mediation.

The mediation will be conducted pursuant to the current version of the Mediation Procedure for the United States District Court for the Western District of Tennessee, as adopted by the Court, a copy of which will be maintained on file in the Clerk's Office.

The court retains discretion to make available other alternative dispute resolution methods, including without limitation, mini trial, early neutral evaluation, and summary jury trial.

### **LR26.1<sup>3</sup>**

#### **DISCOVERY PROCEDURES IN CIVIL CASES**

- (a) Form of Responses to Interrogatories, Requests for Admission and Requests for Production. When responding in any manner, by answer, objection or otherwise, to interrogatories, requests for admissions or requests for production, the responding party shall set out the interrogatory or request to which the party is responding immediately before the party's response.

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<sup>3</sup> Administrative Order No. 2001-02, filed January 30, 2001, deleted in its entirety LR 26.1(b), formerly "Filing of Discovery," & amended LR 83.3 (d) (1).

- (b) Memoranda and Responses. The provisions of LR7.2 (a), (b) and (c) shall apply to all motions and responses concerning discovery pursuant to Fed. R. Civ. P. 26 through 37.
- (c) Timeliness of Discovery. All discovery shall be completed and all motions in connection with disputed discovery shall be filed no later than the dates designated in the Scheduling Order entered in the action pursuant to LR16.1.

**LR47.1  
JURIES**

- (a) Size of Civil Case Juries. The court will seat eight jurors in civil cases.
- (b) Post-trial Interrogation of Jurors.
  - (1) After Verdict. No attorney, party, or representative of either may interrogate a juror after the verdict has been returned without prior approval of the court. Approval of the court shall be sought only by an application of counsel in open court or upon written motion, either of which must state the grounds for and the purpose of the interrogation.

If post-verdict interrogation is approved, the court will determine the scope of and any limitation on the interrogation prior to the interrogation.

- (2) After Mistrial. In the event that a mistrial is ordered due to the jurors' inability to agree on a verdict, any attorney or the attorney's representative may interrogate a juror without prior approval of the court, unless the court determines that the interrogation should not take place or determines that appropriate limitations should be established.

**LR54.1  
PAYMENT OF JUDGMENT AND COSTS IN CIVIL CASES**

- (a) Judgments. Except with respect to litigation in which the United States is a party, the clerk will not, unless authorized by order of the court, accept payment of judgments. Counsel will, however, upon receipt of payment of a judgment, receipt the clerk's docket for that payment.
- (b) Costs. If counsel for the litigants in a civil case can agree on costs, it is not necessary to file a cost bill with the clerk. If counsel cannot agree, a cost bill will be filed with the

clerk within thirty days from the termination of the case. If a cost bill is filed, the clerk will assess costs after notice and hearing. No costs are to be paid through the clerk except those that are due the clerk.

**LR67.1**  
**INVESTMENT OF REGISTRY FUNDS**

- (a) Investment of Funds. Registry funds in this court invested in a commercial financial institution shall be placed in either a passbook savings account or a certificate of deposit. Any other order notwithstanding, registry funds shall not be invested in any commercial financial institution until the clerk has been notified by the Treasury Department or the Federal Reserve Bank that the receiving institution has collateralized the deposit according to the Treasury Department regulations current at that time. Until such notice, the clerk shall deposit the funds in the Treasury of the United States. Collateralization can be effected more promptly by advance notice to the clerk.
- (b) Investment of Funds. Any proposed order for investment of registry funds of the court shall be presented to the Clerk of Court prior to its being presented to a judge for approval, and counsel obtaining such order shall be responsible for meeting the further conditions set forth below:
- (1) The Clerk of Court, Chief Deputy Clerk, or Financial Officer shall signify that he or she has examined and approved the proposed order by placing his or her signature on the proposed order.
  - (2) The order shall specify the amount to be invested; whether the investment is to be a passbook savings account or a certificate of deposit; and the duration of the investment, if a certificate of deposit.
  - (3) The order should also name the institution where the investment shall be made. If no institution is named in the order, the clerk shall select one and shall invest at such institution at the highest rate paid by the institution selected for the type of investment. The clerk shall not be responsible for locating the institution paying the highest rate of interest when the institution is not named in the order.

**LR72.1<sup>4</sup>**  
**UNITED STATES MAGISTRATE JUDGES**

a) Duties under 28 U.S.C. § 636(a). The United States Magistrate Judges for this district are authorized to perform and shall, without specific orders of reference, discharge all duties set out in 28 U.S.C. § 636(a) as follows:

- (1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;
- (1) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgments, affidavits, and depositions;
- (1) the power to conduct trials under section 3401, title 18 United States Code, in conformity with and subject to the limitations of that section;
- (1) the power to enter a sentence for a petty offense; and
- (1) the power to enter a sentence for a Class A misdemeanor in a case in which the parties have consented.

(b) Duties under 28 U.S.C. § 636(b). In addition to the powers and duties set forth in 28 U.S.C. § 636(a), the United States Magistrate Judges for this district are hereby authorized, pursuant to 28 U.S.C. § 636(b), to perform any and all additional duties, as may be assigned to them from time to time by any judge of this court, which are not inconsistent with the Constitution and laws of the United States.

The assignment of duties to the United States Magistrate Judges by the judges of this district may be made by standing order entered jointly by the district judges in this district or by any individual judge, in any case or cases assigned to him, through written order of reference or oral directive made or given with respect to such case or cases.

The duties authorized to be performed by the United States Magistrate Judges, when assigned to them pursuant to subsection (b) of this rule, shall include, but are not limited to:

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<sup>4</sup> Revised by Administrative Order 2003-10 filed April 2, 2003.

