

CRIMINAL RULES

CrR 1.

SCOPE; DEFINITIONS

(a) ~~Scope~~

These local rules supplement the Federal Rules of Criminal Procedure (Fed. R. Crim. P.) as to local procedures; they are effective ~~December 1, 2012~~January 31, 2014. They are designated as CrR, numbered to correspond, where possible, with rules having similar subject matter as the Fed. R. Crim. P., and they, along with the local civil rules (LCR) and magistrate judges' rules (MJR), may be cited as "Local Rules, W.D. Wash." The local magistrate judges' rules (~~MJR~~) contain many provisions relating to criminal matters; ~~and~~ the following local civil rules apply to criminal matters:

<u>LCR 1(c)</u>	<u>Definitions</u>
LCR 1(d)	Prohibition of Bias
LCR 3(c)	Initial Case Assignment
LCR 3(e)	Motions to Recuse
LCR 5(b)	Service by Electronic Means
LCR 5(d)	Electronic Filing and Signing
LCR 5(f)	Proof of Service
LCR 5(g)(8)	Sealing-Unsealing of Court Records
<u>LCR 6</u>	<u>Computing and Extending Time</u>
LCR 10	Form of Pleadings, Motions and Other Filings
LCR 11	Signing Filings; Sanctions
<u>LCR 47(a)</u>	<u>Examination of Jurors</u>
LCR 65.1	Bonds
LCR 67	Registry Funds
LCR 77	Conducting Business; Clerk's Authority
LCR 78	Photography, Broadcasting, and Personal Electronic Devices in the Courthouse
LCR 79(f)	Files-Custody and Withdrawal
LCR 79(g)	Custody and Disposition of Exhibits, Depositions
LCR 83.1	Attorneys; Admission to Practice
LCR 83.2(b)	Withdrawal of Attorneys
LCR 83.3	Standards of Professional Conduct; Continuing Eligibility to Practice; Attorney Discipline
LCR 83.4	Legal Interns
LCR 85	Title and Citations

(b) ~~Definitions~~

Terms used herein (such as "magistrate judge") shall have the same designated meanings as set out in Fed. R. Crim. P. 1(b). Unless the context indicates otherwise "court" and "judge" refer to the judge or magistrate judge before whom the matter or hearing is pending or has been referred; or who may act in the absence of said judge or magistrate judge.

(c) ~~Reserved~~

* Electronic filing in the Western District of Washington became mandatory on June 1, 2004. The electronic filing procedures for the district can be found at <http://www.wawd.uscourts.gov>.

CrR 2.

PURPOSE AND CONSTRUCTION

These local rules are intended to set out local procedures consistent with the Fed. R. Crim. P. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

CrR 3.

THE COMPLAINT

-RESERVED

CrR 4.

ARREST WARRANT OR SUMMONS ON A COMPLAINT

-RESERVED

CrR 4.1.

**COMPLAINT, WARRANT, OR SUMMONS BY TELEPHONE OR
OTHER RELIABLE ELECTRONIC MEANS**

RESERVED

See CrR 41(d)(3).

CrR 5.

INITIAL APPEARANCE

(a) In General

(1) Notice of Arrest. Any agency or person who holds any person in this district on federal criminal charges, shall so advise the U.S. Marshal without unnecessary delay. Except with respect to federal parole violations, after receiving notice or other knowledge during business hours of any such federal arrestee or person held on federal charges anywhere in the district, the marshal shall give ~~telephonic~~ notice without unnecessary delay of the date of federal arrest or custody to the courtroom deputy or other designated staff member for the appropriate magistrate judge who will conduct the initial appearance;

(A) After receiving notice from the U.S. Marshal, the courtroom deputy or other designated staff member for the appropriate magistrate judge shall give ~~telephonic~~ notice without unnecessary delay to:

i. The ~~designated person in the U.S. United States~~ Attorney's Office ~~general-crimes unit supervisor for all cases~~;

ii. During business hours, the U.S. Pretrial Services Office.

Like notice, during business hours, shall also be given by the courtroom deputy or other designated staff member to the U.S. Probation Office duty officer as to any probation, supervised release, or parole violators.

(2) Arrest Without Warrant — Forty-eight Hour Rule. Whenever an arrest without warrant occurs and the initial appearance will not be or is likely not to be held within forty-eight hours of arrest (because of the weekend or holidays or unavailability of an appropriate magistrate judge):

(A) A complaint and affidavit will be prepared and presented within forty-eight hours after the arrest to the appropriate magistrate judge at said judge's home or as directed by said judge. If probable cause is found, an order so finding shall be signed and defendant shall be ordered held pending the initial appearance as promptly as that hearing can be scheduled during court hours or as otherwise ordered.

(B) The initial contact with the appropriate magistrate judge shall be made by the United States Attorney or an authorized assistant who shall have either previously prepared or reviewed and approved the form and content of the complaint and affidavit.

(3) Reserved

(4) Appropriate Magistrate Judge. The "appropriate magistrate judge" is the United States magistrate judge who would normally be expected to conduct the initial appearance; or if unavailable, any available United States magistrate judge; or if unavailable, any other magistrate judge as defined in Fed. R. Crim. P. 1(b).

(b) through (f) Reserved

(g) Appearance of Counsel

(1) Appearance Prior to Arraignment. Any appearance in court prior to arraignment obligates counsel to handle all matters up to, and to appear at, arraignment, unless relieved of said obligation as provided for in paragraphs (3) and (4). (See ~~Local Rules, W.D. Wash.~~, LCR 83.1(d) regarding appearances by non-W.D. Wash. attorneys.)

(2) Appearance at Arraignment. At arraignment, a counsel who has previously appeared may orally withdraw, and arraignment may be continued for up to two weeks to allow defendant to obtain counsel. Any counsel appearing at arraignment may request up to two weeks to finalize a representation agreement with defendant, and the arraignment shall be so continued. Counsel may thereafter be relieved of responsibility by filing, prior to the continued arraignment hearing and after service on defendant and the ~~U.S. United States~~ Attorney's Office, a written notice of nonrepresentation, without the necessity of counsel appearing at said hearing; or by appearing and orally stating so on the record. Defendant must be present in all instances. Further continuances of arraignment to finalize representation may be made only upon a proper showing and by order of the judge or magistrate judge before whom the matter is pending upon due consideration of Speedy Trial rights, including the discovery, motions and trial dates, the situation with respect to any codefendants, right-to-counsel rights, and other relevant considerations. Counsel representing a defendant when arraigned or rearraigned is obligated to handle, in the district court, all matters charged at that arraignment or rearraignment.

(3) Stand-In Appearance. With the agreement of defendant on the record in open court, and with court approval, another attorney may appear for defense counsel.

(4) Relief from Representation. Counsel may be relieved:

(A) With the approval of the judge or magistrate judge before whom the matter is pending, endorsed upon a stipulation of substitution submitted ex parte and signed by counsel, substitute counsel, and defendant; or

(B) By an order of the judge or magistrate judge before whom the matter is pending, granting counsel's written motion for withdrawal, served, filed and noted for consideration as required under ~~Local Rule~~ CrR 12 and LCR 83.2, with the additional requirement of service upon the defendant; or

(C) By an order appointing other counsel after review of a financial affidavit submitted by defendant pursuant to 18 U.S.C. § 3006A.

The Clerk's Office shall provide to counsel, substitute counsel, the U.S. United States Attorney's Office, and, when appropriate, the defendant, copies of approved stipulations, orders allowing withdrawal, and orders appointing counsel.

(h) Release From Custody — Bail/Detention:

(1) On federal criminal charges, see ~~Local Rule~~ CrR 46.

(2) On Probation and Supervised Release violations, see Fed. R. Crim. P. 32.1 and 46.

CrR 5.1.

