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| **CrR 1**  **SCOPE; DEFINITIONS** | |
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| 1. **Scope**   These local rules supplement the Federal Rules of Criminal Procedure (Fed. R. Crim. P.) as to local procedures; they are effective July 1, 2017. 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 contain many provisions relating to criminal matters, and the following local civil rules apply to criminal matters:  LCR 1(c) Definitions  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)(2) Sealing Requirements  LCR 5(g)(6) Withdrawing Unsealed Document  LCR 6 Computing and Extending Time  LCR 7(i) Telephonic Motions  LCR 10 Form of Pleadings, Motions and Other Filings LCR 11 Signing Filings; Sanctions  LCR 47(a) Examination of Jurors 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 | 1. **Scope**   These local rules supplement the Federal Rules of Criminal Procedure (Fed. R. Crim. P.) as to local procedures; they are effective July 1, 2017. 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 contain many provisions relating to criminal matters, and the following local civil rules apply to criminal matters:  LCR 1(c) Definitions  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)(2) Sealing Requirements  LCR 5(g)(6) Withdrawing Unsealed Document  LCR 6 Computing and Extending Time  LCR 10 Form of Pleadings, Motions and Other Filings LCR 11 Signing Filings; Sanctions  LCR 47(a) Examination of Jurors 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  Petitions for Habeas Corpus Under Title 28 U.S.C. 2241 or 2254 and Motions Pursuant to Title 28 U.S.C. § 2255 are addressed in LCR 100. |

***DRAFTING COMMENTS:***

This CrR has been updated to reflect the current list of Local Civil Rules that apply to criminal matters. The reference to LCR 7(i) was deleted because it has been incorporated into the criminal rules as CrR 12(b)(9). The committee also proposes adding a note regarding the civil rule applicable to habeas petitions pursuant to 28 U.S.C. §§ 2241 and 2254, and motions pursuant to 28 U.S.C. § 2255 because less experienced practitioners may only refer to the criminal rules and therefore fail to notice a specific civil rule applies to these proceedings. This clarification was added as a result of an Amendment to Rule 5 of the Federal Rules Governing Section 2254 Cases which requires that petitioner be allowed to file a reply to respondent’s answer. Our rule, LCR 100, already permits the petitioner’s reply.