- (1) Issuance of search warrants upon a determination that probable cause exists, pursuant to Fed.R.Crim.P. 41, issuance of orders for a pen register, a trap and trace device, or other surveillance device pursuant to 18 U.S.C. §§ 3122 & 3123, issuance of administrative search warrants upon proper application meeting the requirements of applicable law, and acceptance of returns of search warrants.
- (2) Processing of complaints and issuing appropriate summonses or arrest warrants for the named defendants. (Fed.R.Crim.P. 4.)
- (1) Conducting initial appearance proceedings, bond and detention hearings, and issuing orders of release or detention for defendants. (Fed.R.Crim.P. 5 and 18 U.S.C. § 3146.)
- (1) Appointment of counsel for qualified persons pursuant to this district's Criminal Justice Act Plan and approval of attorneys' compensation and expense vouchers. (18 U.S.C. Section 3006A; Fed.R.Crim.P. 44.)
- (1) Conducting full preliminary hearings. (Fed.R.Crim.P. 5.1 and 18 U.S.C. § 3060.)
- (Ø) Conducting removal hearings for defendants charged in other districts, including the issuance of warrants of removal. (Fed.R.Crim.P. 5.)
- (3) Issuance of writs of habeas corpus ad testificandum and habeas corpus ad prosequendum. (28 U.S.C. § 2241(c)(5).)
- (4) Release or detention of material witnesses and holding others to security of the peace and for good behavior. (18 U.S.C. § 3149 and 18 U.S.C. § 3043.)
- (1) Issuance of warrants and conducting extradition proceedings pursuant to 18 U.S.C. § 3184.
- (1) Conducting proceedings for the discharge of indigent prisoners or persons imprisoned for debt under process or execution issued by a federal court. (18 U.S.C. § 3569 and 28 U.S.C. § 2007).
- (1) Issuance of an attachment or other orders to enforce obedience to an Internal Revenue Service summons to produce records or give testimony. (26 U.S.C. § 7604(a) and (b)).
- (1) Conducting post-indictment arraignments, acceptance of not guilty pleas, acceptance of guilty pleas in petty offense cases, and, with the consent of the defendant, in Class A misdemeanor cases and in felony cases, and the ordering of

a presentence investigation report concerning any defendant who signifies the desire to plead guilty. (Fed.R.Crim.P. 10, 11(a) and 32(i) and (j).)

- (2) Accepting returns of indictments by the grand juries, issuance of process thereon, setting conditions for release on indictments and informations, and, on motion of the United States, ordering dismissal of an indictment or any separate count thereof. (Fed.R.Crim.P. 6(f) and 48(a).)
- (3) Supervision and determination of all pretrial proceedings and motions made in criminal cases including, without limitation, motions and orders made pursuant to Fed.R.Crim.P. 12, 12.2(c), 15, 16, 17, 17.1 and 28, 18 U.S.C. § 4244, orders determining excludable time under 18 U.S.C. § 3161, and orders dismissing a complaint without prejudice for failure to return a timely indictment under 18 U.S.C. § 3162; except that a magistrate judge shall not grant a motion to dismiss or quash an indictment or information made by the defendant, or a motion to suppress evidence, but may make proposed findings of facts and recommendations to the district judges concerning them.
- (4) Conducting hearings and issuance of orders upon motions arising out of grand jury proceedings including orders entered pursuant to 18 U.S.C. § 6003, and orders involving enforcement or modification of subpoenas, directing or regulating lineups, photographs, handwriting exemplars, fingerprinting, palm printing, voice identification, medical examinations, and the taking of blood, urine, fingernail, hair and bodily secretion samples (with appropriate medical safeguards).
- (5) Conducting preliminary and final hearings in all probation revocation proceedings, and the preparation of a report and recommendation to the district judge following an evidentiary hearing as to whether the petition should be granted or denied, and granting or denying the petition in misdemeanor cases in which the defendant has previously consented to the exercise of jurisdiction by a magistrate judge or in which the magistrate judge has jurisdiction. (Fed.R.Crim.P. 32.1 and 18 U.S.C. § 3653.)
- (6) Supervision, hearing and determination of all pretrial proceedings and non-dispositive motions made in civil cases including, without limitation, rulings upon all procedural and discovery motions, and conducting Rule 16(b) pretrial conferences; except that a magistrate judge (absent a stipulation entered into by all affected parties) shall not appoint a receiver, issue an injunctive order pursuant to Fed.R.Civ.P. 65, enter an order dismissing or permitting maintenance of a class action pursuant to Fed.R.Civ.P. 23, enter any order granting judgment on the pleadings or summary judgment in whole or in part pursuant to Fed.R.Civ.P. 12(c) or 56, enter an order of involuntary dismissal pursuant to Fed.R.Civ.P. 41(b) or

- (c), or enter any other final order or judgment that would be appealable if entered by a district judge of the court.
- (7) Conducting hearings, preparing and submitting proposed findings of fact and recommendations for disposition in any motion excepted in subparagraph (b)(17) of this rule.
  - (8) Conducting all proceedings in civil suits, before or after judgment, incident to the issuance of writs of replevin, garnishment, attachment or execution pursuant to governing state or federal law, and the conduct of all proceedings and the entry of all necessary orders in aid of execution pursuant to Fed.R.Civ.P. 69.
  - (9) Conducting or presiding over the voir dire examination and empanelment of trial juries in civil and criminal cases and accepting jury verdicts in the absence of the presiding district judge with the consent of the parties.
  - (10) Processing and review of all suits instituted under any law of the United States providing for judicial review of final decisions of administrative officers or agencies on the basis of the record of administrative proceedings, and the preparation of a report and recommendation to the district judges concerning the disposition of the case.
  - (11) Serving as a master for the taking of testimony and evidence and the preparation of a report and recommendation for the assessment of damages in admiralty cases, non-jury proceedings under Fed.R.Civ.P. 55(b)(2), or in any other case in which a special reference is made pursuant to Fed.R.Civ.P. Rule 53.
  - (12) In admiralty cases, entering orders (i) appointing substitute custodians of vessels or property seized in rem; (ii) fixing the amount of security, pursuant to Rule E(5), Supplemental Rules for Certain Admiralty and Maritime Claims, which must be posted by the claimant of a vessel or property seized in rem; (iii) in limitation of liability proceedings, for monition and restraining order including approval of the ad interim stipulation filed with the complaint, establishment of the means of notice to potential claimants and a deadline for the filing of claims; and (iv) to restrain further proceedings against the plaintiff in limitation except by means of the filing of a claim in the limitation proceeding.
  - (13) Appointing persons to serve process pursuant to Fed.R.Civ.P. 4(c), except that, as to in rem process, such appointments shall be made only when the Marshal has no deputy immediately available to execute the same and the individual appointed has been approved by the Marshal for such purpose.