PRELIMINARY HEARING

(a) through (f) Reserved

(g) Recording the Proceedings

(1) Copies of Preliminary Hearing TapeRecording(s). Unless ordered sealed by court order, a copy of the preliminary hearing ~~taperecording~~(s) may be obtained from the Clerk's Office and will, whenever possible, be provided within five (5) days of the request. A court-appointed attorney for a defendant and the attorney for the government may obtain a copy free; all others must pay the prevailing rate per ~~tape-recording~~ (as set by the Judicial Conference).

(2) Original Preliminary Hearing TapeRecording(s). The original preliminary hearing ~~taperecording~~(s) shall remain in the custody of the Clerk's Office under the control of the court, subject to the Clerk's established procedures for storage of records and retention. The ~~tapes-recording~~(s) may be made available at further hearings or for other purposes, upon application to the court specifying the necessity.

(3) Transcripts. Anyone seeking preparation of transcripts at government expense shall apply to the court or a judge thereof, and shall state specifically why the access to the recording is insufficient for the party's needs.

(h) Reserved

CrR 6.

THE GRAND JURY

(a) through (i) Reserved

(j) Grand Jury Practice

(1) Motions practice in connection with Grand Jury proceedings and process issued in aid of such proceedings shall be accorded the secrecy protections as set forth in Fed. R. Crim. P. 6(e).

(2) The Clerk's office shall accept for filing under seal without the need for further judicial authorization all motions and accompanying papers designated by counsel as related to Grand Jury matters.

(3) Such motions shall be assigned Grand Jury cause numbers if not otherwise related to pending criminal cases and will be decided by the judge of this court assigned by the Chief Judge to hear Grand Jury matters.

(4) In all other respects, motions and related filings shall conform to ~~Local Rule~~ CrR 12(c).

CrR 7.

THE INDICTMENT AND THE INFORMATION

~~-RESERVED~~

CrR 8.

JOINDER OF OFFENSES OR DEFENDANTS

~~-RESERVED~~

CrR 9.

ARREST WARRANT OR SUMMONS ON AN INDICTMENT OR INFORMATION

RESERVED

CrR 10.

ARRAIGNMENT

Arraignments are generally conducted by a magistrate judge. A trial date, based upon the requirements of the Speedy Trial Act (18 U.S.C. §§ 3161 et seq.), will usually be set at the time the arraignment is first scheduled. Requests for change of a trial date should be addressed to the judge assigned to the case.

See ~~Local Rules W.D. Wash.~~ CrR 5(g) regarding appearance of counsel at arraignment; and CrR 18 regarding the place of trial and assignment of cases.

CrR 11.

PLEAS

(a) through ~~(db)~~ Reserved

~~(ec)~~ Plea Agreement Procedure

(1) In General. Without court approval, plea agreements in felony cases shall be in writing and signed by the defendant, the defendant's attorney and the attorney for the government. Unless otherwise ordered, all felony plea agreements shall set forth a factual basis for the plea.

~~(fd)~~ through (h) Reserved

(i) Felony Pleas Before Magistrate Judges

The ~~full-time~~ magistrate judges in this district are authorized to accept waivers of indictment and guilty pleas in felony cases with the consent of the defendant, the defendant's attorney, and the United States, and to order a presentence investigation report concerning any defendant who pleads guilty to felony charges (~~Rules Fed. R. Crim. P.~~ 7(b), 11(a), and 32(c) ~~Fed. R. Crim. P.~~). In such cases, the United States magistrate judge may conduct the proceedings required by Fed. R. Crim. P. 11, and, if the plea is accepted, order a presentence investigation report pursuant to Fed. R. Crim. P. 32.

If the magistrate judge accepts the plea, the United States magistrate judge shall file a report and recommendation with the district judge to whom the case has been assigned. A copy of such report and recommendation shall be served on all parties. Within fourteen days after such service, any party may file and serve written objections thereto, and any party desiring to oppose such objections shall have seven days thereafter within which to file and serve a written response. The district judge may accept, reject, or modify, in whole or in part, the report and recommendation of the magistrate judge. Sentencing shall take place before the district judge to whom the case has been assigned. This rule in no way precludes any district judge from reserving the function of conducting the proceedings required by Rule 11 in any/all case(s) assigned to the district judge.

CrR 12.

PLEADINGS AND PRETRIAL MOTIONS

(a) ~~and (b)~~ Reserved

~~(eb)~~ Motion ~~Date and~~ Procedure

~~(1) Time for Motions. At the time of arraignment the court shall set a date for the filing of pretrial motions. No motion may be filed subsequent to that date except upon leave of court for good cause shown. If arraignment is postponed at the request of the defendant, the deadline for filing and service of pretrial motions shall be three weeks from the date originally set for arraignment, unless the court otherwise orders. In the event superseding charges are filed, counsel for defendant may apply to the district judge or to the magistrate judge for additional time to file pretrial motions. Such application shall be made on or before the date initially set for arraignment on the superseding charges.~~

(2) Obligations of Movant. The moving party shall file and serve on each party that has appeared in the action the motion and a proposed order. The argument in support of the motion shall not be made in a separate document but shall be submitted as part of the

motion itself. The moving party shall also note the motion, as prescribed in subsection (76) hereof. If the motion requires the consideration of facts not appearing of record, the movant shall also serve and file copies of all affidavits and photographic or documentary evidence presented in support of the motion. See LCR 5; CrR 49.1; CrR 55.

(32) Obligations of Opponent. Each party opposing the motion shall, within seven days after the filing of a motion and no later than one day before its noting date, file with the clerk, and serve on each party that has appeared in the action, a brief in opposition to the motion, together with any supporting material as provided in subsection (21) hereof. The time for service and filing of the brief and any other materials in opposition to the motion may be extended by the court or by written stipulation of the parties; however, the parties may not stipulate to a response date later than the noting date.

(43) Reply Brief. The moving party may, but is not required to, file and serve on each party that has appeared in the action a reply brief in support of the motion, together with any supporting material, no later than the noting date of the motion.

(54) Noncompliance. If a party fails to file the papers required by this rule, or fails to appear on the day appointed for argument or hearing if such be required by the court, such failure may be deemed by the court to be an admission that the motion, or the opposition to the motion, as the case may be, is without merit.

(65) Length of Briefs. Supporting and opposition briefs filed in connection with any pretrial motion shall not exceed twelve ~~8½ inch by 11 inch~~ pages without prior approval of the court. Any reply brief shall not exceed six ~~8½ inch by 11 inch~~ pages without prior approval of the court. See LCR 10.

(76) Noting and Consideration of Motions. Unless otherwise authorized by the court, motions shall be noted for consideration for the second Friday after the motion is filed. The motion shall include in its caption (immediately below the title of the motion) a designation of the Friday upon which the motion is to be noted upon the court's motion calendar. A motion may be noted for a Friday which is a holiday. The form shall be as follows:

NOTE ON MOTION CALENDAR: [insert date noted for consideration.]

(87) Telephonic Motions. Parties may request a telephonic hearing on a motion, following the procedures established in LCR 7(i) ~~of the local civil rules of this court.~~ Any such hearing shall be on the record.

(98) Emergency Motions. Motions to shorten time are abolished. If immediate action is necessary and the judge assigned to the case is unavailable any other judge may hear and dispose of the matter requiring immediate attention, but such action shall not constitute reassignment of the case or proceeding.

(409) Evidentiary Hearings and Oral Arguments. Each motion and response shall state whether an evidentiary hearing is requested. Unless otherwise ordered by the court, all motions will be decided by the court without oral argument. A party desiring oral argument shall so indicate by typing ORAL ARGUMENT REQUESTED in the caption of the motion or responsive brief. If the court determines an evidentiary hearing is appropriate or grants a request for oral argument, the clerk will notify the parties of the date and hour thereof. Counsel shall not appear on the date the motion is noted unless so directed by the court.

