UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

LOCAL RULES

June 2012

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UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA

LOCAL RULES

TITLE I - GENERAL

Rule 1. Scope and Purpose of Rules

(a) **Application.** These rules apply in all civil and criminal cases and other proceedings in the United States District Court for the Western District of Virginia.

(b) **Definitions.** So far as applicable, 1 U.S.C. §§ 1 through 5 govern the construction of these rules. "This Court" refers to the United States District Court for the Western District of Virginia. The words "the Court" or "judge" as used in these rules includes any judicial officer sitting in this Court. "Clerk" as used in these rules means the Clerk of this Court or any authorized deputy thereof. Persons appearing pro se are bound by these rules, and any reference to "attorney" or "counsel" applies to pro se parties unless the context requires otherwise.

(c) **Amendment.** These rules may be amended at any time by this Court, after giving public notice and an opportunity for comment.

(d) **Citation.** These rules may be cited as W.D. Va. Gen. R., W.D. Va. Civ. R., or W.D. Va. Crim. R., as the case may be.

(e) **Effective Date.** These rules and amendments thereto take effect as provided in the order of adoption and govern all proceedings thereafter commenced and, insofar as just and practicable, all then pending proceedings.

Rule 2. Divisions of the Western District

(a) **Divisions.** The divisions of this Court are as follows.

(1) **Abingdon Division.** The Abingdon Division embraces the counties of Smyth, Tazewell, Russell, Washington, Buchanan and the city of Bristol;

(2) **Big Stone Gap Division.** The Big Stone Gap Division embraces the counties of Dickenson, Wise, Scott, Lee and the city of Norton;

(3) **Charlottesville Division.** The Charlottesville Division embraces the counties of Albemarle, Fluvanna, Madison, Greene, Nelson, Rappahannock, Culpeper, Louisa, Orange, and the city of Charlottesville;

(4) **Danville Division.** The Danville Division embraces the counties of Patrick, Henry, Pittsylvania, Halifax, Charlotte and the cities of Danville, Martinsville and South Boston;

(5) **Harrisonburg Division.** The Harrisonburg Division embraces the counties of Frederick, Clarke, Warren, Shenandoah, Page, Rockingham, Augusta, Highland, Bath and the cities of Harrisonburg, Staunton, Waynesboro and Winchester;

(6) **Lynchburg Division.** The Lynchburg Division embraces the counties of Rockbridge, Amherst, Bedford, Campbell, Appomattox, Buckingham,

Cumberland and the cities of Bedford, Buena Vista, Lexington and Lynchburg;

(7) **Roanoke Division.** The Roanoke Division embraces the counties of Alleghany, Botetourt, Craig, Giles, Pulaski, Montgomery, Roanoke, Floyd, Franklin, Carroll, Grayson, Bland, Wythe and the cities of Clifton Forge, Covington, Radford, Roanoke, Salem and Galax.

(b) **Venue in Civil Cases.** Civil actions for which venue is proper in this district must be brought in the proper division as well. The venue rules for United States district courts contained in the United States Code also apply in determining the proper division in which an action must be filed, so that such venue rules are construed as if the terms "judicial district" and "district" were replaced with the word "division."

(c) **Venue in Criminal Cases.** Upon the return of an indictment by any grand jury, it shall be filed in the division in which the crime charged is alleged to have occurred and assigned to the judge next in rotation for that division. Where the indictment charges a crime or crimes that are alleged to have occurred in more than one division, the indictment shall be filed in the division in which it is alleged that a crime occurred that is the residence of a defendant, or if there are more than two defendants, and a majority of the defendants reside in one division, in that division. If the appropriate division cannot be determined using the rules set forth herein, the Clerk shall consult with the chief judge of the district, or in the chief judge's absence, with the next available active district judge in seniority, for direction as to

the proper division for filing. Superseding indictments in any case shall be filed in the division in which the existing indictment is filed. Nothing in this rule shall affect the discretion of the presiding judge in any case in determining the proper place of trial.

(d) **Assignment of Cases.** Cases are assigned among the district judges pursuant to Standing Order, as amended from time to time. If a judge to whom a case is assigned is disqualified from the case by statute or by the Code of Conduct for United States Judges, the case must be reassigned by the Clerk to the judge who is next in rotation pursuant to the Standing Order, and if there is no other available judge, then the chief judge must reassign the case, and if the chief judge is so disqualified or is unavailable, then the next available active district judge in seniority must reassign the case.

(e) **Continuous Session.** All of the divisions of this Court shall be deemed in continuous session for transaction of judicial business on all business days throughout the year.

Rule 3. Bankruptcy Referrals and Jury Trials

(a) **Assignments.** In accordance with the provisions of 28 U.S.C. § 157, all cases under Title 11 of the United States Code and all proceedings arising under Title 11, or arising in or relating to a case under Title 11, are referred to the bankruptcy judges for this district, to be assigned in accordance with their assignment rules.

(b) **Jury Trials.** In accordance with the provisions of 28 U.S.C. § 157(e), bankruptcy judges of this district are hereby specifically designated to conduct jury trials when all parties have expressly consented thereto.