- (14) Processing and review of petitions in civil commitment proceedings under the Narcotic Addict Rehabilitation Act, and the preparation of a report and recommendation concerning the disposition of the petition.
  - (15) Conducting proceedings and imposition of civil fines and penalties under the Federal Boat Safety Act. (46 U.S.C. § 1484(d)).
  - (16) Conducting settlement conferences or other alternative dispute resolution proceedings pursuant to this district's ADR program, LR 16.1, and Fed.R.Civ.P. 16.
  - (17) Granting admission or enrollment of attorneys to practice before the court in this district pursuant to LR 83.1.
  - (18) Order competency examinations of defendants pursuant to 18 U.S.C. § 4244.
- (c) Duties under 28 U.S.C. § 636(c) Civil Consent Jurisdiction. Pursuant to 28 U.S.C. § 636(c)(1), and subject to the provisions of this rule, the United States Magistrate Judges for the district are hereby specially designated and shall have jurisdiction to conduct any or all proceedings in any jury or nonjury civil matter and order the entry of judgment in the case upon consent of the parties. The following procedures shall govern:
- (1) Upon the filing of any civil case, the clerk shall deliver to the plaintiff(s) written notice of the right of the parties to consent to disposition of the case by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c) and the provisions of this rule. The clerk shall also issue or supply at that time, for each defendant in the case, copies of such notice which shall be attached to the summons and thereafter served upon the defendant(s) in the manner provided by Fed.R.Civ.P. 4; provided, however, that a failure to serve a copy of such notice upon any defendant shall not affect the validity of the service of process or the jurisdiction of the court to proceed. If, after the initial filing of a civil case, new or additional parties enter or join in the action pursuant to the operation of any statute, rule or order of the court, the clerk shall immediately mail or otherwise deliver a copy of such notice to each such party.
  - (2) The written notice contemplated by subsection (c)(1) of this rule shall be in such form as the judges of the court from time to time direct. In addition, the clerk shall maintain on hand, in a form or forms to be approved by the judges of the court, written consent agreements for the use of the parties in communicating to the clerk their unanimous and voluntary consent, upon entry of an order of reference by the presiding district judge, to have all further proceedings in the case, including trial with or without a jury, and the entry of judgment, conducted by a United States Magistrate Judge.

- (3) If the parties in any civil case unanimously consent to disposition of the case by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c) and this rule, such consent must be communicated to the clerk on an appropriate form (provided by the clerk in accordance with subsection (c)(2) of this rule). The clerk shall not accept or file any consent except in the form and manner, and within the time, prescribed by this rule.
- (4) In the event the parties file a unanimous consent pursuant to subsection (c)(3) of this rule, the clerk shall immediately notify the presiding district judge who will promptly (1) enter an order of reference to a United States Magistrate Judge, or (2) enter an order declining to do so; provided, however, the district judges of the court shall not decline to make an order or orders of reference for the purpose of limiting the types of cases to be tried by the United States Magistrate Judges pursuant to this rule. In making or in declining to make an order of reference the presiding district judge may consider, among other things, the current allocation of pending judicial business between the district judges of the court and the magistrate judges; the judicial economy, if any, to be gained by the reference as measured in part by the extent of prior judicial labor expended and familiarity accumulated in the case by the district judge or the magistrate judge, as the case might be; the extent to which the magistrate judge(s) may have time available to devote to the case giving due regard to the necessity of diligent performance of other judicial duties regularly assigned to the magistrate judges; and any other features peculiar to the individual case which suggest, in the interest of justice or judicial economy, that a reference should or should not be made.
- (5) In any case in which an order of reference has been made, the presiding district judge may, for cause shown on his own motion, or under extraordinary circumstances shown by any party, vacate the order of reference and restore the case to the calendar of the presiding district judge.
- (d) Misdemeanor Jurisdiction. Pursuant to 18 U.S.C. § 3401, the United States Magistrate Judges for this district, sitting with or without a jury, are specifically designated and shall have jurisdiction to try persons accused of, and sentence persons convicted of, petty offenses.

With consent of the parties, any of the United States Magistrate Judges for this district, sitting with or without a jury, shall have jurisdiction to try persons accused of, and sentence persons convicted of Class A misdemeanors committed within the district whether originating under an applicable federal statute or regulation or a state statute or regulation made applicable by 18 U.S.C. § 13. Cases of Class A misdemeanors may, upon transfer into this district under Rule 20, Fed.R.Crim.P., be referred to a United States Magistrate Judge for this district for plea and sentence, upon defendant's consent.

In a petty offense case involving a juvenile, the United States Magistrate Judges for this district may exercise all powers granted to the district court under Chapter 403 of Title 18 of the United States Code. In cases of any misdemeanor, other than a petty offense involving a juvenile, in which consent to trial before a magistrate judge has been filed, a magistrate judge may exercise all powers granted to the district court under Chapter 403 of Title 18 of the United States Code.

In the trial of all cases pursuant to this subparagraph, Rule 58, Federal Rules of Criminal Procedure, governs practice and procedure.