| **CrR 12**  **PLEADINGS AND PRETRIAL MOTIONS** | |
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| 1. **Reserved** 2. **Motion Procedure** 3. 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 (6) 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. 4. 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 (1) 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. 5. 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. 6. 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. 7. Length of Briefs. Supporting and opposition briefs filed in connection with any pretrial motion shall not exceed twelve pages without prior approval of the court. Any reply brief shall not exceed six pages without prior approval of the court. See LCR 10. 8. 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.]   1. Telephonic Motions. Parties may request a telephonic hearing on a motion, following the procedures established in LCR 7(i). Any such hearing shall be on the record. 2. Emergency Motions. Motions to shorten time are abolished. If immediate action is necessary, parties shall use the procedures outlined in LCR 7(i). If 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. 3. 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. Reconsideration of Motions.    * 1. 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.      2. Procedure. A motion for reconsideration shall be plainly labeled as such. The motion shall be noted for consideration on 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.      3. 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. 5. **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, 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. through (h) Reserved | 1. **Reserved** 2. **Motion Procedure** 3. 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 (6) 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. 4. 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 (1) 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. 5. 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. 6. 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. 7. Length of Briefs. Supporting and opposition briefs filed in connection with any pretrial motion shall not exceed twelve pages without prior approval of the court. Any reply brief shall not exceed six pages without prior approval of the court. See LCR 10. 8. 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.]   1. Meet and Confer Requirement*.* A motion in limine pursuant to CrR 23.2 and any motion for an order compelling disclosure or discovery must include a certification, in the motion or in a declaration or affidavit, that the movant has in good faith conferred or attempted to confer with opposing counsel in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. If the movant fails to include such a certification, the court may deny the motion without addressing the merits of the dispute. A good faith effort to confer with opposing counsel requires a face-to-face meeting or a telephone conference. If the court finds that counsel for any party willfully refused to confer, failed to confer in good faith, or failed to respond on a timely basis to a request to confer, the court may take appropriate action. 2. Same Day Motions*.* Stipulated or joint motions, motions to file over-length motions or briefs, motions for reconsideration, ex parte motions, and motions to recuse shall be noted for consideration for the day they are filed. 3. Telephonic Motions. Upon the request of any party, and with the court’s approval, a motion may be heard by telephone without the filing of motion papers, unless requested by the court. No request for a telephonic motion shall be considered unless all counsel participate in the call making the request, or unless it is represented by counsel making the call that reasonable efforts have been made to include all counsel in the call, and that such efforts were unavailing. Whether such telephonic motions will be considered, what procedural requirements will be imposed, and the type of relief granted are within the sole discretion of the court. Any such hearing shall be on the record. 4. Motions for Relief from a Deadline. A motion for relief from a deadline should, whenever possible, be filed sufficiently in advance of the deadline to allow the court to rule on the motion prior to the deadline. Parties should not assume that the motion will be granted and must comply with the existing deadline unless the court orders otherwise.   If a true, unforeseen emergency exists that prevents a party from meeting a deadline, and the emergency arose too late to file a motion for relief from the deadline, the party should contact the adverse party, meet and confer regarding an extension, and file a stipulation and proposed order with the court. Alternatively, the parties may use the procedure for telephonic motions outlined above. It is expected that if a true emergency exists, the parties will stipulate to an extension.   1. Emergency Motions. Motions to shorten time are abolished. If immediate action is necessary, parties shall use the procedures outlined above. If 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. 2. 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. 3. Reconsideration of Motions. 4. 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. 5. Procedure. A motion for reconsideration shall be plainly labeled as such. The motion shall be noted for consideration on 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. 6. 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. 7. **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, 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. through (h) Reserved | |

***DRAFTING COMMENTS:***

The committee has proposed several changes to Rule CrR 12. Proposed subsection (b)(7) creates a requirement that any party filing a motion *in limine* or a motion to compel disclosure or discovery certify in the motion or in a declaration or affidavit that a good faith effort was made to resolve the dispute with opposing counsel before filing the motion. This is the same process set forth in the civil rules. The purpose of this rules change is to limit such motions to those disputes that cannot be resolved between the parties.

Proposed subsection (b)(8) clarifies the types of motions that may be noted as same day motions. Prior to subsection (b)(8), the local criminal rules did not address same day motions.

Proposed subsection (b)(9) addresses the procedure for telephonic motions in criminal cases to avoid the confusing cross-reference to the civil rules.

The committee is proposing subsection (b)(10) to address motions for extensions of time. It clarifies that such motions should be filed well in advance of a deadline absent some emergency need for a last-minute extension. It also makes clear that a party should not assume an extension will be granted. It also advises the parties that if there is a true emergency, the parties should be working together to propose a solution.