Rule 4. Social Security Cases

(a) **Applications to Proceed without Prepayment of Funds in Disability Insurance and Supplemental Security Income Appeals.** Pursuant to the provisions of 28 U.S.C. § 636(b)(l)(B) and Federal Rule of Civil Procedure 72(b), all applications to proceed without prepayment of funds in Social Security disability insurance or supplemental security income appeals may be referred to a United States magistrate judge for consideration. Pursuant to Federal Rule of Civil Procedure 72(b), the petitioner may object to any order entered by the magistrate judge denying in forma pauperis status and may seek review by the district judge to whom the case would be assigned by filing a written objection to the order with the court within 14 days of notice thereof.

(b) **Social Security Disability Filings.** Pursuant to the provisions of 42 U.S.C. § 405(g) on judicial review of decisions by the Commissioner of Social Security, the following rules apply:

(1) The Commissioner must respond to Social Security disability complaints within 120 days after service of the complaint on the United States Attorney;

(2) In all cases in which the Court has entered a judgment affirming, modifying, or reversing the decision of the Commissioner and remands the

cause for a rehearing, the order of remand shall be deemed a final order for all purposes, including a petition for approval of attorneys' fees, and the claimant must file a new complaint pursuant to the terms of 42 U.S.C. § 405(g) to obtain further judicial review, and in such cases, the Court shall waive prepayment of any statutory filing fee;

(3) The Court shall retain jurisdiction in all cases in which the Court remands the case to the Commissioner for consideration of new evidence which is material and for which good cause is shown for failure to incorporate the evidence in prior proceedings. Claimants dissatisfied with the Commissioner's decision upon remand may petition the Court to reinstate the case on the active docket for review of the decision; if all parties are satisfied with the decision upon remand, the prevailing party shall petition the Court for entry of a final order adopting and ratifying the decision; and

(4) A successful claimant found entitled to some measure of back benefits is responsible for payment of any statutory filing fee the prepayment of which was waived by the Court.

(c) **Briefing of Social Security Cases.** In all cases seeking judicial review of decisions by the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g), the following procedures are applicable, unless changed by the presiding judge:

(1) The plaintiff must file, within 30 days of service of a copy of the administrative record, a brief addressing why the Commissioner's decision

is not supported by substantial evidence or why the decision otherwise should be reversed or the case remanded;

(2) If the plaintiff desires oral argument, it must be requested in writing at the time the plaintiff's brief is filed. Whether to allow oral argument is at the discretion of the Court. If oral argument is allowed, a party may participate either telephonically or in person;

(3) If the Commissioner desires to file a brief in response, such brief must be filed within 30 days after service of the plaintiff's brief. No further briefs by the parties will be submitted unless requested by the Court; and

(4) In the event that the Commissioner files a motion to remand the case to the Commissioner for further proceedings, the motion must set forth whether or not the plaintiff consents to such remand. If no such consent is indicated, the plaintiff must file the grounds of any objection to remand within 14 days of service of the motion to remand, or it will be assumed that plaintiff consents to remand.

Rule 5. Prejudicial Influences

The conduct of a trial will be insulated by all court personnel, lawyers and litigants from all prejudicial influences. Except for naturalization and ceremonial proceedings, photography during a session of court, as well as sound and video broadcasting or recording, is prohibited in the courtroom, its environs, and the offices of this Court.

Rule 6. Attorneys

(a) **Eligibility to Practice.** Any person who is an active or emeritus member of the Virginia State Bar in good standing is eligible to practice before this Court upon admission.

(b) **Procedure.** Admission to practice is upon motion in open court any day during which this Court is in session. An attorney desiring to be admitted, not less than 2 weeks before the day on which the motion is to be submitted, must file in the clerk's office at the place where such motion is to be made, an application for admission to practice, which application must be made in writing, stating the qualifications hereinbefore prescribed and, in addition thereto, the name and office address of the applicant; and such application must be accompanied by the certificates of at least 2 members of the bar of this Court, that they are acquainted with the applicant and that the applicant is of good character and ethical conduct. Upon the filing of the application for admission to practice by an attorney, the Clerk must ascertain from the Virginia State Bar that the applicant is an active or emeritus member in good standing. The Court may, in its discretion, hear motions for admission to practice at times other than a day in which court is in session. Persons who are associate, retired, or disabled members of the Virginia State Bar and who do not engage in the practice of law may, in the discretion of the Court, be admitted as members of the bar of this Court upon following the procedures set forth herein, but may not practice before this Court.

(c) **Eastern District Attorneys.** Any attorney admitted to practice in the United States District Court for the Eastern District of Virginia is permitted to practice in this Court upon the filing of a certificate of good standing from the Clerk of the Eastern District of Virginia showing that the attorney has been duly admitted to practice in that district.