- (e) Duties under 28 U.S.C. § 636(e) Contempt Authority. Pursuant to 28 U.S.C. § 636(e), the United States Magistrate Judges for the district are hereby specially designated and shall have jurisdiction to conduct contempt proceedings and exercise the contempt authority as set forth in 28 U.S.C. § 636(e).
- (f) Duties as to Pretrial Matters in Civil Cases. Pursuant to authority granted under subsection (b)(17) of this rule, the United States Magistrate Judges for this district shall, without specific order of reference, hear and determine all non-dispositive motions including, without limitation, all procedural and discovery motions and shall conduct Rule 16(b) conferences, setting all deadlines and trial date, in coordination with the presiding trial judge's staff in all cases unless the presiding trial judge by specific order directs otherwise. Except in those cases which are excluded by Local Rule 16.1(b), the United States Magistrate Judges for the district shall conduct settlement conferences pursuant to the authority granted in subsection (b)(27) of this rule only after parties have engaged in private mediation. The parties must present a certificate from a private mediator that at least one mediation was held and the parties participated in good faith before the presiding trial judge will refer a case to the magistrate judge for a settlement conference.
- (g) Appeals from or Objections to Magistrate Judges' Decisions.
  - (1) An appeal from an order of a magistrate judge determining a pretrial matter shall be filed with the clerk and served on opposing counsel within ten days after being served with a copy of the order. The presiding district judge may reconsider any order determining a pretrial matter where it has been shown that the magistrate judges' order is clearly erroneous or contrary to law.
  - (2) In any case in which the magistrate judge is not authorized to enter a determination pursuant to 28 U.S.C. § 636 or any standing or special order of the court entered thereunder, but is authorized or directed to submit proposed findings of facts and recommendations to the district judge to whom the case has been assigned, a copy of such proposed findings of facts and recommendations shall be furnished, upon filing, to the district judge and to all parties. Within ten (10) days after such service, any party may file and serve written objections thereto. The

district judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. The district judge may accept, reject, or modify in whole or in part, the findings and recommendation of the magistrate judge. The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

- (3) Upon the entry of judgment in any civil case disposed of by a magistrate judge on consent of the parties under 28 U.S.C. § 636(c), an aggrieved party may appeal directly to the United States Court of Appeals for the Sixth Circuit in the same manner as an appeal from any other judgment of this court.
  - (4) The appeal of an order of contempt issued by a magistrate judge for this district shall be made to the United States Court of Appeals for the Sixth Circuit in cases proceeding on consent of the parties under 28 U.S.C. § 636(c). The appeal of any other order of contempt issued by a magistrate judge for this district shall be made to the district court.
- (h) No limitation. Nothing in this rule shall be construed to limit or affect the right of any judge or judges of the court to assign judicial duties or responsibilities to a United States Magistrate Judge with or without the consent of the parties.

#### **LR77.1 PLACES OF HOLDING COURT**

- (a) Organization of Court. The Western District of Tennessee contains a Western Division, for which the places of holding court are Memphis and (under the limited circumstances set forth in sub-paragraph (d) below) Dyersburg, and an Eastern Division, for which the place of holding court is Jackson. Both divisions of the court shall be in continuous session on all business days throughout the year.
- (b) Divisions. The work of the court is comprised of cases arising in or related to the following counties:
  - (1) Western Division: Dyer, Fayette, Lauderdale, Shelby, and Tipton.
  - (2) Eastern Division: Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry and Weakley.
- (c) Venue in Civil Cases, Generally. Except as otherwise provided below, a civil action against a single defendant residing in the district must be brought in the division where

the defendant resides, and civil action against multiple defendants residing in different divisions of this district may be brought in either division.

- (1) Local Actions. A civil action of a local nature shall be brought in the division in which the real property involved in the action is located.
- (2) Non-Resident Defendants. If no defendant resides in this district, the action shall be filed in either
  - (A) the division in which any plaintiff resides, or
  - (B) the division in which the cause of action arose or the event complained of occurred.
- (3) Corporations. For the purpose of this rule, a corporation shall be deemed to be a resident of the county in this district in which it has its principal place of business. If it has no operation that can be deemed to be a principal place of business in this district, the corporation shall be deemed to be a resident of both divisions, but if the cause of action arose in one of the divisions, the action shall be filed in that division.
- (d) Dyersburg. Only non-jury cases will be tried at Dyersburg, Tennessee. Counsel for a party to a non-jury civil action pending in the Western Division who desires that the action be tried at Dyersburg must file, within ten days after an answer has been filed to each asserted claim, a request that the action be placed on the Dyersburg trial docket. The request must set out the reasons for the request and must contain a certificate that it has been served on all parties to the action. A response to the request must be filed not later than ten days after the request is served; the response must state the reasons for objection to the request, if any, and must contain a certificate that it has been served on all parties. Requests and responses shall be separately filed and shall not be included in other pleadings. The court will rule on such requests without argument. The court on its own motion may place civil non-jury cases on the Dyersburg docket from either division of the court.

**LR 83.1<sup>5 6</sup>**  
**ATTORNEYS**

- (a) Admission. The bar of this court shall consist of all present members and those attorneys admitted in the future to practice before this court. Any person is eligible for membership who is licensed to practice law and is a member in good standing of the bar of the Supreme Court of any State or of the District of Columbia. Admission shall be made only on motion in open court by a member in good standing of the bar of this court. The applicant, if admitted, shall take the prescribed oath and pay the required fee. Upon completion of all requirements for admission, the court will enter an order of admission. The admittee's name and Board of Professional Responsibility number shall be inscribed on the roll of attorneys, and a certificate of admission may be issued upon application.

Among the requirements of this court to remain in good standing is the payment of an Annual Enrollment Fee (\$10). Payment shall be made within 60 days of billing by the clerk. Failure to do so shall result in the attorney being stricken from the rolls of this court, and for readmission, will require payment of the full fee assessed for the admission of new enrollees.