(~~4~~10) Reconsideration of Motions.

(A) Standards. Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.

(B) Procedure. A motion for reconsideration shall be plainly labeled as such. The motion shall be noted for consideration on ~~the Friday following~~ the day it is filed. The motion shall point out with specificity the matters which the movant believes were overlooked or misapprehended by the court, any new matters being brought to the court's attention for the first time, and the particular modifications being sought in the court's prior ruling. Failure to comply with this subsection may in itself be grounds for denial of the motion.

(C) Response. No response to a motion for reconsideration shall be filed unless requested by the court. No motion for reconsideration will be granted without such a request. The request will set a time when the response is due, and may limit the response to particular issues or points raised by the motion. A reply may be filed not later than seven days after all responses have been served and filed or the time for filing responses has expired, whichever is earlier.

(4c) Time for Motions:

At the time of arraignment the court shall set a date for the filing of pretrial motions. No motion may be filed subsequent to that date except upon leave of court for good cause shown. If arraignment is postponed at the request of the defendant, the deadline for filing and service of pretrial motions shall be three weeks from the new arraignment date originally set for arraignment, unless the court otherwise orders. In the event superseding charges are filed, counsel for defendant may apply to the district judge or to the magistrate judge for additional time to file pretrial motions. Such application shall be made on or before the date initially set for arraignment on the superseding charges. See CrR 23.2.

(d) through (h) Reserved

~~See Rule CrR 49, Serving and Filing Papers; and see Local Civil Rule LCR 10, Form of Pleadings, Motions and Other Filings.~~

CrR 12.1.

NOTICE OF AN ALIBI DEFENSE

~~-RESERVED~~

CrR 12.2.

NOTICE OF AN INSANITY DEFENSE; MENTAL EXAMINATION

~~-RESERVED~~

CrR 12.3.

NOTICE OF A PUBLIC-AUTHORITY DEFENSE

-RESERVED‡

CrR 12.4.

DISCLOSURE STATEMENT

-RESERVED

CrR 13.

JOINT TRIAL OF SEPARATE CASES

(a) Common Questions

When criminal cases involving common questions of law and fact (but not necessarily the same parties) are assigned to different judges, there may be good reason to assign all of said cases to one judge. Such may be assigned to the judge to whom the case bearing the earliest filing number was assigned, at his or her option.

(b) Related Cases

Counsel are encouraged to file a notice of related case in order to bring such cases to the attention of the court. The notice of related case should be filed in the case bearing the earliest filing number and a copy thereof shall be served upon all counsel of record in all such cases.

(c) Consolidation

A motion for consolidation of indictments or informations under Fed. R. Crim. P. 13 shall be heard by the judge to whom the case bearing the earliest filing number has been assigned, and in the event consolidation is ordered, the consolidated cases shall be heard by said judge.

CrR 14.

RELIEF FROM PREJUDICIAL JOINDER

-RESERVED

CrR 15.

DEPOSITIONS

-RESERVED

DISCOVERY AND INSPECTION

The purposes of this rule are to expedite the transfer of discoverable material contemplated by the Federal Rules of Criminal Procedure between opposing parties in criminal cases and to ensure that pretrial discovery motions to the court are filed only when the discovery procedures outlined herein have failed to result in the exchange of all legitimately discoverable material. It is the intent of the court to encourage complete and open discovery consistent with applicable statutes, case law, and rules of the court at the earliest practicable time. Nothing in this rule should be construed as a limitation on the court's authority to order additional discovery.

(a) Discovery Conference

At every arraignment at which the defendant enters a plea of not guilty, or other time set by the court, the attorney for the defendant shall notify the court and the attorney for the United States, on the record, or thereafter in writing, whether discovery by the defendant is requested. If so requested, within fourteen days after said attorney for the defendant and the attorney for the government shall confer in order to comply with ~~Rule 16~~ Fed. R. Crim. P. 16, and make available to the opposing party the items in their custody or control or which by due diligence may become known to them. This conference shall be in person. If, however, it is impractical to meet in person, the conference may be conducted via telephone.

(1) Discovery from the Government.

At the discovery conference the attorney for the government shall comply with the government's obligations under Rule 16 including, but not limited to, the following:

- (A) Permit defendant's attorney to inspect and copy or photograph any relevant written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody, or control of the government.
- (B) With respect to oral statements made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent:
 - (i) Provide that portion of any written record containing the substance of any such relevant oral statement made by the defendant; and
 - (ii) Provide the substance of any other such relevant oral statement made by the defendant which the government intends to offer in evidence at the trial.
- (C) Permit defendant's attorney to inspect and copy or photograph the defendant's Federal Bureau of Investigation Identification Sheet, and any other state, county, or local criminal record information concerning the defendant;
- (D) Permit defendant's attorney to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies of portions thereof, which are within the possession, custody, or control of the government, and which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant;

(E) Permit defendant's attorney to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are material to the preparation of the defense or are intended for use by the government as evidence in chief at trial;

(F) Permit defendant's attorney to inspect and copy or photograph any relevant recorded testimony of the defendant before the Grand Jury which relates to the offense charged;

(G) Permit defendant's attorney to inspect and copy or photograph any photographs used in any photograph lineup, show up, photo spread, or any other identification proceedings or, if no such photographs can be produced, the government shall notify the defendant's attorney whether any such identification proceeding has taken place and the results thereof;

(H) Permit defendant's attorney to inspect and copy or photograph any search warrants and supporting affidavits which resulted in the seizure of evidence which is intended for use by the government as evidence in chief at trial or which was obtained from, or belongs to, the defendant;

(I) Inform the defendant's attorney whether any physical evidence intended to be offered in the government's case-in-chief, the admissibility of which the defendant may have standing to challenge, was seized by the government pursuant to any exception to the warrant requirement;

(J) Advise whether the defendant was a subject of any electronic eavesdrop, wire tap, or any other interception of wire or oral communications as defined by ~~Title 18, United States Code, Section 18 U.S.C. § 2510~~, et seq., during the course of the investigation of the case;

(K) Advise the attorney for the defendant and provide, if requested, evidence favorable to the defendant and material to the defendant's guilt or punishment to which he is entitled pursuant to *Brady v. Maryland* and *United States v. Agurs*; and

(L) Advise the attorney for the defendant whether or not the government will provide a list of the names and addresses of the witnesses whom it intends to call in its case-in-chief at trial.

The attorney for the government is not required, however, to produce any statements of witnesses which fall within the purview of ~~Section 3500 of Title 18, United States Code 18 U.S.C. § 3500~~ and Fed. R. Crim. P. 26.2, until such time as required under those provisions.

(2) Discovery From Defendant. At the discovery conference, the defendant's attorney shall:

(A) Permit the attorney for the government to inspect and copy or photograph all books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial;

(B) Permit the attorney for the government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as

evidence in chief at trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness' testimony;

(C) Inform the attorney for the government, in writing, if requested, whether the nature of the defense is alibi. If a defendant intends to rely on the defense of alibi, and the attorney for the government has made the demand outlined in Fed. R. Crim. P. 12.1(a), at least fourteen days before the pretrial conference, the attorney for the defendant shall disclose the substance of any alibi intended to be presented by the defendant and state the specific place or places at which the defendant claims to have been at the time of the alleged offense, and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi as required by Rule 12.1, within fourteen days thereafter, but in no event less than fourteen days before trial, unless the court otherwise directs. The attorney for the government shall serve upon the defendant's attorney a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

(D) Inform the attorney for the government whether the nature of the defense is insanity. If a defendant intends to rely upon the defense of insanity at the time of the alleged crime or intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offense charged, he shall give written notice thereof to the government and file a copy of such notice with the clerk.

(E) Advise the attorney for the government whether or not the defendant will provide the names and addresses of the witnesses whom the defense intends to call in its case-in-chief at trial.