(d) **Pro Hac Vice Admission.** Attorneys who are not qualified and licensed to practice under the laws of Virginia, but who are qualified and licensed to the practice before the Supreme Court of the United States, or before the highest court of any state in the United States, or before the courts of the District of Columbia, may not become members of the bar of this Court, but may appear only in association with a member of the bar of this Court, upon motion of such member, and only for the conduct of a case in which he or she is associated and then pending before this Court. In any case removed or transferred to this Court in which a party is represented by an attorney who is not a member of the bar of this Court, such attorney must, within 30 days of such removal or transfer (or such other time as directed by the presiding judge), be admitted to practice before this Court or be permitted to appear in association with a member of the bar of this Court. Pro hac vice admitted attorneys must promptly qualify for electronic case filing. Pro hac vice admitted attorneys may be permitted to appear at hearings or trials in the absence of an associated member of the bar of this Court in the discretion of the presiding judge.

(e) **Signing of Pleadings.** No pleading, notice, or other paper required to be signed by counsel shall be accepted for filing by the Clerk unless signed by a member of the bar of this Court, who shall have entered an appearance of record in the case, with the address where notice can be served upon the attorney, and which attorney is deemed to have such authority that the Court can deal with the attorney alone in all matters affecting the disposition of the case. Such appearance must not be withdrawn without the leave of the Court. Service of notice, process, or any other paper upon the attorney is equivalent to such service on the parties for whom the attorney has appeared. Provided, however, that the foregoing provisions shall not apply to a party who conducts his or her own case. A party who conducts his or her own case shall file with the pleadings a memorandum of an address where notice can be served upon the party.

(f) **Government Attorneys.** Notwithstanding any provision of this rule, any attorney representing the United States government, or any agency thereof, or representing any federal employee sued in the course of employment, or any attorney employed by the Federal Public Defender's Office, may appear and file pleadings in an official capacity without admission to practice in this Court, so long as such attorney is qualified and licensed to the practice before the Supreme Court of the United States, or before the highest court of any state in the United States, or before the courts of the District of Columbia.

(g) **Law Students.** An eligible law student who has qualified under this Court's Plan for Third-Year Practice may participate in any civil or criminal case in accordance with the Plan.

(h) **Discipline.** All attorneys admitted to practice before this Court or admitted for the purpose of a particular proceeding are admitted subject to the disciplinary rules, conditions, and procedures set forth in this Court's Rules of Disciplinary Enforcement.

(i) **Entry and Withdrawal by Attorney.** Any attorney entering a cause, at any time after its inception, must promptly give written notice thereof to the Clerk, requesting to be entered as an attorney of record. No attorney of record shall withdraw from any cause pending in this Court, except with the consent of the Court for good cause shown.

(j) **Surety.** No attorney appearing as counsel in any case shall become bail or surety in any cause or proceeding, civil or criminal, in this Court or to be returned thereto.

Rule 7. Service and Filing of Pleadings and Other Papers

Pursuant to the authority granted by Federal Rules of Civil Procedure 5(d) (3) and 83, and Federal Rule of Criminal Procedure 57, the following practices and procedures apply to filing, signing, and verifying documents by electronic means:

(a) **Implementation of Procedures by Clerk.** The Clerk is authorized to implement and publish *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means* ("electronic filing procedures"), as

amended from time to time, including the procedure for registration of attorneys and for distribution of user login identifications and passwords to permit electronic filing and notice of pleadings and other papers.

(b) **Case Management/Electronic Case Files.** The official court record in all cases shall be the electronic file maintained in the Court's Case Management/Electronic Case Files ("CM/ECF") servers together with any paper attachments and exhibits filed in accordance with the electronic procedures.

(c) **Signatures.** The electronic filing of a petition, pleading, motion, or other paper by an attorney who is a registered participant in this Court's CM/ECF system shall constitute the signature of that attorney under Federal Rule of Civil Procedure 11 and for all other purposes.

(d) **Use of Passwords.** No attorney shall knowingly permit or cause to permit the attorney's password to be utilized by anyone other than an authorized employee of the attorney or the attorney's law firm. No person shall knowingly utilize or cause another person to utilize the password of a registered attorney unless such person is an authorized employee of that attorney's law firm.

(e) **Entry of Pleadings and Other Papers on the Docket.** The electronic filing of a pleading or other paper in accordance with the electronic filing procedures shall constitute entry of that pleading or other paper on the docket kept by the Clerk under Federal Rule of Civil Procedure 79 and Federal Rule of Criminal Procedure 55.

(f) **Entry of Orders and Other Proceedings on the Docket.** The Clerk or chambers staff at the direction of the judge to whom a case is assigned shall enter all orders, decrees, judgments, and proceedings of the Court in accordance with the electronic filing procedures, which shall constitute entry of the order, decree, judgment, or proceeding on the docket kept by the Clerk under Federal Rule of Civil Procedure 58 and Federal Rule of Criminal Procedure 55.

(g) **Service.**

(1) **Notice of Electronic Filing.** Whenever a pleading or other paper is filed electronically in accordance with the electronic filing procedures, the Court's CM/ECF system shall serve the filing party with a "Notice of Electronic Filing" by electronic means at the time of docketing.

(2) **Persons Entitled to Service.** The filing party shall serve the pleading or other paper upon all persons entitled to notice or service in accordance with the applicable rules, or, if service by first class mail is permitted under the rules, the filing party may make service on registered participants in the Court's CM/ECF system in accordance with sub-paragraph three below.