- (b) Permission to Participate in a Particular Case. An attorney not licensed to practice law in the State of Tennessee, but who is licensed to practice and is in good standing at the bar of the highest court of any other state or of any federal district court, may be admitted specially for the purpose of acting as attorney in a case in this court. Any attorney seeking special admission is subject to the following rules and requirements:
- (1) An attorney seeking to participate in a particular case under this subsection shall file a written motion, including the attorney's Board of Professional Responsibility number and current address and telephone number, along with (a) a certificate of good standing from the highest court of a state or from a federal district court, (b) a certificate that the attorney has obtained and is familiar with the local rules of this court, including the Guidelines of Professional Courtesy and Conduct, and (c) a proposed order of special admission.
  - (2) An attorney may be provisionally admitted for a particular case on oral motion without the required written motion and certificates in order to participate in

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<sup>5</sup> Amended by Administrative Order 98-19, filed June 23, 1998, to include at LR83.1 (a), requirement of an annual \$10 "Good Standing" enrollment fee.

<sup>6</sup> Amended by Administrative Order #2002-08, filed April 26, 2002, expanding bar membership eligibility **from** good standing membership of the bar of the Supreme Court of TN **to** good standing membership of the bar of Supreme Court of any state, or of the District of Columbia.

initial preliminary matters, such as an arraignment, but such attorney must comply with the preceding paragraph within fifteen days of being provisionally admitted.

- (3) Failure to comply with local rules, failure to keep the clerk advised of a current address and telephone number, failure to attend scheduled conferences, hearings and other proceedings, or any misconduct shall be grounds for rescinding an order of special admission.
- (c) Appearance in Criminal Cases. An attorney retained by a defendant in a criminal case and assistant United States attorneys shall file a written notice of appearance, including the attorney's Board of Professional Responsibility number, stating that the attorney will serve as counsel of record. For defense counsel, notice must be filed within four days after being retained or within four days after process is served on the client, whichever occurs later. As to assistant United States attorneys, notice must be filed within four days of the return of indictment, or initial appearance, or unsealing of indictment, whichever last occurs. All notices must bear a certificate of service on opposing counsel. The provisions of this rule apply to attorneys who appear as substitute counsel and to those who appear as co-counsel to an attorney already appearing as counsel of record.
  - (d) Effect of Appearance as Counsel. By appearing in this court or before a magistrate judge in a proceeding representing a client, an attorney represents to this court, unless he or she affirmatively advises the court to the contrary, that the attorney has complied with (a) or (b) above and is not currently under a disbarment or suspension from any other court. A party represented by counsel who has appeared in a case may not act on his or her own behalf unless that party's attorney has obtained leave of the court to withdraw as counsel of record, provided that the court may, in its discretion, hear a party in open court, notwithstanding the fact that the party is currently represented by counsel of record.
  - (e) Conduct. All attorneys practicing before the United States District Court for the Western District of Tennessee shall comply with the Code of Professional Responsibility as then currently promulgated and amended by the Supreme Court of Tennessee, except that prior court approval as a condition to the issuance of a subpoena addressed to an attorney shall not be required, as specified in Tenn. S. Ct. R. 8, DR 7-103,(c) and with the Guidelines for Professional Courtesy and Conduct as adopted by this court. (A copy of the Guidelines is available in the office of the Clerk of the United States District Court for the Western District of Tennessee.)
    - (1) For a willful violation of the said Code or these Rules, an attorney is subject to appropriate disciplinary action by the court in accordance with the procedures contained in this court's Order Adopting Rules of Disciplinary Enforcement (filed 9/29/1980; copy available in clerk's office), as amended from time to time.

- (2) If any attorney is convicted of or pleads nolo contendere to a felony or is disbarred from practice in any state or federal court, such attorney's right to practice in this court shall be suspended immediately and may be restored only after application and hearing in accordance with the procedures contained in this court's Order Adopting Rules of Disciplinary Enforcement (filed 9/29/1980; copy available in clerk's office), as amended from time to time.
- (f) Courtroom Attire. All attorneys appearing in this court shall be appropriately attired, coat and tie for men, comparable attire for women, and shall not be groomed or attired in a manner reasonably calculated to draw attention from the proceedings, call attention to themselves, or as to show disrespect to the court.<sup>7</sup>
- (g) Criminal Cases. Counsel accepting employment in criminal cases in this district shall be aware of and comply with the requirements of the Speedy Trial Act and all plans adopted by the district under its provisions.
- (h) Withdrawal. No attorney of record may withdraw in any case except on written motion and court order. All motions for leave to withdraw shall include the reasons requiring withdrawal and the name and address of any substitute counsel. If the name of substitute counsel is not known, the motion shall set forth the name, address and telephone number of the client, as well as the signature of the client approving the withdrawal or a certificate of service on the client. Ordinarily, withdrawal will not be allowed if withdrawal will delay the trial of the action.

#### **LR83.2<sup>8</sup>**

#### **CIVIL *PRO BONO* PANEL FOR *PRO SE* INDIGENT PARTIES**

In order to encourage greater representation of *pro se* indigent parties in civil cases, the court has adopted the “Plan for the Appointment of Counsel for *Pro Se* Indigent Parties in Civil Cases of the United States District Court for the Western District of Tennessee,” (the Plan) pursuant to Administrative Order No. 98-17, filed May 28, 1998. This Plan is applicable district-wide, and is in effect to: increase the number of attorneys on the Civil Pro Bono Panel; govern the appointment of counsel from the Panel; allow for reimbursement of expenses from the *Pro Bono* Expense Fund; and, establish guidelines for such reimbursement. A copy of the Plan is available at the Clerk’s Office.

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<sup>7</sup>Provided by Administrative Order No. 2001-05, filed March 5, 2001 .