| **CrR 16**  **DISCOVERY AND INSPECTION** | |
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| 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.   1. **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 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. Proposed Topics for Discussion.   During the conference, or as soon as practicable thereafter considering the size and complexity of the case, the parties should consider ways in which to ensure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.  Topics for discussion may include:   * + 1. Whether there is likely to be additional discovery material to be provided and if so:        1. The expected timing for the production of that discovery;        2. The expected timing for the production of reciprocal discovery;        3. Whether there are issues to be resolved regarding the production of electronically stored information;     2. Whether there are likely to be affirmative defenses and the timing of those disclosures;   (C) Whether the case can be resolved through plea negotiations and the appropriate timing for making and responding to plea offers;   1. Whether consideration should be given to proposing a scheduling order to the Court to reflect discovery agreements and to propose dates for various filings different from those already required by the rules, including the following:    * + 1. The filing and responding to pretrial motions (see CrR12(c)), and motions in limine (see CrR 23.2);        2. The exchange of exhibit lists and witness lists; and        3. The timing of expert disclosure; 2. Whether the parties have a different view of the length of trial than originally estimated by the United States; 3. Whether the trial date set at arraignment is realistic, and if not what a realistic date might be; 4. Whether it would be beneficial to have one or more status conferences in the case, and the schedule for such conferences (see CrR 17.1(a)).    1. Discovery from the Government.   At or before the discovery conference the attorney for the government shall comply with the government’s obligations under Fed. R. Crim. P. 16(a) including, but not limited to, the following:   * + 1. 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;     2. 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;     3. 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;     4. 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 18 U.S.C. § 2510, et seq., during the course of the investigation of the case;     5. 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 its progeny; and     6. 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 18 U.S.C. § 3500 and Fed. R. Crim. P. 26.2, until such time as required under those provisions.   * 1. Discovery From Defendant.   At or before the discovery conference, in addition to the requirements in Fed. R. Crim. P. 16(b), the defendant’s attorney shall advise the attorney for the government whether or not the defendant will provide the names and address of the witnesses whom the defense intends to call in its case-in-chief at trial.   * 1. Substantial Expenses Relating to Discovery.      1. 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.      2. 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.      3. 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).  1. **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.   1. **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).  1. **Exchange of Exhibit Lists**   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.   1. **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 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.   1. **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.   1. **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.   1. **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.  \*\* See Electronic Discovery and Technology Requirements for Criminal Cases, adopted January 2017, available at [http:www.wawd.uscourts.gov.](http://www.wawd.uscourts.gov/) | 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.   1. **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, at the Fed. R. Crim. P. 16.1(a) discovery conference no later than 14 days after the arraignment, the attorney for the defendant and the attorney for the government shall, if reasonably feasible, comply with the obligations imposed by subsections 16(a)(2) and 16(a)(3) of this Rule and try to agree on a timetable and procedures for pretrial disclosure to the opposing party of any additional information 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. Proposed Topics for Discussion.   During the conference, or as soon as practicable thereafter considering the size and complexity of the case, the parties should consider ways in which to ensure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.  If discovery includes electronically stored information, the parties shall discuss the issues listed in the ESI Discovery Production Checklist set out in the Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases (2012) (National ESI Protocols), found in Appendix B, including subsequent updates.  Other topics for discussion may include:   * + 1. Whether there is likely to be additional discovery material to be provided and if so:        1. The expected timing for the production of that discovery;        2. The expected timing for the production of reciprocal discovery;     2. Whether there are likely to be affirmative defenses and the timing of those disclosures;   (C) Whether the case can be resolved through plea negotiations and the appropriate timing for making and responding to plea offers;   1. Whether consideration should be given to proposing a scheduling order to the Court to reflect discovery agreements and to propose dates for various filings different from those already required by the rules, including the following:    * + 1. The filing and responding to pretrial motions (see CrR12(c)), and motions in limine (see CrR 23.2);        2. The early exchange of preliminary, non-binding exhibit lists and witness lists (*see* CrR 23.3) in order to facilitate the efficient review of discovery and preparation for trial;        3. The exchange of final exhibit lists and witness lists; and        4. The timing of expert disclosure; 2. Whether the parties have a different view of the length of trial than originally estimated by the United States; 3. Whether the trial date set at arraignment is realistic and, if not, what a realistic date might be; 4. Whether it would be beneficial to have one or more status conferences in the case, and the schedule for such conferences (see CrR 17.1(a)).    1. Discovery from the Government.   Consistent with any scheduling order entered by the Court, any timetable agreed to by the parties, or if reasonably feasible at or before the discovery conference, the attorney for the government shall comply with its obligation for disclosure of the information and material required by Fed. R. Crim. P. 16(a) and all exculpatory information, including, but not limited to, the following:   * + 1. 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;     2. 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;     3. 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;     4. 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 18 U.S.C. § 2510, et seq., during the course of the investigation of the case; and     5. Advise the attorney for the defendant whether the government will provide addresses for the witnesses it intends to call in its case-in-chief at trial. If no time to provide a witness list is agreed between the parties or the court has not adopted a specific scheduling order then the parties shall comply with CrR 23.3.   The attorney for the government is not required, however, to produce any statements of witnesses which fall within the purview of 18 U.S.C. § 3500 and Fed. R. Crim. P. 26.2, until such time as required under those provisions.   * 1. Discovery From Defendant.   If discovery has been requested from the United States, consistent with any scheduling order entered by the Court, any timetable agreed to by the parties, or if reasonably feasible at the discovery conference, the defense shall comply with the requirements in Fed. R. Crim. P. 16(b). In addition, the defendant’s attorney shall advise the attorney for the government if it will provide addresses for the witnesses it intends to call in its case-in-chief at trial. If no time to provide a witness list is agreed between the parties or the Court has not adopted a specific scheduling order, then the parties shall comply with CrR 23.3.   * 1. Substantial Expenses Relating to Discovery.      1. 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.      2. 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.      3. 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).  1. **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.   1. **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).  1. **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 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.   1. **Certification of Compliance**   All motions for disclosure or discovery shall contain a certification that the movant has complied with CrR 12(b)(7). \*\* See Electronic Discovery and Technology Requirements for Criminal Cases, adopted January 2017, available at [http:www.wawd.uscourts.gov.](http://www.wawd.uscourts.gov/) |