(3) **Service to Registered Participants of CM/ECF.** If the recipient of notice or service is a registered participant in the Court's CM/ECF system, service by electronic means of the "Notice of Electronic Filing" with a hyperlink to the document shall be the equivalent of service of the pleadings or other paper by first class mail, postage prepaid.

(4) **Service Complete on Transmission.** Service by electronic means is complete on transmission.

(5) **Ineffective Electronic Service.** Service by electronic means is not effective if the party making service learns that the attempted service did not reach the person to be served.

(h) **Consent to Service and Notice by Electronic Means.** Participation in this Court's CM/ECF system by receipt of a user login identification and password from the Court shall constitute a request for and consent to service and notice electronically pursuant to Federal Rule of Civil Procedure 5(b)(2)(E) and Federal Rule of Criminal Procedure 49. Participants in the CM/ECF system, by receiving a user login identification and password from this Court, agree to receive service by electronic means.

(i) **Electronic Filing Required.** All attorneys must file all documents electronically, unless otherwise authorized by the presiding judge in a particular case or the applicable electronic filing procedures.

(j) **Three-day Mailing Rule.** The three-day rule of Federal Rule of Criminal Procedure 45 and Federal Rule of Civil Procedure 6(e) for service by mail also applies to service by electronic means. Attorneys should be aware that the response due date, which appears when either electronically filing a motion or querying deadlines, is for court use only and should not be relied upon as an accurate computation of the response date.

Rule 8. Redaction of Personal Data Identifiers from Pleadings

The responsibility for redacting personal identifiers as required by the federal rules of procedure rests solely with counsel or with the pro se party. The Clerk will not review each pleading for compliance.

Rule 9. Sealed Documents

The following procedures govern documents under seal in criminal and civil cases in this Court.

(a) **General.** A document (including a motion or other pleading) may be filed or placed under seal only if permitted by order of the Court. Portions of a document cannot be filed or placed under seal—only the entire document may be sealed. A sealed document is a document to which access other than by the Court or authorized court personnel is prohibited or restricted. The Clerk must not otherwise disclose any sealed document except upon order of the Court.

(b) **Format.** Any sealed document must be submitted to the Clerk clearly labeled "SEALED."

(c) **Motion to Seal.** To obtain an order allowing a document to be filed or placed under seal, a party must file an unsealed written motion containing:

(1) a non-confidential description of the document to be sealed;

(2) the non-confidential reasons why sealing is necessary, including the reasons why alternatives to sealing are inadequate; and

(3) the duration for which sealing is requested.

The party must also submit to the Court at the same time a proposed unsealed order granting the motion, which order must contain findings setting forth the matters contained in (1), (2), and (3) above. The motion to seal must be accompanied by the document that is to be placed under seal, if it has not already been submitted. The document will be kept under seal by the Clerk temporarily pending a decision by the Court on the motion to seal. If the motion to seal is denied, the document will be returned by the Clerk to the party submitting it, unless the Court orders otherwise.

(d) **Public Notice of Motion to Seal.** Any motion requesting an order allowing a document to be filed under seal must be docketed in such a way to give public notice of its nature as a motion to seal.

(e) **Public Notice of Sealing.** The filing of a document under seal must be docketed in such a way as to give public notice that the document is filed under seal.

(f) **Objection to Sealing.** Any party or nonparty may file an objection to any motion to seal or to the sealing of any document or may file a motion to unseal a document previously sealed.

(g) **Agreement by Parties.** These provisions do not limit the ability of the parties by a confidentiality agreement or otherwise to restrict access to documents that are not filed with the Court. No confidentiality agreement or other agreement of the parties, however, will allow the filing of sealed documents without adherence to these provisions. A separate motion must be filed in each instance that a document is to be filed under seal.

(h) **Unsealing.** Unless there is a court order to the contrary, the Clerk will unseal the following sealed documents when indicated:

(1) **Search Warrant.** After the search is executed and the warrant is returned to the Clerk;

(2) **Arrest Warrant, And In A Violation Case, Any Violation Report.** After the arrest is made;

(3) **Indictment.** Upon the arrest or appearance of the defendant. In multi-defendant cases, upon the earliest of any of the following:

(a) 10 days following the arrest of any defendant;

(b) 30 days after return of the indictment; or

(c) when all defendants have been arrested or summoned.

In multi-defendant cases in which the indictment is to remain sealed, the government is responsible for submitting to the magistrate judge for approval, reasonably in advance of an initial appearance, an appropriately redacted indictment for disclosure to the defendant and to the public.

(4) **Criminal Complaint.** 30 days after issuance or when all defendants named are in custody or have been summoned, whichever is the earliest; and

(5) **Any Other Documents.** When the case is closed and the time for appeal has past.

Whenever a document is unsealed, any related order or motion under seal will be unsealed, unless the Court orders otherwise. In criminal cases, each defendant must be provided with a copy of the charges against that defendant (with other portions redacted, if necessary), even if the indictment or complaint is otherwise sealed.

(i) **Extension of Sealing.** In order to extend the period of time for which a document is to be sealed, an order of the Court must be obtained using the procedures set forth in this rule.

(j) **Sealed Case.** No case may be sealed in its entirety except by order of the Court for cause shown, and after written motion conforming to these provisions.