<sup>8</sup>Revised by Administrative Order 98-19, filed June 23, 1998.

**LR83.3**  
**ASSIGNMENT OF CASES**

- (a) Assignment of Cases in Western Division. Unless otherwise ordered, cases in the Western Division shall be assigned according to the following rules:
- (1) Procedure for Assignment of Cases. The clerk shall assign cases, including bankruptcy appeals, in the Western Division, using a system that insures that each active judge receives an equal number of cases and that assignments are made on a random basis, without consideration of the identity of the judge in making the assignment. The clerk shall use the same assignment system to make assignments to each senior district judge, except that a senior district judge may determine the number of cases he will accept for assignment. Each case assigned to a district judge shall also be assigned to a magistrate judge in accord with the random assignment system, with the magistrate judge sitting in Jackson receiving one-fourth of the Western Division cases and the magistrate judges sitting in Memphis each receiving an equal number of the remaining cases.
  - (2) In the event a case is dismissed and then refiled at a later date, the judge to whom the original case was assigned will be assigned the refiled case.<sup>9</sup>
  - (3) Companion Civil Cases. Counsel shall inform the clerk whenever companion cases appear to be assigned to different judges. The clerk shall examine the complaint in the more recent action and determine whether the case is companion to or likely to be tried with one already pending. If it is called to the clerk's attention upon the filing of an action that the case is a companion to a pending action, the clerk shall assign the case to the judge before whom the original companion action is pending without utilizing the random assignment system. For purposes of this subsection, a companion case includes, but is not limited to, a case arising from or related to the same transaction, condition, or occurrence as another pending case.
- (b) Assignment of Cases in Eastern Division. Unless otherwise ordered, Eastern Division cases will be assigned to the judge who is currently assigned to the Eastern Division.
- (c) Effect Of Assignment. Except as provided in subsection (d) of this rule, when a case is assigned to a judge and magistrate judge, the judge and magistrate judge shall hear and determine all phases of it until its final disposition, except as provided in Rule LR16.1.

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<sup>9</sup> See also LR7.2 (f)(4).

- (d) Exchange of Cases Between Judges. Unless otherwise ordered, case assignments may be exchanged as follows:
- (1) When a judge has been assigned a case in accordance with these rules and is of the opinion that he or she should not preside in the case, unless the recusing judge determines to return the case to the Clerk for random reassignment, such judge may, by mutual consent with one of the other judges of this district, transfer the case. The judge to whom the case is transferred may select a comparable case assigned to him or her and transfer it to the judge from whom the transferred case was received.<sup>10</sup>
  - (2) If a matter demands immediate judicial determination (such as a temporary restraining order or a motion pertaining to bail) and the judge to whom the case is assigned is not reasonably available, then the party seeking the action shall contact the clerk, who will arrange for another judge to hear the matter. Handling of a matter under such circumstances does not constitute a permanent reassignment of the case.
  - (3) For such other good cause and in such other manner as the court may direct.

**LR83.4**  
**PHOTOGRAPHING, RECORDING AND BROADCASTING**

The use of cameras, video and sound tape recorders, and any video or sound transmitting devices shall not be permitted on any of the court floors above the second floor of the Clifford Davis Federal Building in Memphis and the main floor of the Ed Jones Federal Building and Courthouse in Jackson, Tennessee. Exception to this prohibition can be obtained for special proceedings in response to written requests timely submitted to the judge presiding at the proceeding.

**LR83.5**  
**CONTACTING JUDGES AND COURT PERSONNEL**

- (a) No Ex Parte Communication with Judges. Except as otherwise ordered, neither counsel nor a party to a pending action shall contact the judge before whom the matter is pending unless there is an emergency, except by letter or, upon reasonable notice to all counsel and unrepresented parties, orally or in open court. A copy of all letters sent to a judge

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<sup>10</sup>LR 83.3 (d) (1) amended by Administrative order No. 2001-02, filed January 30, 2001.

shall also be sent to all other counsel involved in the action (or any party acting pro se) and to the Clerk of the Court.

- (b) Law Clerks and Other Support Personnel. Except as may otherwise be directed by the court, neither counsel nor a party to a pending action shall discuss with law clerks or other support personnel the merits or other matters of substance relating to any pending action.

**LR83.6**  
**CITATIONS OF CASES AND STATUTES**

When a case cited by counsel does not appear in a standard reporting series to which the court and opposing counsel could reasonably be expected to have access, counsel shall furnish a copy of the case to the court and opposing counsel. When a cited statute, regulation or ordinance is not contained in United States Code or the Tennessee Code Annotated, counsel shall furnish a copy of the statute, regulation or ordinance to the court and opposing counsel.

**LR83.7<sup>11 12</sup>**  
**SUBMISSION OF COURT PAPERS**

- (a) (1) Filing Complaint. An attorney or pro se litigant shall file an original and two copies of an original complaint on 8½ x 11" paper. The clerk shall forward once copy to the judge who draws the case, the other copy to the assigned magistrate judge.
- (2) Service of Process will not be issued upon the filing of a non-prisoner pro se complaint when a filing fee is paid pending review of the complaint's merit under 28 U.S.C. §1915 (e) (2). This statutory provision mandates that whether or not a filing fee is paid, the court SHALL dismiss a case at any time upon the court's determination that any of the § 1915 (e) (2) provisions are met.
- (3) It is required that a Form JS-44 Civil Cover Sheet, available from the Clerk's Office or from the court's web site at [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov) be completed by plaintiff/plaintiff's counsel and submitted at the time of filing.

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<sup>11</sup> Amended by Administrative Order 2003-11, filed April 2, 2003.

<sup>12</sup> Amended by Administrative Order 2004-05, filed March 25, 2004. This action red-designated paragraph (a) as (a)(1), and inserted new paragraphs (a)2 and (a)3.