(3) Substantial Expenses Relating to Discovery.

(A) At the discovery conference, counsel shall discuss whether discovery in the case might involve substantial expense, including the expense of storage, distribution, or organization of electronically stored information. Counsel shall discuss whether a discovery coordinator for the case should be appointed.

(B) If counsel for any party believes that the case might involve substantial expense or that a discovery coordinator for the case should be appointed, the parties shall submit to the court, within seven days after the discovery conference, a joint status report reciting the parties' respective views on these issues.

(C) If, after the discovery conference, counsel for any party believes that circumstances have changed, counsel shall confer and the parties shall, if appropriate, file a joint status report reciting the parties' respective views. See CrR 17.1(a).

(b) Entrapment Defenses and the Discovery of Other Crimes, Wrongs, or Acts Admissible Pursuant to Fed. R. Evid. 404(b)

In addition to the requirements of Fed. R. Evid. 404(b), if, during the discovery conference or thereafter, the attorney for the defendant advises the attorney for the government that the defense is one of entrapment and provides a synopsis of the evidence of that defense, the attorney for the government shall, within seven days or two weeks prior to trial, whichever is later, disclose a synopsis of any other crimes, wrongs, or acts about which the government has information and

which is relevant to said defense and intended for use by the government in its case-in-chief or in rebuttal.

(c) Items Not Subject to Disclosure

This rule does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant or the defendant's attorney or agents in connection with the investigation or defense of the case, or of statements made by prospective government or defense witnesses, to the defendant, the defendant's agents, or attorneys.

(d) Continuing Duty to Disclose

If, prior to or during trial, any party discovers additional evidence not previously disclosed which is subject to discovery or inspection under this rule, such party shall promptly notify that other party's attorney of the existence of additional evidence or material.

(e) Declination of Disclosure

If, in the judgment of the attorney for the government or of the defendant's attorney, it would not be in the interest of justice to make any one or more of the disclosures set forth in the subsections of this rule, disclosure may be declined. A declination of any requested disclosure shall be in writing, directed to opposing counsel. In the event either the attorney for the government or attorney for the defendant declines to provide the names and addresses of witnesses, such a declination shall, in addition, state the particular reasons for the declination. The declination shall be served on opposing counsel and a copy filed with the court at least seven days before the pretrial motions deadline.

(f) Statements of Witnesses

Statements of witnesses, including material covered by Fed. R. Crim. P. 26.2, 18 U.S.C. § 3500, and Fed. R. Crim. P. 6, are to be exchanged:

- (1) During the time of trial as provided by Fed. R. Crim. P. 26.2, and 18 U.S.C. § 3500; or
- (2) At any time if the parties agree; and
- (3) Production of statements of witnesses at a hearing on a motion to suppress evidence will be governed by Fed. R. Crim. P. 12(h).

(g) Exchange of Exhibit Lists

~~No later than nine~~ At least fourteen days before trial, the parties shall exchange a list of exhibits which they intend to introduce during the presentation of their respective cases-in-chief.

(h) Further Discovery or Inspection

If discovery or inspection beyond that provided for above is sought by either counsel, the attorney for the government and the defendant's attorney shall confer with a view toward satisfying these requests in a cooperative atmosphere without recourse to the court. The request for further discovery may be oral or written and the response shall be in a like manner. Only in the event that either party's request for any discovery or inspection cannot be satisfied without recourse to the court may either party move for additional discovery or inspection.

Any motion for further discovery or inspection shall be filed in compliance with these Local Criminal Rules.

(i) Certification of Compliance With This Rule

All motions for discovery or inspection shall contain a certification that counsel have engaged in a discovery conference and discussed the subject matter of each motion and have been unable to reach agreement of the resolution of the issues. The certification for the motion shall set forth: (1) The statement that the prescribed conference was held; (2) the date of the conference; (3) the names of the parties who attended the conference; and (4) the matters which are in dispute and which require the determination of the court.

The filing of any such motion for further discovery or inspection which does not include the required certification may result in summary denial of the motion or other sanctions in the discretion of the court.

(j) Modification of Time Periods

All time periods set forth in this rule may be modified by written agreement by the defendant's attorney and the attorney for the government or by order of the court.

(k) Other Pretrial Motions

Except for discovery motions covered by this order, all other pretrial motions shall be filed in accordance with the Federal Rules of Criminal Procedure and the Local Rules, W.D. Wash. which are in effect at the time the pretrial motions are filed.

** A copy of the Best Practices for Electronic Discovery in Criminal Cases, adopted March 21, 2013, is available at <http://www.wawd.uscourts.gov>.

CrR 17.

SUBPOENA (OBTAINING THE PRESENCE OF WITNESSES)

(a) Reserved

(b) Defendant Unable to Pay

(1) Payment of Witnesses. The United States Marshal shall pay witness costs and fees incurred pursuant to Fed. R. Crim. P. 17(b), and subsection (2) below.

(2) In-District Services. By presenting a copy of the order of appointment to the U.S. Marshal's Office, a court-appointed attorney may:

(A) Have in-district witnesses served by the United States Marshal; and

(B) Have in-district witnesses paid attendance fees when also providing the documentation required by the U.S. Marshal's Office.

(3) Other Costs. To be allowable, any other costs or fees for defendants unable to pay must be authorized by court order pursuant to Fed. R. Crim. P. 17(b). Service of any out-of-district subpoenas issued pursuant to this subsection is to be done by the U.S. Marshal unless otherwise ordered by the Court. Ex parte applications and orders thereon may be filed and maintained under seal until the witnesses have testified.

(4) Nondisclosure of Witnesses. Except as authorized by the court-appointed attorney or defendant found financially unable to pay, the United States Marshal shall not disclose the

name and address of persons served pursuant to this rule; and returns of service on such witnesses are to be filed and maintained under seal until the witnesses have testified.

(c) through (h) Reserved

(i) Subpoena Alternatives

See MJR 1(b) which authorizes magistrate judges to issue writs of habeas corpus ad testificandum and other orders or warrants to obtain the presence of witnesses.

CrR 17.1.

PRETRIAL AND STATUS CONFERENCES

(a) Policy and Procedure

~~Either~~ Any party may request that the court schedule a pretrial or status conference with the trial judge prior to trial. The purpose of such conference or conferences shall be to address outstanding motions, the status of discovery, scheduling, and such other matters as may be appropriate. The parties are encouraged to utilize status and pretrial conferences in complex criminal cases.

(b) Recordation

All pretrial and status conferences in felony cases shall be recorded ~~unless otherwise ordered by the court.~~

(c) Presence of Defendant

~~A defendant's presence at a pretrial or status conference shall be required unless:~~ A defendant is required to be present at a pretrial or status conference unless the nature of the hearing is such that the defendant's presence is not required under Fed. R. Crim. P. 43.

~~(1) Presence is not required under Fed. R. Crim. P. 43; or~~

~~(2) Defendant waives presence in writing with approval of the court.~~

CrR 17.2.