(k) **Exceptions.** No motion or order is required for the filing under seal of the following:

(1) An unredacted version of a document or a reference list containing personal data identifiers, in compliance with these rules, the federal rules of procedure, or the E-Government Act;

(2) An ex parte motion, under circumstances where such ex parte application is permitted; and

(3) Presentence investigation reports, pretrial services reports, psychiatric or psychological evaluations in criminal cases, affidavits submitted in support of a motion for in forma pauperis status, or other documents required by law to be filed under seal.

(l) **Sentencing.** The United States may file a motion under seal seeking a downward departure or reduction of sentence in a criminal case without first filing an unsealed written motion, with leave of court upon a showing of particular need in an individual case to prevent serious harm.

Commentary

This rule describes the procedures to follow in criminal and civil cases with relation to sealed documents, including pleadings, motions, exhibits, and other material. Case law protects generally the right of public access to documents filed in court, both under the First Amendment and the common law. *See, e.g., Va. Dep't of State Police v. Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004).

Questions relating to sealed documents are presented in varying circumstances. For example, a party to a case may desire to file an exhibit to a brief containing confidential business information that has been disclosed to the opposing party under an agreement of confidentiality, but which the parties do not wish the public to see. The procedure to be followed is to file a motion not under seal that describes in a non-confidential way the document that the party desires to file under seal (in this hypothetical example, the exhibit). The motion must also state, in a non-confidential way, the reasons why sealing is requested (in this case, the fact that the exhibit contains confidential trade secrets whose disclosure would be harmful to the business of the party) and why alternatives to sealing are inadequate. Finally, the motion must also state the length of time that the party desires the document to be sealed. The motion must be accompanied by the document desired to be sealed (the exhibit, in this example) for review by the presiding judge, as well as a proposed unsealed order allowing the document to be sealed, which order recites the necessary findings.

Often the parties to a case will enter into a confidentiality agreement that provides that certain information exchanged between them in the course of discovery will remain confidential. The procedures described in this rule do not affect the ability of the parties to enter into such an agreement. However, the parties cannot agree to the sealing of documents filed in court without following the mandatory procedures set forth in this rule.

In other words, the parties cannot seal documents filed in court merely by agreement or by labeling them "sealed."

There are certain exceptions to the rule that any document to be sealed must be accompanied by a nonsealed motion. Where the sealed document is an unredacted version of a document required to be redacted by these rules, the federal rules of procedure, or the E-Government Act, or a reference list of personal data identifiers, then no motion or order is required. Like all sealed documents, however, the unredacted version or the reference list must be clearly labeled "SEALED."

Circumstances sometimes permit an ex parte motion to the Court. For example, where there is a need for confidentiality, a criminal defendant may file an ex parte sealed motion seeking an order authorizing specified investigative, expert, or other services at public expense. *See* 18 U.S.C. § 3006A(e)(l) (Criminal Justice Act); 18 U.S.C. § 3599(f) (capital cases, including capital habeas cases). No unsealed motion or order is required. The motion must be clearly labeled "EX PARTE AND SEALED."

This rule provides that unless the Court orders otherwise, all documents in a case will be unsealed at the conclusion of the case. The rule does not flatly prohibit the continued sealing of a document, but leaves that decision to the presiding judge. As an alternative, the judge may order a sealed document in paper form returned to the party submitting it at the conclusion of the case. If a document is ordered sealed for a particular period of time, the period may be extended by a later order, obtained by following the procedures set forth.

Rule 10. Communication with Jurors

No attorney or party litigant shall personally, or through any investigator or any other person acting for the attorney or party litigant, interview, examine or question any juror or alternate juror during the juror's term of service as a potential juror with respect to the verdict or deliberations of the jury in any action, civil or criminal, except by leave of Court upon good cause shown and upon such conditions as the Court in the particular case may fix.

Rule 11. Imposition of Jury Costs

The Court may in its discretion impose the costs of a jury where a case is settled or otherwise disposed of after it is too late to reasonably notify the jury not to appear.

Rule 12. Trial Exhibits

Upon jury verdict or decision by the Court, the Clerk shall retain documentary exhibits. Documents of unusual bulk or weight and physical exhibits, other than documents, shall remain in the custody of the attorney producing them. The attorney shall permit inspection of the same by any party for the purpose of preparing the record on appeal. The attorney also shall be charged with the responsibility for the safekeeping of said exhibits and, if requested, transportation of the exhibits to the appellate court.

In all cases where money, firearms, narcotics, controlled substances or any manner of contraband is introduced into evidence, such evidence shall be returned by the Clerk to the attorney producing them for safekeeping immediately after the return of the jury verdict or, in a nonjury case, at the close of all the evidence. The attorney who introduces an exhibit into evidence in a case will be responsible for its custody.

All documentary exhibits filed in a proceeding must be physically removed by the parties who filed them. In the event no appeal is perfected, the exhibits must be removed within 60 days in civil cases and within 30 days of criminal cases, from the date of final disposition of the case by this Court. In the event an appeal is perfected and thereafter disposed of by the court of appeals, the exhibits must be removed within 30 days after receipt of the judgment, other process or certificate disclosing disposition of the case by that court. In the event that a case is appealed to the Supreme Court, the exhibits must be removed within 30 days after receipt of judgment, other process or certificate disclosing disposition of the case by that court.