***DRAFTING COMMENTS:***

The Committee’s proposed changes incorporates the language from the new Federal Rule of Criminal Procedure 16.1 into Local Rule CrR 16(a). New Rule 16.1 has two sections: Section 16.1(a)requires the government and defense attorney to confer and try to agree on Rule 16 pretrial disclosure timetables and procedures no later than fourteen days after the arraignment. Section 16.1(b)allows either party individually, or both parties in agreement, to request that the court modify the disclosure schedule or create a schedule if none exists. Below is Rule 16.1 currently before Congress that is set to take effect on December 1, 2019:

**Rule 16.1. Pretrial Discovery Conference; Request for Court Action**

**(a) Discovery Conference.** No later than 14 days after the arraignment, the attorney for the government and the defendant’s attorney must confer and try to agree on a timetable and procedures for pretrial disclosure under Rule 16.

**(b) Request for Court Action.** After the discovery conference, one or both parties may ask the court to determine or modify the time, place, manner, or other aspects of disclosure to facilitate preparation for trial.

Besides making our local rule consistent with Rule 16.1, we propose additional language under CrR 16(a)(1) referencing the ESI discovery production checklist from the *Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases (2012)* as a guide for practitioners to use during the “meet and confer” conference. The checklist is developed by both the Department of Justice (DOJ) and Defender Services and is being promoted nationally. This same ESI protocol, with the checklist, has been adopted by this jurisdiction as a Best Practices Policy. A copy of the checklist will be an Appendix to CrR 16. The *Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases (2012)* drew on our own “2005 Best Practices” policies.

The new proposed Rule 16.1 includes a comment referencing the *Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases (2012)*:

Because technology changes rapidly, the rule does not attempt to state specific requirements for the manner or timing of disclosure in cases involving ESI. However, counsel should be familiar with best practices. For example, the Department of Justice, the Administrative Office of the U.S. Courts, and the Joint Working Group on Electronic Technology in the Criminal Justice System (JETWG) have published “Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases” (2012).

It is the first time the protocol has been associated with a court rule or statute. We would be the first jurisdiction to incorporate a part of the protocol (the checklist) into an appendix to our local rule.

The checklist will require counsel to become more familiar with technology such as file types and formats, which is consistent with the national CJA Model Plan and Washington’s Rules of Professional Conduct.