- (b) Other Pleadings and Papers. An original and two copies of all other pleadings and papers to be filed (including memoranda of law) shall be filed with the clerk on 8½ x 11" paper, *in the division where the assigned judge sits*<sup>13</sup>. The clerk shall deliver one copy to the judge and one copy to the magistrate judge to whom the case is assigned. Pleadings and papers (other than complaints) shall contain a certification that a copy has been served on each counsel of record for a party (or on a party on whose behalf no attorney has appeared) and shall state the name of the person served, the address at which the person was served, and the manner of service.
- (c) Orders. If a proposed order is submitted to the clerk or judge, only an original is required.
- (d) Federal Condemnation Cases. When the United States files separate land condemnation actions and concurrently files a single declaration of taking relating to those separate actions, the clerk is authorized to establish a master file so designated, in which the declaration of taking shall be filed, and the filing of the declaration of taking in the master file shall constitute a filing of the same in each of the actions to which it relates if reference is made to the separate actions in the declaration in the master file.
- (e) Applications For Permission to File On Pauper's Oath. All applications for filing of civil actions in this district on pauper's oath shall be submitted to a United States Magistrate Judge for approval. If the applicant is represented by counsel, counsel must affirm to the magistrate judge that counsel believes that the client in making the pauper's oath is in fact a pauper within the meaning of the law. In the event that no magistrate judge is available at the time of the application, the application may be submitted directly to a district judge.
- (f) Registration of Foreign Judgments. In addition to the instructions set out in 28 U.S.C. § 1963, a completed "Certification of Judgment for Registration in Another District" must be provided. This form must state whether or not a supersedeas bond has been posted to stay or enjoin a pending appeal, if any. This form is available at the Clerk's Office.

**LR83.8**  
**SETTLEMENTS: NOTICE**

- (a) Notice of Settlements. Whenever a case is settled or otherwise disposed of out of court, counsel for all parties shall give immediate notice to the clerk.

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<sup>13</sup> Italicized language appended pursuant to Administrative Order No. 2002-18, filed August 21, 2002.

- (b) Consequences of Late Notice in Civil Cases. Unless the clerk's office is notified that a settlement has been reached by 1:00 p.m. on the last full business day prior to the date the trial is scheduled, all costs incurred in having jurors report for service in connection with the case may be assessed by the court equally between the parties, or against one of the parties if it appears that that party was responsible for failure to give the required notice to the clerk. The clerk or deputy clerk receiving notice of a settlement orally or in writing shall immediately record on the docket sheet the receipt of notice of settlement and the date and time of receipt and initial the entry.

**LR83.9**  
**FILES AND EXHIBITS**

- (a) Removal of original papers. Original papers in the custody of the clerk shall be removed from the clerk's office only upon order of the court, upon terms approved by the Clerk of Court, provided, however, that judicial officers and their staffs, official court reporters, special masters or commissioners may remove original papers as necessary to expedite the business of the court. Persons seeking to remove such papers shall obtain the approval of the clerk of court to a proposed court order before submitting the order to a judge for signature.
- (b) Exhibits. All exhibits received or marked for identification at any hearing shall be delivered to the clerk, who shall keep them in his custody. However, any narcotics, cash, counterfeit notes, weapons, precious stones or other contraband received, and any other exhibits which because of size or nature require special handling shall remain in possession of the party introducing the exhibit during the pendency of the action.

After the final determination of any action, counsel shall have thirty days within which to withdraw exhibits in the clerk's custody. In the event the exhibits are not so withdrawn, the clerk shall destroy or otherwise dispose of said exhibits.

**LCrR12.1**  
**MOTIONS IN CRIMINAL CASES**

- (b) All non-substantive motions, including discovery motions, shall be accompanied by a certificate of counsel (with one copy) affirming that, after consultation between prosecution and defense counsel, they are unable to reach an accord as to the action requested by the motion. Failure to file an accompanying certificate of consultation may be deemed good grounds for denying the motion<sup>14</sup>.

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<sup>14</sup> Paragraph "(a)" inserted pursuant to Administrative Order No. 2002-18, filed August 21, 2002.

- (c) Motions to suppress, for change of venue, to sever, and to dismiss shall be supported by a memorandum of law and facts.
- (d) If a party opposes a motion, it shall file a response within eleven days after the motion is served, which response shall contain a memorandum of law and facts. Failure to file a response will constitute a waiver of any objections which the party may have to a motion.

**LCrR15.1**  
**DISCOVERY PROCEDURES IN CRIMINAL CASES**

Discovery procedures in criminal cases, pursuant to Fed. R. Crim. P. 16, will be as follows:

- (a) Within ten days after arraignment, any attorney seeking discovery shall make such a request in writing addressed to the United States Attorney and filed with the Clerk of Court. The request shall state specifically what items are being requested for discovery.
- (b) The United States Attorney shall respond in writing to the request for discovery within ten days. The response shall include the following:
  - (1) Identification of the date the request for discovery was received by the United States Attorney and the name of the attorney making the request.
  - (2) Specification of items, or reasonably specific categories of items, that are available for discovery. Copies of discoverable documents shall be enclosed with the response unless the number of such documents creates an unreasonable burden or expense, in which case the documents shall be made available for inspection and copying, at the defendant's expense, and the response shall indicate the time and place of the documents' availability. In addition, if discoverable items are not available in the United States Attorney's office, the United States Attorney shall notify any agents or witnesses who have control of the items of the necessity of making the items available for inspection and copying.
  - (3) A statement of the extent to which the United States Attorney seeks reciprocal discovery under Fed. R. Crim. P. 16(b).

A copy of the response, not including copies of enclosures, shall be filed with the Clerk of Court.