In the event that exhibits are not removed from the custody of the Clerk within the required time, the Clerk, after sending a form notice to respective counsel for the parties to remove the exhibits, shall, after 30 days have expired from the time of mailing of such notice, cause the same to be destroyed or otherwise disposed of.

TITLE II - CIVIL RULES

Rule 3. Commencing an Action

(a) Pursuant to Federal Rule of Civil Procedure 3, a civil action is commenced by filing a complaint. In any civil case in this Court, the complaint is deemed filed the day the clerk receives it together with payment of the required filing fee. If the filing fee is paid on a later day, the complaint will be deemed filed the day the complaint was received by the Clerk if the presiding judge in the case determines that the late payment of the filing fee was due to good cause.

(b) In the event that a civil complaint is submitted together with an application to proceed without the payment of the required filing fee, the complaint is deemed filed on the day it was received if (a) the application is granted or (b) the application is denied and the filing fee is thereafter paid within a reasonable time.

(c) In the event a fee is erroneously paid by way of credit card through the Court's electronic filing system, no refund may be made except upon the order of the presiding judge in the case. In the event that a user of the system has made

repeated mistakes or good cause otherwise exists, the judge may decline to order a refund.

Rule 11. Pleadings and Motions

(a) **Address and Telephone Number.** All pleadings and motions must include the attorney's office address, telephone number, e-mail address, and the attorney's bar identification number. All pleadings and motions filed by a non-prisoner litigant proceeding pro se must contain an address where notice can be served on such person and a telephone number where such person can be reached or a message left. All pleadings and motions filed by a prisoner proceeding pro se must contain an address where notice can be served on such person.

(b) **Determination of Motions.** The moving party is responsible either to set a motion for hearing or to advise the Court that all parties agree to submission of the motion without a hearing. The non-moving party also may arrange for a hearing. All hearings are to be at a date and time obtained from and scheduled by the Court. Unless otherwise ordered, a motion is deemed withdrawn if the movant does not set it for hearing (or arrange to submit it without a hearing) within 60 days after the date on which the motion is filed. In accordance with Federal Rule of Civil Procedure 78(b), the Court may determine a motion without an oral hearing.

(c) **Briefs Required.**

(1) All motions, unless otherwise directed by the Court and except as noted hereinbelow, must be accompanied by a written brief setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. Unless otherwise directed by the Court, the opposing party must file a responsive brief and such supporting documents as are appropriate within 14 days after service, and the moving party may file a rebuttal brief within 7 days after the service of the opposing party's reply brief. No further briefs (including letter briefs) are to be submitted without first obtaining leave of court.

(2) Briefs need not accompany motions: (a) for a more definite statement; (b) for an extension of time to respond to or file pleadings, unless the time has already expired; (c) for a default judgment; (d) for continuances; and (e) to amend pleadings or add or substitute parties. These motions, while not requiring a brief, must state good cause justifying the relief requested. In addition, a separate brief is not required where a motion itself contains the legal and factual argument necessary to support the motion.

(3) Procedural motions, including motions for enlargement of time, whether or not opposed, may be acted upon at any time by the Court, without awaiting a response, and any party adversely affected by such action may request reconsideration, vacation, or modification of such action.

Rule 16. Scheduling Orders

Scheduling orders shall be issued in all cases except pro se prisoner, Social Security, and habeas cases or other cases exempted by the presiding judge and may be issued by a magistrate judge. The scheduling order shall govern any deadline fixed or procedure ordered that is in conflict with that contained in these rules.

Rule 26. Expert Disclosure

(a) **Agreement Upon Disclosure.** Counsel are encouraged to agree in a discovery plan or otherwise upon the sequence and timing of the expert disclosures required by Federal Rule of Civil Procedure 26(a)(2).

(b) **Objections to Expert Testimony.** Unless otherwise fixed by the Court, or unless good cause is shown, any objections to the admissibility of expert testimony or opinions must be by motion filed and set for hearing or submitted without hearing within a reasonable time before the date of trial, thus permitting an adequate time for the Court to consider the motion.

Rule 40. Scheduling of Cases for Trial

Cases shall be scheduled for trial in the manner directed by the presiding judge.

Rule 51. Proposed Instructions

Except as otherwise directed by the Court, in all cases tried to a jury, any proposed instructions must be filed at least 7 days before the scheduled trial date. Each instruction must be set forth on a separate page, numbered and identified appropriately by the party submitting it, bearing at its foot a citation of the authority in support of the instruction. Instructions must be filed as a group together with a cover sheet in pleading form and a certificate of service.

Rule 54. Fees and Costs

(a) Attorneys' Fees.

(1) **Time for Filing.** Unless otherwise provided by statute or national rule, or in social security cases, or otherwise ordered by the Court, any motion requesting the award of attorneys' fees must be filed no later than 14 days after the entry of judgment. Any opposition to the motion must be filed within 14 days of service. Non-compliance with these time limits may be deemed to be a waiver of any claim for attorneys' fees. The Court may extend such times upon motion for cause shown.