The proposed changes to CrR 16(a) encourages meaningful dialog between the parties. It also, where applicable, encourages developing a case schedule specific for a case after a meet and confer. The rule also suggests that the parties discuss the early exchange of preliminary, nonbinding exhibit and witness lists. The due dates for exchanging exhibit lists and witness lists are contained in a separate rule. For cases involving a large number of witnesses, the early disclosure will help defense counsel more efficiently locate materials within large volumes of discovery and will help avoid unreasonable trial delay. The early disclosure could also move the focus away from trial and towards an early resolution.

The change to CrR 16(b)(1) that is proposed will make this portion of the rule consistent with the changes to CrR 16(a). The change provides that discovery must be produced, if reasonably feasible, at the discovery conference to be held within 14 days or arraignment or consistent with the timetable agreed to by the parties, or the scheduling order of the Court. A similar change was made to CrR 16(a)(3) regarding the defense discovery obligation.

In addition, proposed Rule CrR 16(a)(2) now includes reference to the government’s obligation to produce all exculpatory information. A minority of committee members sought to define exculpatory information, to clarify that exculpatory information need not be admissible to require disclosure, and to clarify that any doubts should be resolved in favor of disclosure. Such a definition and clarifications were added to the local rules in the Districts of Oregon, Montana, and Massachusetts. A minority of committee members also wanted to articulate that the appellate materiality standard does not apply to pretrial discovery, as explained by the Ninth Circuit in *United States v. Price,* 566 F.3d 900, 913 n.14 (9th Cir. 2009); *see also United States v. Sudikoff*, 36 F. Supp. 2d 1196 (C.D. Cal. 1999)*.* While not necessarily disagreeing with these standards, the majority of committee members concluded that the government’s obligation to produce exculpatory material needs no further explanation in the local rules. By placing the language in CrR 16(a)(2), the rule also reflects the fact that, unlike the obligation under Fed. R. Crim. P. 16, the obligation to produce exculpatory material does not depend on a demand from the defense counsel and applies to all exculpatory information. As such, the language in CrR 16(a)(2)(E) has now been deleted.

The committee also made a change to what is now CrR 16(a)(2)(E), and to CrR16(a)(3) to reference the fact that there is now a proposed rule CrR 23.3 regarding the production of witness lists.

The committee is proposing to delete CrR 16(d) in favor of creating a separate rule to address the exchange of exhibit lists. That proposed rule is CrR 23.2.

The committee is proposing to delete the substance of CrR 16(e) (“Certification of Compliance with this Rule”) in favor of a reference to the meet and confer requirements found at CrR 12(b)(7).

The committee is proposing to delete CrR 16(f) entirely as it misstates the practice in this jurisdiction that counsel can change time periods set forth in this rule without a court order. The only time period in this rule is the 14 days from arraignment to hold the discovery conference. As this time period is set by the Federal Rules, it cannot be changed by agreement between the parties. Fed. R. Crim. P. 16.1(a).

| **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 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. | 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 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 Tacoma district judges. In cases involving multiple felony charges committed in both “Seattle” and “Tacoma” counties, the 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 equitable assignment of cases to all 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 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 ten days prior to the trial date. | The government shall serve and file a trial brief discussing matters of substantive law involved in the trial and important or unusual evidentiary matters at least 14 days prior to the trial date. The defense shall file and serve a trial brief ten days before trial. Motions contained in the trial brief will not be considered by the Court. If the government or the defense produces discovery after the date on which a trial brief is to be filed, the opposing party may file a supplemental trial brief after the deadline provided by this rule provided that the supplemental trial brief is directed only at this subsequently-produced information. |

***DRAFTING COMMENTS:***

To sharpen the issues for trial, and to limit last minute briefing, the committee is proposing this amendment to stagger the due dates for the filing of trial briefs. It would require the government to file its brief 4 days earlier than the current rule and require the defense to file its brief 4 days after the government’s trial brief. The proposed rule makes clear that supplemental briefing should only be filed to address any discovery that is produced after the party has filed its trial brief.

|  |  |
| --- | --- |
| **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. | The parties must meet and confer prior to the filing of a motion in limine pursuant to CrR 12(b)(7). Unless otherwise ordered by the court, 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. If the government or the defense produces discovery after the date on which motions in limine are to be filed, the opposing party may file a motion in limine after the deadline provided by this rule provided that the motion is directed only at this subsequently-produced information. |