SETTLEMENT CONFERENCES

REPEALED

~~**(a) Policy**~~

~~It is the policy of the court to facilitate efforts to settle criminal cases, when requested to do so by the parties. Participation in a settlement conference is entirely voluntary, however. A party's declination to participate in the settlement conference process shall in no way be used against that party at any stage of the proceeding.~~

~~**(b) Role of Settlement Judge**~~

~~The role of the settlement judge shall be limited to facilitating a voluntary settlement between parties in criminal cases. The settlement judge shall not preside over any aspect of the case, other than facilitation of a voluntary settlement according to this rule. The settlement judge shall not take~~

~~a guilty plea from nor sentence any defendant in the case. He or she shall not communicate anything regarding the status or substance of the settlement discussions to the trial judge, except to notify the judge of a settlement.~~

~~**(c) Request for Settlement Conference**~~

~~A request for a settlement conference may be initiated by the parties. The trial judge shall determine whether such conference shall be held. Not all defendants in a multidefendant case need join in the request or in the conference.~~

~~**(d) Assignment of Settlement Judge**~~

~~The trial judge shall select a district or magistrate judge to act as settlement judge after considering recommendations of the parties. Any party may withdraw from a settlement conference unilaterally at any time.~~

~~**(e) Conduct of the Conference**~~

~~(1) Availability of Defendant. The settlement judge shall determine a course of procedure for settlement discussions as he or she may determine to be best. The participation by the defendant shall be determined by the settlement judge.~~

~~(2) Authority of Government Attorney to Reach Disposition. The government attorney participating in settlement discussions shall either have authority to agree to a disposition of the case or shall have the ability to obtain such authority from a supervisory or other government attorney upon telephone notice.~~

~~**(f) Proceedings Privileged.**~~

~~Proceedings of settlement conferences shall in all respects be privileged and not reported or recorded. No statement made by any participant at the settlement conference shall be admissible at the trial of any defendant in the case or be considered for any purpose in the sentencing of any defendant in a case. No statement made by a defendant in the course of a settlement conference shall be reported to the counsel for the government.~~

CrR 18.

PLACE OF PROSECUTION AND TRIAL (ASSIGNMENT OF CASES)

Cases involving federal felonies committed in the Western District of Washington's six "Seattle" counties (Island, King, San Juan, Skagit, Snohomish and Whatcom), in the absence of a court order directing otherwise, shall be assigned equally among the active Seattle district judges; and those in the other thirteen "Tacoma" counties (Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, Wahkiakum) shall likewise be assigned equally among the active Tacoma district judges. In cases involving multiple felony charges committed in both "Seattle" and "Tacoma" counties, the U.S. United States Attorney's Office may designate the case as a Seattle or Tacoma case, subject to reassignment upon motion of a defendant, or upon the court's own motion, based upon the convenience of the defendant(s) and the witnesses, and the prompt administration of justice.

The above shall also apply to all proceedings before U.S. district judges in cases involving misdemeanors, including petty offenses and infractions.

Assignments are subject to such changes as may be established by the chief judge for the purposes of equalization of case assignments to all active judges of the district.

The place of trial shall be the courtroom regularly assigned to the judge handling the case, unless otherwise ordered. A party wishing trial at some other place within the district or elsewhere shall move for the same within the time allowed for filing pretrial motions under these rules.

CrR 19.

RESERVED

CrR 20.

TRANSFER FOR PLEA AND SENTENCE

RESERVED

CrR 21.

TRANSFER FOR TRIAL

(a) through (c) Reserved

(d) ~~Motion for Change of Venue~~ Time to File a Motion to Transfer.

A motion ~~for change of venue~~ to transfer a trial under Fed. R. Crim. P. 21 shall be made within the time allowed for filing pretrial motions under ~~these rules~~ CrR 12.

CrR 22.

~~TRANSFERRED~~ RESERVED

CrR 23.

JURY OR NONJURY TRIAL

-RESERVED

CrR 23.1.

TRIAL BRIEF

Each party shall serve and file a trial brief discussing matters of substantive law involved in the trial and important or unusual evidentiary matters at least ~~five~~ ten days prior to the trial date.

CrR 23.2

MOTIONS IN LIMINE

Motions in limine shall be filed at least ten days before trial. Responses to motions in limine shall be filed at least five days before trial. No reply shall be filed unless requested by the court.

CrR 24.

TRIAL JURORS

(a) Examination

Each party shall prepare any suggested questions for the court to propound to the jurors, which shall be served and filed at least five-ten days before the trial date.

(b) through (c) Reserved

(d) Disclosure of Identifying Juror Information

Names of trial jurors shall not be disclosed to the public or media outside open court, except upon order of the court. A request for disclosure of petit juror names to the public or media must be made to the presiding judge. Juror names which may be part of a transcript of court proceedings will be restricted from remote electronic public access. Counsel may not release a jury list or a transcript of voir dire to a defendant except upon order of the court.

CrR 25.

JUDGE'S DISABILITY

RESERVED

CrR 26.

TAKING OF TESTIMONY (AND EXHIBIT HANDLING)

(a) Procedure at Trial

(1) In the trial the United States shall open the cause by stating generally what it expects to prove. Each defendant may either then, or after the United States has closed its evidence in chief, state generally what he or she expects to prove. After all the evidence on each side is in, the United States may argue the cause to the court or jury, as the case may be, and shall, during such argument, state fully all of its points and refer to all of its authorities, or be precluded from a reply. Each defendant may then argue his or her case, and the United States may close.

(2) Unless otherwise permitted by the court, counsel shall conduct the examination of witnesses and argument to the court or jury from the lectern, and counsel shall rise upon making objections or otherwise addressing the court.

(b) Examination of Witnesses

On the trial of an issue of fact, only one attorney for each party shall examine or cross-examine any witness unless otherwise ordered by the court.

(c) Expert Witnesses

Except as otherwise ordered by the court, a party shall not be permitted to call more than one expert witness on any subject.

(d) Attorney as Witness

If an attorney for any party be examined as a witness on behalf of a party he or she represents and give testimony on the merits, he or she shall not argue the merits of the cause, either to the court or jury, except by the consent of the opposite party and the permission of the court.

(e) Custody and Disposition of Exhibits

See ~~Local Civil Rule~~ LCR 79(g).

CrR 26.1.

FOREIGN LAW DETERMINATION

RESERVED

CrR 26.2.

PRODUCING A WITNESS'S STATEMENT

RESERVED

See ~~Local Rules W.D. Wash.~~ CrR 16(f).

CrR 26.3.

MISTRIAL

RESERVED

CrR 27.

PROVING AN OFFICIAL RECORD

-RESERVED

CrR 28.

INTERPRETERS

-RESERVED

CrR 29.

MOTION FOR A JUDGMENT OF ACQUITTAL

RESERVED

CrR 29.1.

CLOSING ARGUMENT

RESERVED

CrR 30.

JURY INSTRUCTIONS

(a) Proposed Instructions Required

Unless otherwise ordered by the court, each party shall file and serve proposed jury instructions.

(b) Format

Each proposed instruction shall be numbered consecutively as “Plaintiff’s (or Government’s or Defendant’s) proposed Instruction No. (fill in number),” and each shall reflect, at the foot of the page, any supporting authority for the instruction.

(c) Filing and Service

Unless otherwise ordered, proposed jury instructions shall be filed and served at least five-ten days before the trial date. Each party has the right to propose additional or modified instructions during the course of the trial. All proposed instructions must be served on all parties, filed in the docket, and attached as a Word or WordPerfect compatible file to an e-mail sent to the e-mail orders address of the assigned judge pursuant to the court’s electronic filing procedures. The assigned judge may impose additional requirements for submitting proposed jury instructions during a pre-trial conference, in the applicable case management order, or by other order. Further clarification may be obtained by reviewing the assigned judge’s web page at <http://wawd.uscourts.gov> and/or by contacting the assigned judge’s in-court deputy.

(d) Reading Instructions Prior to Argument

The court will normally read instructions to the jury after the close of evidence and prior to argument.

(e) Copy of Instructions for Jury Use

A written set of the court’s instructions shall be given to the jury when they retire to deliberate their verdict.

CrR 31.

JURY VERDICT

~~(a) through (d) Reserved~~

(ea) Receiving the Verdict

~~Upon receiving the verdict of the jury, one attorney for each party and t~~The defendant or defendants shall be present to receive the verdict of the jury, except as provided in Fed. R. Crim. P. 43(b). One attorney for each party shall also be present.