(2) **Contents.** Any motion requesting the award of attorneys' fees must be supported by a memorandum setting forth the nature of the case, the claims as to which the party prevailed, the claims as to which the party did not prevail, a detailed description of the work performed broken down by hours or fractions thereof expended on each task, the attorney's customary fee for

such like work, the customary fee for like work prevailing in the attorney's community, a listing of any expenditures for which reimbursement is sought, any additional factors which are required by the case law, and any additional factors that the attorney wishes to bring to the Court's attention.

Rule 56. Summary Judgment-Time of Filing

Unless good cause be shown, no motion for summary judgment or other dispositive motion shall be considered unless it is filed and set for hearing, or submitted without hearing, within the time fixed by the Court, or if no such time is fixed by the Court, within a reasonable time before the date of trial, thus permitting adequate time for the Court to consider the motion.

Rule 67. Deposits Into Court

(a) **Receipt of Funds**

(1) No money shall be sent to the Court or its officers for deposit in the Court's registry without a court order signed by the presiding judge in the case or proceeding.

(2) Unless provided for elsewhere in this Order, all monies ordered to be paid to the Court or received by its officers in any case pending or adjudicated shall be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. § 2041 through depositories designated by the Treasury to accept such deposit on its behalf.

(3) The party making the deposit or transferring funds to the Court's registry shall serve the order permitting the deposit or transfer on the Clerk of Court.

(b) Investment of Registry Funds

(1) Where, by order of the Court, funds on deposit with the Court are to be placed in some form of interest-bearing account, CRIS, administered by the Administrative Office of the United States Courts, shall be the only investment mechanism authorized.

(2) Money from each case deposited in CRIS shall be "pooled" together with those on deposit with Treasury to the credit of other courts in CRIS and used to purchase Government Account Series securities through the Bureau of Public Debt, which will be held at Treasury, in an account in the name and to the credit of the Director of Administrative Office of the United States Courts, hereby designated as custodian for CRIS.

(3) An account for each case will be established in CRIS titled in the name of the case giving rise to the investment in the fund. Income generated from fund investments will be distributed to each case based on the ratio each account's principal and earnings has to the aggregate principal and income total in the fund. Reports showing the interest earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in CRIS and made available to litigants and/or their counsel.

(c) **Deductions of Fees**

(1) The custodian is authorized and directed by this Order to deduct the registry fee for maintaining accounts in CRIS and the investment services fee for the management of investments. The proper registry fee is to be determined on the basis of the rates published by the Director of the Administrative Office of United States Courts as approved by the Judicial Conference. The investment services fee is assessed from interest earning according to the Court's Miscellaneous Fee Schedule.

(2) If registry fees were assessed against the case under the old 45-day requirement prior to deposit in CRIS, no additional registry fee will be assessed.

(d) **Unclaimed Funds.** Funds paid into this court which have remained unclaimed for five years and for which the right to withdraw has either been adjudicated or is not in dispute shall be deposited in the Treasury in the name and to the credit of the United States and any claimant with full proof of the right to withdraw may petition the court, with notice to the United States Attorney, and obtain an order authorizing payment.

(e) **Criminal Bond Forfeitures.** Upon proper motion, any funds deposited by or on behalf of a criminal defendant for bail bond purposes, with the exception of funds deposited by a third party surety, may be held and paid over to the United States Attorney for payment of any assessment, fine, restitution, or penalty imposed upon the criminal defendant.

Rule 73. Magistrate Judges

Pursuant to the provisions of 28 U.S.C. § 636 and Federal Rule of Civil Procedure 73, the full time magistrate judges of this Court are designated to conduct any or all proceedings in a jury or nonjury civil matter and order entry of judgment in the case, upon the consent of the parties, and upon entry of an order of reference in the particular civil matter by a district judge of this court, which order specifically transfers, assigns or refers the matter to a magistrate judge for all proceedings and for the entry of dispositive orders or judgment.

Rule 83. Alternative Dispute Resolution Program

(a) **Availability.** This Court shall offer alternative dispute resolution to all parties in every civil case. Mediation shall be the common and preferred means of alternative dispute resolution. Other means of alternative dispute resolution shall be made available by this Court upon request of all parties, except in those cases in which the alternative form may be prohibited by statute.

(b) **Requests for Referrals.** Alternative dispute resolution shall not be automatically required in every case. Upon joint motion of all parties, the Court shall refer the case for alternative dispute resolution in the form requested by the parties, unless that form is prohibited by statute. If one party makes a unilateral request for referral, the Court may refer the case for alternative dispute resolution in any nonbinding form deemed appropriate by the presiding judge. In any other case, the presiding judge may require the parties to participate in alternative dispute

resolution in any nonbinding form permitted by statute and deemed appropriate by this Court.

(c) **Neutrals.** Upon joint motion of all parties, the Court shall refer the case to an alternative dispute resolution resource outside the Court. In all other cases, a United States district judge or magistrate judge shall serve as the neutral when the matter is designated by the presiding judge for alternative dispute resolution.