***DRAFTING COMMENTS:***

The proposed changes to Rule CrR 23.2 are also directed at sharpening the issues for trial. Requiring parties to meet and confer prior to the filing of a motion *in limine* will ensure that such motions will only be directed at issues that the parties cannot resolve. The proposed rule maintains the current timing for the filing of such motions and limits the filing of last minute motions to issues arising as a result of discovery materials received after the deadline contained in this rule.

| **CrR 23.3**  **EXHIBIT LISTS AND WITNESS LISTS** | |
| --- | --- |
| Replace 16(d) with this new rule. | 1. **Exhibit Lists**   Unless a specific scheduling order has been adopted for the case, the government shall file its list of case-in-chief exhibits 14 days in advance of the trial date. The defense shall file its list of case-in-chief exhibits no later than ten days in advance of trial. The list of exhibits filed by the defense should not duplicate any exhibit otherwise listed on the government’s list of exhibits, upon which the defense can rely.   1. **Witness Lists**   Unless a case-specific scheduling order or protective order entered by the court provides otherwise, in the absence of witness safety concerns, the government must provide a list of proposed case-in-chief witnesses to the court and the defense no later than 14 days prior to trial, and the defense must provide its list of proposed case-in-chief witnesses to the court and the government no later than 10 days prior to trial.  Witness lists need not be filed until directed by the court. Where reasonable and articulable witness safety concerns are present, the government may redact the names of witnesses for whom such concerns are presented, while still identifying the number of witnesses, both named and redacted on its list. |

***DRAFTING COMMENTS:***

The committee proposes this new rule to replace CrR 16(d). Regarding exhibit lists, the committee is proposing a staggered schedule for the productions of such lists, with the government’s proposed exhibit list due 14 days prior to trial and the defense list due 4 days thereafter. By staggering production, the committee is seeking to avoid having duplication of exhibits with two numbers.

The proposed rule also addresses witness lists. There currently is no rule that requires disclosure of witness lists prior to the commencement of trial. A majority of members on the committee sought earlier production of the witness lists by both the government and the defense. The government’s representatives on the committee believe that, in the absence of a court scheduling order or agreement of the parties, consistent with the current system, the government should not be required to share its witness list in advance of trial. The principal reason behind the government’s position is witness safety. The defense bar members note that these concerns are addressed by the State of Washington, whose rules require disclosure of names and addresses by the time of the omnibus hearing. The defense bar members also believe that the government should be required to disclose its witness list more than 14 days before trial. As a compromise, the committee is proposing a rule that would require the government to file its witness list 14 days in advance of trial, and the defense to file a reciprocal list 10 days in advance of trial, unless a court order directs otherwise. To accommodate witness safety concerns, the rule permits the government to withhold names of those witnesses for whom there are safety concerns until the morning of trial. The defense representatives believe that they will not be able to adequately prepare if they are given names of previously redacted witnesses only the morning of trial.

The proposed rule requires each party to include on its witness list only witnesses it intends to present in its case-in-chief witnesses. The government’s representatives believe that the rule should not be limited to case-in-chief witnesses, but should apply to all witnesses that a party reasonably expects to call. The government’s representatives believe that limiting the rule to case-in-chief witnesses undermines the purpose for requiring early reciprocal disclosure of witnesses, and opens the door for omitting witnesses from the list by classifying the witnesses as other than case-in-chief witnesses. A rule that required parties to list all witnesses they reasonably expect to call would minimize this danger. Such a rule could incorporate a specific provision allowing a party to call witnesses not listed, where there was no reasonable basis for the party to have anticipated calling those witnesses prior to the commencement of the trial.