(a) through (d) Reserved

(f) Contacting Jurors After Trial (Verdict)

Counsel shall not contact or interview jurors, or cause jurors to be contacted or interviewed after trial without first having been granted leave to do so by the court; ~~except that in cases involving a hung jury as to one or more counts, counsel may contact and/or interview jurors.~~

CrR 32.

SENTENCING AND JUDGMENT

(a) through (c) Reserved

(d) Presentence Report

(1) through (3) Reserved

(4) When Made. If a defendant desires preparation of a presentence report and its review by the court prior to entry of a guilty plea or acceptance of a plea agreement by the court, ~~he~~ the defendant shall obtain from the clerk execute an appropriate request and waiver forms and execute the same.

(5) Confidentiality. Each copy of a probation department presentence report which this court has or does make available to the United States Parole Commission, the Bureau of Prisons, the United States Sentencing Commission or any other agency for any reason whatever constitutes a confidential court document and shall be presumed to remain under the continuing control of the court during the time that such presentence report is in the temporary custody of any of those agencies. Such copy of the presentence report shall be loaned provided to such agency, ~~the Parole Commission, and the Bureau of Prisons~~ only for the purpose of enabling ~~those~~ agencyies to carry out ~~their~~ its official functions, ~~including parole release and supervision, and shall be returned to this court after such use, or earlier upon the request of this court.~~

(6) Final Presentence Report. The final presentence report shall be provided to counsel for the parties at least fourteen days in advance of the sentencing date.

(e) through (h) Reserved

(i) Sentencing

(1) Sentencing Hearing.

(A) Section 5K1.1 Motions. If the government intends to file a § 5K1.1 motion for substantial assistance, the motion must be served on all counsel and filed under seal at least fourteen days prior to sentencing. In such event, the government must also serve and file under seal a written statement of the nature and extent of the defendant's cooperation. Any motion under § 5K1.1 and the supporting written statement must also be provided to the probation officer who has prepared the presentence report. If the government files a § 5K1.1 motion requesting that the court depart from the Guidelines, the defendant may file, in response, his or her version of the defendant's cooperation. Any such response by the defendant must be filed at least ~~six~~ seven days prior to sentencing and may be included in the defendant's sentencing memorandum. A duplicate copy of all pleadings shall also be filed for the sentencing judge.

(B) Continuance of Sentencing Date. The sentencing court may continue the sentencing date on its own motion; or upon a telephonic request of a party or the U.S. Probation Office through the judge's courtroom clerk based on the need for more time. A party or a U.S. Probation Officer seeking a continuance should be in a position to advise the courtroom clerk as to whether or not the request is opposed by any party or by the U.S. Probation Office.

(C) Acceptance of Responsibility. In the event that a defendant wishes to provide a written statement accepting responsibility, the statement should be signed by the defendant. The original should be provided to the U.S. Probation Office with a copy to the United States Attorney at least ~~fourteen~~21 days prior to sentencing.

(D) Sentencing Memorandum. Counsel for the United States or for a defendant shall serve copies of any sentencing memorandum or related documents upon the opposing party and upon the U.S. Probation Office and file such materials at least ~~six days~~seven days prior to sentencing.

(E) Evidentiary Hearing. At least ~~six~~seven days prior to the sentencing hearing, counsel shall inform the probation officer and Clerk's Office whether or not an evidentiary hearing will be requested at the sentencing and, if so, whether witnesses will be called, who they will be, and an estimated length of the hearing.

(j) and (k) Reserved

CrR 32.1.

REVOKING OR MODIFYING PROBATION OR SUPERVISED RELEASE

A magistrate judge shall conduct all probation or supervised release revocation proceedings as to a defendant originally sentenced by a magistrate judge. In revocation proceedings relating to defendants sentenced by a district judge, initial appearances ~~and any preliminary hearings~~ shall be conducted by a magistrate judge, unless otherwise ordered by a district judge. ~~and with the consent of the defendant and to the extent consistent with applicable law, any evidentiary hearing shall be conducted by a magistrate judge, unless otherwise ordered by a district judge. Not more than fourteen days after any such evidentiary hearing, the magistrate judge shall submit to and file with the district court, proposed findings of fact, a copy of which shall be promptly provided to all the parties. Said submission shall include a listing of all the alleged violations that were found to be established by a preponderance of the evidence, and all the alleged violations that were not so established; and may include comments and/or recommendations as to disposition. Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations. The district court judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or resubmit the matter to the magistrate judge with instructions. If, in a hearing before a magistrate judge, the defendant admits the alleged violation or violations, such admission shall constitute a waiver of a revocation hearing pursuant to Fed. R. Crim. P. 32.1(b)(2), and the matter shall be set for disposition before a district judge. If the defendant denies the alleged violation or violations, the matter will be decided by a district judge.~~

CrR 32.2.

CRIMINAL FORFEITURE

RESERVED

CrR 33.

NEW TRIAL

RESERVED

CrR 34.

ARRESTING JUDGMENT

RESERVED

CrR 35.

CORRECTING OR REDUCING A SENTENCE

RESERVED

CrR 36.

CLERICAL ERROR

RESERVED

CrR 37.

RULING ON A MOTION FOR RELIEF THAT IS BARRED BY A PENDING APPEAL

RESERVED

CrR 38.

STAYING A SENTENCE OR A DISABILITY

RESERVED

CrR 39.

RESERVED

CrR 40.

ARREST FOR FAILING TO APPEAR IN ANOTHER DISTRICT OR FOR VIOLATING
CONDITIONS OF RELEASE SET IN ANOTHER DISTRICT

RESERVED

CrR 41.

SEARCH AND SEIZURE

(a) through (ed)(2) Reserved

(ed)(3) ~~Telephonic~~ Search Warrant Applications by Telephone or Other Reliable Electronic Means

~~Telephonic~~ Search warrant applications that are to be presented by telephone or other reliable electronic means may be made to a ~~full-time~~ magistrate judge of this district only under the circumstances described below unless otherwise ordered by a United States district judge of this district. ~~One magistrate judge shall be designated at all times, on a rotating basis, to receive warrant applications.~~ Whenever possible, the magistrate judge shall have voice recording equipment available to record all telephonic applications for search warrants.

(1) An ~~telephonic~~ application for a search warrant ~~shall may~~ be ~~made presented by reliable electronic means or by telephone only~~ with the prior approval of the ~~U.S. United States~~ Attorney, or an ~~a~~ Assistant ~~U.S. United States~~ Attorney, for this district. ~~Whenever possible:~~

(A) ~~The application shall be made by conference call in which both a law enforcement agent and an assistant U.S. Attorney are able to converse with the magistrate judge. When the search warrant application is to be presented by reliable electronic means, prior to calling the magistrate judge, the law enforcement agent shall prepare, and the Assistant United States Attorney shall review, the form of the affidavit and proposed search warrant to be presented.~~

(B) ~~In the rare case when a warrant application is to be made solely by telephone,~~ ~~P~~rior to calling the magistrate judge, the law enforcement agent and the ~~a~~ Assistant ~~U.S. United States~~ Attorney shall have agreed to a form of affidavit which can be read to the magistrate judge verbatim insofar as circumstances permit.

~~(2) The presentation of a search warrant application by telephone or other electronic means must be made by a conference call in which both a law enforcement agent and an Assistant United States Attorney are able to converse with the magistrate judge, unless the magistrate judge excuses this requirement.~~

~~(23) The magistrate judge must decide whether the circumstances are such that it is reasonable to ~~dispose-dispense~~ with a ~~written affidavit before authorizing~~ the personal appearance of the law enforcement officer and permit the warrant application to be presented by reliable electronic means or whether the circumstances constitute the rare event when a telephonic search warrant application may be presented.~~ Among the ~~non-exclusive~~ factors the magistrate judge ~~may-should~~ consider in making this determination are:

(A) Whether the agent can appear before the magistrate judge during regular court hours;

(B) Whether the agent requesting a search warrant is a significant distance from the magistrate judge;

(C) Whether the factual situation is such that it would be unreasonable for a substitute agent, who is located near the magistrate judge, to present a written affidavit in person to the magistrate judge in lieu of proceeding with an application presented by other reliable electronic means or as a telephonic application; and,

(D) The possibility that if a search warrant were not issued pursuant to the telephone application, there would be a significant risk that evidence would be destroyed.