(d) **Training and Disqualification of Neutrals.** As the primary alternative dispute resolution resource persons for the Court, the magistrate judges shall receive appropriate training as may be offered by the Federal Judicial Center, Administrative Office, or other approved agency. In requesting referral to an outside alternative dispute resolution resource, the parties shall provide to the Court satisfactory documentation as to the qualifications of the designated neutral. Complaints concerning the performance of any neutral, including a magistrate judge, shall be addressed to the chief United States district judge. This Court may disqualify from further service any person, including a magistrate judge, who is deemed unqualified to serve as a neutral in a particular case, or in all cases.

(e) **Confidentiality.** If requested by the applicant, any unilateral request for alternative dispute resolution referral shall be maintained in the strictest confidence by all officers of this Court. Once entered, however, all orders of referral shall be matters of public record. Communications and/or information provided during any alternative dispute resolution process shall be kept confidential by all parties and by the neutral. Any information or document which is otherwise produced

through a legitimate discovery process is exempted from this confidentiality requirement. Any party may seek entry of a protective order to prevent or limit discovery of any information or document which has become known to the opposing party only because of participation in an alternative dispute resolution process. Any party who participates in alternative dispute resolution with a magistrate judge of this Court shall be deemed to have consented to any party's ex parte communication with the magistrate judge made in the course of attempted resolution of the dispute.

(f) **Scheduling.** Alternative dispute resolution sessions may be scheduled at the discretion of the parties and the neutral. Alternative dispute resolution shall proceed independently of all other pretrial development in the case. Referral of a case for alternative dispute resolution shall not operate so as to modify or stay any scheduling provisions of any pretrial order. Parties engaged in alternative dispute resolution may apply to the Court for such modifications or stays upon demonstration of exceptional cause.

(g) **Enforceability.** The Court will not assist in the enforcement of any agreement, settlement, or fee arrangement from any alternative dispute resolution process which is not annexed by the Court. In all other situations, the parties may invoke any of the Court's traditional enforcement mechanisms.

(h) **Coordinator.** This Court shall designate an employee or a judicial officer who is knowledgeable in alternative dispute resolution practices and processes to

implement, administer, oversee, and evaluate the Court's alternative dispute resolution program.

TITLE III - CRIMINAL RULES

Rule 12. Style of Motions

All motions and the responses in criminal cases must bear a caption which identifies the moving party and describes the general nature and the purpose of the motion. A defendant may adopt a motion filed by another defendant only by filing a separate pleading for each motion that the defendant wishes to adopt. This separate pleading must bear the same caption as the original pleading that the defendant wishes to adopt. A single motion to adopt more than one pleading of another defendant is not permitted.

Rule 32. Local Procedure for Guideline Sentencing.

(a) **Disclosure of Recommended Sentence.** Pursuant to Federal Rule of Criminal Procedure 32(e)(3), the probation officer shall not disclose, without court order, the probation officer's recommendation, if any, on the sentence.

(b) **Motion for Substantial Assistance.** The attorney for the Government must file its 18 U.S.C. § 3553(e) motion for substantial assistance, if any, at the same time the attorney for the Government makes objections under Federal Rule of Criminal Procedure 32(f).

(c) **Disclosure of Presentence Report.** Nothing in this rule will require the disclosure of information in the presentence report not disclosable under Federal

Rule of Criminal Procedure 32. The presentence report will be deemed to have been disclosed when a copy of the report is physically delivered, 1 day after verbal announcement that the report is available for inspection or 3 days after a copy of the report or notice of its availability is mailed.

Rule 58. Collateral Payments

In accordance with Federal Rule of Criminal Procedure 58(d)(1), payment of a fixed sum may be accepted in suitable types of petty offense cases in lieu of appearance and as authorizing the termination of the proceedings. Such fixed sums may be increased or decreased from time to time by this Court by standing order, provided such fixed sums shall not exceed the maximum fine which could be imposed upon conviction.

Rule 59. Appeals From Conviction or Sentence by Magistrate Judge

(a) **Record on Appeal.** Within 14 days, or such other period of time as the district judge may direct, after filing a notice of appeal from a conviction or sentence by a magistrate judge as permitted by Federal Rule of Criminal Procedure 58(g)(2), the appellant must file a statement of the grounds for the appeal and a supporting memorandum of law. If the appellant has ordered a transcript of the trial or other proceedings before the magistrate judge, the appellant must so inform the district judge and the appellee. In such event, the appellant must file a supporting memorandum of law within 14 days, or such other period of time as the district judge may direct, of the filing of the transcript.

(b) **Submission of Appeal.** The appellee has 21 days, or such other period of time as the district judge may direct, from the date of filing of appellant's memorandum of law or the filing of the transcript of proceedings before the magistrate judge, whichever is later, in which to file a responsive memorandum. The appellant has 14 days, or such other period of time as the district judge directs, in which to file a reply. The matter is thereafter deemed submitted for decision, provided that oral argument may be granted in the Court's discretion.

SCHEDULE OF REVISIONS TO LOCAL RULES

Date	Rule Number and Title
May 19, 2011	Rule 67. Deposits Into Court
March 8, 2012	Rule 9 (h) (3). Sealed Documents
June 12, 2012	Rule 7 (j). Three-day Mailing Rule