| **CrR 30**  **JURY INSTRUCTIONS** | |
| --- | --- |
| 1. **Proposed Instructions Required**   Unless otherwise ordered by the court, each party shall file and serve proposed jury instructions.   1. **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.   1. **Filing and Service**   Unless otherwise ordered, proposed jury instructions shall be filed and served at least 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](http://wawd.uscourts.gov/) and/or by contacting the assigned judge's in-court deputy.   1. **Reading Instructions Prior to Argument**   The court will normally read instructions to the jury after the close of evidence and prior to argument.   1. **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. | 1. **Proposed Instructions Required**   ~~Unless otherwise ordered by the court, each party shall file and serve proposed jury instructions.~~  Unless a specific scheduling order has been adopted for the case, the government shall file its proposed jury instructions 14 days in advance of the trial date. The defense may file any proposed alternative or supplemental instructions no later than ten days in advance of trial. The government may file any supplemental instructions based on the defense filing no later than five days in advance of trial.  Each party has the right to propose additional or modified instructions during the course of the trial.   1. **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.   1. **Filing and Service**   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](http://wawd.uscourts.gov/) and/or by contacting the assigned judge's in-court deputy.   1. **Reading Instructions Prior to Argument**   The court will normally read instructions to the jury after the close of evidence and prior to argument.   1. **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. |

***DRAFTING COMMENTS:***

This rule change has been proposed to avoid the need for both the United States and the defense to file a complete set of proposed instructions and should permit greater efficiency by permitting focus on the areas of disagreement. As proposed, the new rule would require the United States to file its proposed jury instructions 14 days in advance of trial. No later than ten days in advance of trial, the defense would be required to file any alternative or supplemental instructions. The United States would then file any supplemental or alternative instructions based on the defense filing no later than five days in advance of trial.

| **CrR 32(d)(6)**  **SENTENCING AND JUDGMENT** | |
| --- | --- |
|  | (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. |

***DRAFTING COMMENTS:***

Corrections to Local Criminal Rules – Scrivener’s Errors

The error noted above was an update approved in 2014 to the Local Criminal Rules. When the Rules were updated again in 2016, the language above was left out in error.

| **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 shall be conducted by a magistrate judge, unless otherwise ordered by a district judge. 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. | 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 shall be conducted by a magistrate judge, unless otherwise ordered by a district judge. In the case of an initial appearance scheduled to take place pursuant to a summons, defense counsel shall, if possible, consult with the defendant in advance of the hearing and shall attempt to determine whether the defendant intends to admit the violations. If defense counsel determines that the defendant will admit the violations, defense counsel shall notify the magistrate judge. The magistrate judge may then strike the scheduled initial appearance and schedule a single hearing in front of the district judge that shall also serve as both the initial appearance and the disposition hearing. 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. |

***DRAFTING COMMENTS:***

The proposed rule change is designed to eliminate the need for a separate initial appearance in supervised release cases in which a defendant, who is summonsed rather than arrested, intends to admit the violations. In such cases, the proposed change allows defense counsel to notify the Court that the defendant will admit the violations, and allows the Court to strike the initial appearance and to schedule a single hearing – before the district judge – to serve as both the initial appearance and the disposition hearing. The proposed rule change will promote judicial efficiency by avoiding a hearing with little or no value, and will reduce inconvenience to the defendant, counsel, and the court.

| **CrR 41(d)(3)(3)(C)**  **SEARCH AND SEIZURE** | |
| --- | --- |
| (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, | (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**, |

***DRAFTING COMMENTS:***

Corrections to Local Criminal Rules – Scrivener’s Errors

The error noted above was an update approved in 2014 to the Local Criminal Rules. When the Rules were updated again in 2016, the language above was left out in error.

\*\* **“presented by other reliable electronic means or as a telephonic application; and,”** should be added to the end of section C in the Local Criminal Rules.