~~(34)~~ If the warrant application is made by telephone, Oon the first day following the issuance of a search warrant based on a telephonic application, the magistrate judge shall have a duplicate ~~tape-recording~~ made of the application, furnish that ~~tape-recording~~ to the U.S. United States Attorney's Office who shall cause a transcription of the ~~tape-recording~~ to be made and returned to the magistrate judge.

~~(45)~~ Deviation from the procedures set forth in this rule may be grounds for the magistrate judge to refuse a warrant application, but shall not necessarily be grounds for a motion to suppress evidence which has been seized.

~~(fe)~~ through (i) Reserved

CrR 42.

CRIMINAL CONTEMPT

RESERVED

CrR 43.

DEFENDANT'S PRESENCE

RESERVED

CrR 44.

RIGHT TO AND APPOINTMENT OF COUNSEL

RESERVED

CrR 44.1.

LEGAL INTERNS

See LCR 83.4.

CrR 45.

COMPUTING AND EXTENDING TIME

RESERVED

~~(a) **Computing Time.** This rule and Fed. R. Crim. P. 45 apply in computing any time period specified in these rules, any court order, or any statute that does not specify a method of computing time. Unless otherwise explicitly specified, in computing time under these Local Criminal Rules,~~

~~(1) count every day, including intervening Saturdays, Sundays, and legal holidays;~~

~~(2) exclude the day of the event that triggers the period; and~~

~~(3) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday.~~

~~(b) through (c) Reserved~~

~~(d) **Motions**~~

~~See Local Rule CrR-12.~~

~~(e) **Additional Time After Service by Mail**~~

~~See Fed. R. Crim. P. 45(e) regarding the effect of service by mail (which can be avoided by using electronic filing procedures). See Rule CrR-49; and see also LCR-5(b) (Local Civil Rules.)~~

For a Time Table of trial events under these local rules, see **Appendix A.**

CrR 46.

RELEASE FROM CUSTODY; SUPERVISING DETENTION

(a) Release Prior to Trial

(1) Pursuant to the Pretrial Services Act of 1982 (18 U.S.C. §§ 3152, 3155), the court authorizes ~~the~~ U.S. Probation and Pretrial Services Agency of the Western District of Washington to perform all pretrial services as provided by the Act.

(2) Upon notification that a defendant has been arrested, pretrial service officers will conduct a prerelease interview as soon as practicable, if counsel for defendant consents. Counsel for defendant shall be allowed to be present at any such interview. The judicial officer setting conditions of release or reviewing conditions previously set shall receive and consider reports submitted by pretrial service officers.

(3) Appearance bonds and related documents shall be on such forms as are approved by the court.

(b) through (j) Reserved

CrR 47.

MOTIONS AND SUPPORTING AFFIDAVITS

RESERVED

See ~~Rule CrR 12, Pleadings and Pretrial Motions.~~

CrR 48.

DISMISSAL

RESERVED

CrR 49.

SERVING AND FILING PAPERS

RESERVED

~~(a) through (d) Reserved~~

~~In addition to Fed. R. Crim. P. 49 and this district's electronic filing procedures, see Local Rules W.D. Wash. (Local Civil Rules):~~

- ~~LCR 5(b) — Service by Electronic Means;~~
- ~~LCR 5(d) — Electronic Filing and Signing;~~
- ~~LCR 5(f) — Proof of Service;~~
- ~~LCR 10 — Form of Pleadings, Motions and Other Filings.~~

CrR 49.1.

PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

(a) Redacted Filings.

Parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the court or used as exhibits in any hearing or at trial, unless otherwise ordered by the court:

- (1) Dates of Birth - redact to the year of birth
- (2) Names of Minor Children - redact to the initials
- (3) Social Security Numbers and Taxpayer-Identification Numbers- redact in their entirety
- (4) Financial Accounting Information - redact to the last four digits
- (5) Passport Numbers and Driver License Numbers - redact in their entirety
- (6) Home Addresses - redact to the city and state of the address.

(b) through (h) Reserved

See CrR 55(b) & (c).

CrR 50.

PROMPT DISPOSITION

RESERVED

~~(a) Reserved~~

~~(b) Plans for Achieving Prompt Disposition of Criminal Cases~~

~~A copy of the Local Plan, effective July 1, 1980, is available on the court's website at <http://www.wawd.uscourts.gov>.~~

CrR 51.

PRESERVING CLAIMED ERROR

RESERVED

CrR 52.

HARMLESS AND PLAIN ERROR

RESERVED

CrR 53.

REGULATION OF CONDUCT

(a) Release of Information by Attorneys

It is the duty of the lawyer for the prosecution or for the defense not to release or authorize the release of information or opinion for dissemination by any means of public communication, in connection with pending or imminent criminal litigation with which he is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

With respect to a pending investigation of any criminal matter, a lawyer participating in the investigation shall refrain from making any extra-judicial statement, for dissemination by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway; to describe the general scope of the investigation; to obtain assistance in the apprehension of a suspect; to warn the public of any dangers; or otherwise to aid in the investigation.

From the time of arrest, issuance of an arrest warrant or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer associated with the prosecution or defense shall not release or authorize the release of any extra-judicial statement, for dissemination by any means of public communication, relating to that matter and concerning:

- (1) The prior criminal record (including arrests, indictment, or other charges of crime), or the character or reputation of the accused, except that the lawyer may make a factual

statement of the accused's name, age, residence, occupation and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;

(2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal of the accused to make any statement;

(3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense;

(6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer during this period in the proper discharge of his official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons); the identity of the investigating and arresting officer or agency and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

During the trial of any criminal matter, including the period of selection of the jury, no lawyer associated with the prosecution or defense shall give or authorize any extra-judicial statement or interview, relating to the trial or the parties or issues in the trial, for dissemination by any means of public communication, except that the lawyer may quote from or refer without comment to public records of the court in the case.

After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer associated with the prosecution or defense shall refrain from making or authorizing any extra-judicial statement for dissemination by any means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

(b) Release of Information by Courthouse Personnel

All courthouse personnel, including among others, court clerks, court reporters, law clerks, secretaries, probation officers, the U.S. Marshal, and deputy marshals, are prohibited from disclosing to any person, without authorization by the court, information relating to a pending criminal case that is not part of the public records of the court. All such personnel are specifically prohibited from divulging information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

(c) Conduct of Proceedings in a Widely Publicized or Sensational Case

In a widely publicized or sensational case likely to receive massive publicity, the court, on its own motion, or on motion of either party, may issue a special order governing such matters as extra-judicial statements by lawyers, parties, witnesses, jurors and court officials likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order. Such special order may be addressed to some or all of the following subjects:

- (1) A proscription of extra-judicial statements by participants in the trial, including lawyers, parties, witnesses, jurors, and court officials, which might divulge prejudicial matter not of public record in the case;
- (2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial so as to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers, and others, both in entering and leaving the courtroom and courthouse, and during recesses in the trial;
- (3) Specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations;
- (4) Sequestration of the jury on motion of either party or the court, without disclosure of the identity of the movant;
- (5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by statute, and that no photograph be taken or sketch be made of any juror within the environs of the court;
- (6) Insulation of witnesses from news interviews during the trial period;
- (7) Specific provision regarding the seating of spectators and representatives of news media, including:
 - (A) An order that no member of the public or news media representatives be at any time permitted within the bar railing;
 - (B) The allocation of seats to news media representatives in cases where there are an excess of requests, taking into account any pooling arrangement that may have been agreed to among the newsmen.