- (c) If the United States Attorney requests reciprocal discovery, defense counsel shall respond in writing, affirmatively or negatively, to the United States Attorney at least five days

before trial. The response shall be filed with the Clerk of Court. The response shall conform to the procedure set forth above in (b)(1)-(2). If, however, defense counsel is unable to provide a response within this time limit, defense counsel shall file with the court at least five days before trial an *ex parte* statement of reasons why this is not possible.

#### **LCrR24<sup>15</sup>**

### **POST TRIAL INTERVIEWING OF JURORS IN CRIMINAL CASES**

After Verdict. No attorney, party, or representative of either may interview a juror after the verdict has been returned without prior approval of the court. Approval of the court shall be sought only by an application of counsel in open court or upon written motion, either of which must state the grounds for and the purpose of the interview.

If post-verdict interview is approved, the court will determine the scope of any limitation on the interview prior to the interview.

After Mistrial. In the event a mistrial is ordered due to jurors' inability to agree on a verdict, any attorney or the attorney's representative may interview a juror without prior approval of the court, unless the court determines that the interview should not take place or determines that appropriate limitations should be established.

#### **LCrR32.1**

### **PROCEDURAL STEPS FOR SENTENCING**

The following procedures shall apply to all sentencings under the Sentencing Reform Act of 1984, as amended (28 U.S.C. § 991 *et seq.* and 18 U.S.C. § 3551 *et seq.*):

- (a) The district judge will schedule the hearing as soon as practicable but no earlier than sixty-five (65) days or later than ninety (90) days, following entry of a guilty plea, a plea of nolo contendere, or a verdict of guilty, unless good cause exists to schedule the sentencing at a different time.
- (b) The pre-sentence investigation report, including guideline computations, shall be completed by the probation officer and disclosed to the parties at least thirty-five (35) days prior to the scheduled sentencing proceeding, unless the minimum period is waived by the defendant. The report shall be deemed to have been disclosed when a copy is physically delivered or three days after a copy is mailed.

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<sup>15</sup>Thirty-day notice for comment expired June 30, 1999, affecting an effective date of July 1, 1999.

- (c) If a party reasonably disputes sentencing factors or facts material to sentencing, or seeks the inclusions of additional factors or facts material to sentencing, in the pre-sentence investigation report, it is the obligation of the complaining party to communicate such objection or request in writing to the probation officer within fourteen (14) days after receiving the presentence report and to seek administrative resolution of such factors or facts through opposing counsel and the United States Probation Office. This pre-sentence conference is mandatory except when sentencing factors or facts are not in dispute. Informal resolution of disputed factors or facts material to sentencing should be resolved--to the extent practicable-- through informal procedures, including telephone conferences.
- (d) Within twenty (20) days after disclosure of the pre-sentence investigation report to the parties, counsel for the defendant and the government shall file a pleading entitled "Position of Parties With Respect to Sentencing Factors." This pleading shall contain a written statement certifying that the party has conferred with opposing counsel and with the United States probation officer in a good faith effort to resolve any disputed matters. The pleading shall also include notice of any factor important to the sentencing determination which is reasonably in dispute, in accordance with § 6A1.3 of the United States Sentencing Commission Guidelines Manual (11/1/91 or subsequent versions). If the sentencing hearing is expected to last more than thirty minutes or if the party anticipates presenting evidence through more than one witness, the pleading shall notify the court of this.
- (e) At least seven (7) days prior to the scheduled sentencing proceeding, the probation officer shall transmit to the sentencing judge the pre-sentence investigation report, including guideline computations, and an addendum indicating any unresolved factual disputes or objections by the parties with respect to the application of the guidelines, and the probation officer's opinion concerning any disputed issues. Upon review of these materials, the sentencing judge will notify the parties if the court intends to consider a sentence outside the applicable guideline range on a ground not identified as a ground for departure either in the pre-sentence report or a pre-hearing submission. In this event, the sentencing judge will reset the sentencing hearing if necessary to ensure reasonable notice.
- (f) At the sentencing hearing, the sentencing judge shall hear arguments and, if necessary for a resolution of the disputed issues, hear evidence. The sentencing judge shall then announce tentative findings under § 6A1.3(b) of the Guidelines Manual (11/1/91 or subsequent versions) and provide a reasonable opportunity for the submission of oral or written objections by either party prior to the imposition of sentence. For good cause shown the sentencing judge may continue the sentencing hearing for a reasonable time to allow any party an opportunity to present additional evidence or oral or written objections to the court's tentative findings. After hearing from counsel, parties, and witnesses, if necessary, in the sentencing hearing and any continuation thereof, the judge shall impose sentence.

- (g) The times set forth in this rule may be modified by the court for good cause shown, except that the twenty (20) day period set forth in paragraph (d) may be diminished only with the consent of the defendant.
- (h) Any party filing an appeal or cross-appeal in any criminal case in which it is expected that an issue will be asserted pursuant to 18 U.S.C. § 3742 concerning the sentence imposed by the court shall immediately notify the probation officer who shall then file with the clerk for inclusion in the record *in camera* (under seal) a copy of the pre-sentence investigation report.
- (i) The probation office will deliver to each lawyer or pro se party a copy of this rule on or before disclosure of the pre-sentence investigation report.

**LCrR32.2**  
**PROBATION OFFICE RECORDS**

Except as otherwise provided by Rule 32 of the Federal Rules of Criminal Procedure, confidential records of the court maintained by the probation office, including presentence and probation supervision records, shall not be sought by any applicant except by written application to the court establishing with particularity the need for the information sought.

When a request for disclosure of presentence and probation records is made, by way of subpoena or other judicial process, to a probation officer of this court, the probation officer may file a petition seeking instructions from the court with respect to responding to the subpoena or other judicial process or for authority to release documentary records or produce testimony with respect to the confidential records and information.

In no event shall disclosure of confidential records and information of the probation office be made, except upon an order issued by the court, unless otherwise permitted by the Federal Rules of Criminal Procedure.