**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. Motion Noting Date (for court consideration) | Second Friday after filing of motion | CrR 12(c)(6) |
| 5. Motion Response Date | 7 days after filing of motion | CrR 12(c)(2) |
| 6. Motion for Reconsideration and Noting Date | No specified time limit on filing for reconsideration – note on date of filing | CrR 12(c)(10) |
| 7. Pretrial and Status Conferences | Upon request of a party and order of the court | CrR 17.1(a) |
| 8. Exhibit Lists Filed | 14 days before trial for the  government and 10 days before trial for the defense. | CrR 23.3(a) |
| 9. Motions in Limine | 10 days before trial | CrR 23.2 |
| 10. Trial Brief | 14 days before trial for the  government and 10 days before trial for the defense | CrR 23.1 |
| 11. Voir Dire | 10 days before trial | CrR 24 |
| 12. Jury Instructions Filed  13. Witness Lists Exchanged | 14 days before trial for the government and 10 days before trial for the defense and during trial  14 days before trial for the government and 10 days before trial for the defense | CrR 30(a)  CrR 23.3(b) |
| 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); final presentence report to counsel 14 days before sentencing; submitted to court 7 days before sentencing | Fed. R. Cr. P. 32(e), (f), & (g) and CrR 32(d)(6) |
| 16. Sentencing § 5K1.1 Motions | 14 days before sentencing | CrR 32(i)(1)(A) |
| 5K1.1 Motion Response | 7 days before sentencing | CrR 32(i)(1)(A) |
| Acceptance of Responsibility Statement  17. Sentencing Memorandum | 21 days before sentencing (submit to Probation)  7 days before sentencing | CrR 32(i)(1)(C)  CrR 32(i)(1)(D) |

***DRAFTING COMMENTS:***

Although not reflected on the chart, we recommend removing the reference to motions to shorten time that were abolished by this jurisdiction.

This chart is amended to reflect the changes resulting from the proposed rules changes.

**APPENDIX B**

**LOCAL CRIMINAL RULES, WESTERN DISTRICT OF WASHINGTON**

**ESI Discovery Production Checklist**

* Is this a case where the volume or nature of ESI significantly increases the case’s complexity?
* Does this case involve classified information?
* Does this case involve trade secrets, or national security or homeland security information?
* Do the parties have appropriate technical advisors to assist?
* Have the parties met and conferred about ESI issues?
* Have the parties addressed the format of ESI being produced? Categories may include:
* Investigative reports and materials
* Witness statements
* Tangible objects
* Third party ESI digital devices (computers, phones, etc.)
* Photos, video and audio recordings
* Third party records
* Title III wire tap information
* Court records
* Tests and examinations
* Experts
* Immunity and plea agreements
* Discovery materials with special production considerations
* Related matters
* Discovery materials available for inspection but not produced digitally
* Other information
* Have the parties addressed ESI issues involving:
  + Table of contents?
  + Production of paper records as either paper or ESI?
  + Proprietary or legacy data?
  + Attorney-client, work product, or other privilege issues?
  + Sensitive confidential, personal, grand jury, classified, tax return, trade secret, or similar information?
  + Whether email transmission is inappropriate for any categories of ESI discovery?
  + Incarcerated defendant’s access to discovery materials?
  + ESI discovery volume for receiving party’s planning purposes?
  + Parties’ software or hardware limitations?
  + Production of ESI from 3rd party digital devices?
  + Forensic images of ESI digital devices?
  + Metadata in 3rd party ESI?
  + Redactions?
  + Reasonable schedule for producing party?
  + Reasonable schedule for receiving party to give notice of issues?
  + Appropriate security measures during transmission of ESI discovery, *e.g.,* encryption?
  + Adequate security measures to protect sensitive ESI against unauthorized access or disclosure?
  + Need for protective orders, clawback agreements, or similar orders or agreements?
  + Collaboration on sharing costs or tasks?
  + Need for receiving party’s access to original ESI?
  + Preserving a record of discovery produced?
* Have the parties memorialized their agreements and disagreements?
* Do the parties have a system for resolving disputes informally?
* Is there a need for a designated discovery coordinator for multiple defendants?
* Do the parties have a plan for managing/returning ESI at the conclusion of the case?

***DRAFTING COMMENTS:***

See LCR 16 comments.