The above list of subjects is not intended to be exhaustive, but is merely illustrative of subject matters which might appropriately be dealt with in such an order.

(d) Pretrial Publicity

Nothing in this rule or any other criminal rule of this court is intended to restrict the media's right to full pretrial coverage of news pursuant to the First Amendment to the United States Constitution. To assure this right, notice of presentation to the court of any motion for an order affecting the news media's right to full pretrial coverage of pending or impending criminal proceedings must be served by movant upon designated representatives of the principal public media at least twenty-four hours prior to presentation. The designated representative or representatives shall have the right to be heard by the court, in open court, at the time the motion is presented.

CrR 54.

TRANSFERRED/RESERVED

CrR 55.

RECORDS

(a) Files - Custody and Withdrawal

See ~~Local Civil Rule LCR 79(f), Files — Custody and Withdrawal.~~

(b) Matters To Be Filed Under Seal

If the following matters or items are filed, they shall be filed under seal, with access provided only to court staff:

- (1) grand jury matters;
- (2) pretrial services reports;
- (3) petitions for summons or warrant, until the defendant appears on the petition;
- (4) financial affidavits in support of motions for appointment of counsel;
- (5) materials relating to motions for leave to withdraw as counsel;
- (6) psychological or psychiatric reports;
- (7) lists of prospective or seated jurors;
- (8) transcripts of voir dire;
- (9) materials relating to § 5K1.1 motions;
- (10) release status reports;
- (11) final presentence reports;
- (12) the judge's statement of reasons for the sentence imposed; and

(13) documents received from a defendant who is represented by counsel, pending review by and specific order of the court.

(c) Motions to Seal

If a party wishes to file under seal materials other than those enumerated in CrR 55(b), a motion or stipulated motion to seal must be made or filed before or at the same time the party files the sealed materials. The party filing the sealed materials shall comply with the requirements of LCR 5(g) unless otherwise ordered.

CrR 56.

WHEN COURT IS OPEN

(a) Reserved

(b) Hours and Closures.

The court's hours and holiday closures are set forth on the court's website at <http://www.wawd.uscourts.gov>.

(c) Reserved

CrR 57.

DISTRICT COURT RULES

RESERVED

~~These local rules are intended to comply with Fed. R. Crim. P. 57.~~

CrR 58.

PETTY OFFENSES AND OTHER MISDEMEANORS

(a) Reserved

(b) Pretrial Procedure

All informations, indictments, citations, or other instruments on file with the clerk which charge only misdemeanors (including such cases transferred to this district under ~~Rule Fed. R. Crim. P. 20- of the Fed. R. Crim. P.~~) shall upon filing with the clerk be designated for proceeding before a magistrate judge. If the defendant does not consent to trial and/or disposition before a magistrate judge, and if such consent is required, the clerk shall reassign the case for trial and/or disposition before a district court judge.

(c) Reserved

(d) Securing the Defendant's Appearance; Payment in Lieu of Appearance.

(1) Forfeiture of Collateral. Payment of sums fixed in this court's Schedule of Forfeitable Bail may be accepted in lieu of appearance and as authorizing termination of the proceedings.

Where such proceedings involve a charge of moving traffic violations, the Clerk shall transmit a copy of the charge to the appropriate state's driver licensing authority, and identify it as a record of conviction. A copy of the current "Schedule of Forfeitable Bail and Mandatory Appearances for Misdemeanors and Infractions in the Western District of Washington" is available at the Clerk's Office.

(2) through (3) Reserved

(e) through (f) Reserved

(g) Appeal

(1) Reserved

(2) Decision, Order, Judgment or Sentence by a Magistrate Judge.

(A) through (B) Reserved

(C) Record — Transcript or Recording of Proceeding Before Magistrate Judge. Where the proceedings before a magistrate judge were tape recorded, that recording will be available for review by the district judge, without further action by the parties. Where either party wishes to have a transcript made from that recording, or where the proceedings were attended by a court reporter, that party shall be responsible for arranging for and paying the costs of the preparation of the transcript. A party who qualifies may obtain authorization for the transcript pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A. Counsel for appellant shall arrange to have such transcript filed within twenty-one days after the Notice of Appeal is filed; but upon motion made within such time, the district judge may extend the deadlines for transcript and briefs.

(D) Reserved

(E) Briefs. Appellant shall file and serve ~~his-an opening~~ brief within twenty-eight days after filing the Notice of Appeal. Appellee shall file and serve ~~his-a response~~ brief in response within fourteen days thereafter. Appellant may file and serve a reply brief within seven days thereafter. If appellant is ~~representing-himself-pro se, he-~~ appellant may file a short statement of the issues for the court to consider on appeal, instead of a formal brief.

(F) Oral Argument. The district judge shall have discretion whether to schedule oral argument on an appeal. Any party may request oral argument not later than the deadline for the filing of his initial brief.

(3) Reserved

CrR 59.

MATTERS BEFORE A MAGISTRATE JUDGE

RESERVED

CrR 60.

VICTIM'S RIGHTS

RESERVED

CrR 61.

TITLE

RESERVED

APPENDIX A

LOCAL CRIMINAL RULES, WESTERN DISTRICT OF WASHINGTON

TIMETABLE — TRIAL AND SENTENCING EVENTS

EVENT	TIME, DATES AND LIMITS	RULE
1. Trial Date	Set at arraignment - Speedy Trial Act	CrR 10
2. Discovery Conference	To be held within 14 days after request for discovery, usually within 2 weeks after arraignment	CrR 16(a)
3. Motion Filing Date	Normally set 3 weeks from original arraignment date unless otherwise ordered by court	CrR 12(c)(4)
4. Motion Noting Date (for court consideration)	Second Friday after filing of motion	CrR 12(c)(7 6)
5. Motion for Shortening Time for Motions to be Heard	Abolished	CrR 12(c)(9 8) LCR 6(e b)
6. Motion Response Date	7 days after filing of motion	CrR 12(c)(3 2)
7. Motion for Reconsideration and Noting Date	No specified time limit on filing for reconsideration – note on first Friday after <u>date of filing</u>	CrR 12(c)(4 10)
8. Pretrial and Status Conferences	Upon request of a party and order of the court	CrR 17.1(a)
9. Settlement Conference	Upon request by both sides	CrR 17.2(e)

EVENT	TIME, DATES AND LIMITS	RULE
	and order of the court	
409. Exchange of Exhibit Lists	9-14 days before trial	CrR 16(g)
<u>10.</u> <u>Motions in Limine</u>	<u>10 days before trial</u>	<u>CrR 23.2</u>
11. Trial Brief	5-10 days before trial	CrR 23.1
12. Voir Dire	5-10 days before trial	CrR 24
13. Instructions	5-10 days before trial and during trial	CrR 30(c)
14. Witness Statements	After witness has testified at trial or earlier by agreement of parties	Fed. R. Cr. P. 26.2 and CrR 16(f)
15. Presentence Reports	Furnished by Probation 35 days before sentencing; objections within 14 days of receipt (submit to Probation); <u>final presentence report to counsel 14 days before sentencing</u> ; submitted to court 7 days before sentencing	Fed. R. Cr. P. 32(be), (f), & (g) and CrR 32(d)(6)
16. Sentencing § 5K1.1 Motions	14 days before sentencing	CrR 32(ei)(1)(A)
5K1.1 Motion Response	6-7 days before sentencing	CrR 32(ei)(1)(A)
Acceptance of Responsibility Statement	14-21 days before sentencing (submit to Probation)	CrR 32(ei)(1)(C)
Sentencing Memorandum	6-7 days before sentencing	CrR 32(ei)(1)(D)