Local Criminal Rules Committee – Proposed Amendments to Local Criminal Rules for Public Comment

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Typographical Corrections:

CrR 1, 5.1, 12, 23.1, Appendix A

CrR 1 SCOPE; DEFINITIONS	
CrR 1	Proposed Changes
. . . (b) Definitions . . . (5) "Judge" refers to a United States District Judge, a United States Bankruptcy Judge, or United States Magistrate Judge. 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. . . .	. . . (b) Definitions . . . (5) "Judge" refers to a United States District Judge~~, a United States Bankruptcy Judge,~~ or United States Magistrate Judge. 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. . . .

CrR 5 INITIAL APPEARANCE	
CrR 5	**Proposed Changes**
(a) In General (1) Notice of Arrest. . . . (2) Arrest Without Warrant . . . . . . (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 CrR 62.1 (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 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	(a) In General (1) Notice of Arrest. . . . (2) Reserved (b) Arrest Without Warrant . . . . . . ~~(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 CrR 62.1 (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 United States Attorney's Office, a written notice of nonrepresentation,~~

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 (except portions submitted ex parte and under seal under CrR 55(b)(5)), filed and noted for consideration as required under CrR 12 and CrR 62.2, with the additional requirement of service upon the defendant; or	~~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 (except portions submitted ex parte and under seal under CrR 55(b)(5)), filed and noted for consideration as required under CrR 12 and CrR~~

(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 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 At the initial appearance, the court can schedule or hold a detention hearing only if the case involves one of the circumstances in 18 U.S.C. § 3142(f). If the record does not establish that the case involves one of the circumstances in § 3142(f), the magistrate judge must immediately release the person pursuant to 18 U.S.C. §§ 3142(b) or 3142(c). . . .	~~62.2, 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 United States Attorney's Office, and, when appropriate, the defendant, copies of approved stipulations, orders allowing withdrawal, and orders appointing counsel.~~ (h) Pretrial Release/Detention ~~Release From Custody – Bail/Detention~~ When a defendant makes their initial appearance in a new criminal case, ~~At the initial appearance,~~ the court can schedule or hold a detention hearing only if the case involves one of the circumstances in 18 U.S.C. § 3142(f). If the record does not establish that the case involves one of the circumstances in § 3142(f), the magistrate judge must immediately release the person pursuant to 18 U.S.C. §§ 3142(b) or 3142(c). . . .

CrR 12 PLEADINGS AND PRETRIAL MOTIONS	
CrR 12	Proposed Changes
(a) Reserved (b) Motion Procedure (1) 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. 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 CrR 49.1; CrR 55. The moving party shall note the motion for twelve days after the day on which it is filed. (2) Obligations of Opponent. Each party opposing the motion shall 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 deadline for filing the opposition is seven days after the motion is filed. . . . (7) Meet and Confer Requirement. A motion in limine pursuant to CrR 23.1(a)(6) 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	(a) ~~Reserved~~Supporting Motions, Responses, and Replies with Evidence If a motion, response, reply, or other brief requires the consideration of facts that are not already in the record, the filing party shall serve and file copies of all affidavits, declarations, and photographic or other evidence presented in support of the filing. *See* CrR 49.1; CrR 55. (b) Motion Procedure (1) 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~~. 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 CrR 49.1; CrR 55. The moving party shall note the motion~~ for twelve days after the day on which it is filed. (2) Obligations of Opponent. Each party opposing the motion shall 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)~~section (a) hereof. The

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. . . . (9) 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. . . .	deadline for filing the opposition is seven days after the motion is filed. . . . (7) Meet and Confer Requirement. A motion in limine pursuant to CrR 23.1(a)(6) 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~~is defined in CrR 1(a)(6). 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. . . . (9) Telephonic Motions. Upon the request of any party, and with the court's approval, a motion may be heard by telephone or videoconference 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. . . .

CrR 23.1 EXPERT DISCLOSURES, JURY INSTRUCTIONS AND VERDICT FORM, EXHIBIT LISTS, WITNESS LISTS, TRIAL BRIEF AND MOTIONS IN LIMINE	
CrR 23.1	Proposed Changes
. . .	. . .
(2) Proposed Instructions. *See* CrR 30.	(2) Proposed Instructions and Verdict Form. *See* CrR 30.
(3) Exhibit Lists. 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.0	(3) Exhibit Lists. 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.~~0~~
. . .	. . .
(5) Trial Brief. 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. Motions contained in the trial brief will not be considered by the Court. The defense shall file and serve a trial brief ten days before trial. 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.	(5) Trial Brief. 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. Motions contained in the trial brief will not be considered by the Court. The defense shall file and serve a trial brief ten days before trial. 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.
(6) Motions in Limine. 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	(6) Motions in Limine. 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 set out in this rule provided that the motion is directed only at this subsequently-produced information.	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 set out in this rule provided that the motion is directed only at this subsequently-produced information.
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. Motions contained in the trial brief will not be considered by the Court. The defense shall file and serve a trial brief ten days before trial. 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.	~~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. Motions contained in the trial brief will not be considered by the Court. The defense shall file and serve a trial brief ten days before trial. 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.~~

CrR 24 TRIAL JURORS	
CrR 24	Proposed Changes
(a) Examination The court will conduct a voir dire examination of the prospective trial jurors. Each party shall prepare any suggested questions for the court to propound to the jurors, which shall be served and filed at least ten days before the trial date. In addition, counsel may examine the prospective jurors directly if and to the extent permitted by the court. (b) Reserved (c) 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. (d) Contacting Jurors 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.	(a) Examination The court will conduct a voir dire examination of the prospective trial jurors. Each party shall prepare any suggested questions for the court to propound to the jurors, which shall be served and filed at least ten days before the trial date. In addition, ~~counsel may examine the prospective jurors directly if and to the extent permitted by the court.~~the court will permit counsel an opportunity to submit or ask questions after hearing the court's voir dire. (b) Reserved (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. (e~~d~~) Contacting Jurors

	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.

CrR 30 JURY INSTRUCTIONS AND VERDICT FORM	
CrR 30	Proposed Changes
(a) Proposed Instructions Required 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. . . .	(a) Proposed Instructions and Verdict Form Required Unless a specific scheduling order has been adopted for the case, the government shall file its proposed jury instructions and verdict form 14 days in advance of the trial date. The defense may file any proposed alternative or supplemental instructions and proposed verdict form no later than ten days in advance of trial. The government may file any supplemental or alternative instructions and an amended proposed verdict form 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 and verdict forms during the course of the trial. . . .

CrR 31 JURY VERDICT	
CrR 31	Proposed Changes
(a) Receiving the Verdict 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. (b) through (d) Reserved (e) 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.	(a) Receiving the Verdict The defendant or defendants shall be present to receive the verdict of the jury, except as provided in Fed. R. Crim. P. 43(b) and (c). One attorney for each party shall also be present. (b) through (d) Reserved (e) 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.

CrR 32 SENTENCING AND JUDGMENT	
CrR 32(i)(1)	Proposed Changes
. . . (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 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	. . . (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 seven days prior to sentencing and may be included in the defendant's sentencing memorandum. All such filings covered by this rule may be filed using the procedure specified in General Order 12-23.~~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

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. . . .	date for good cause on its own or a party's motion; or upon an ~~telephonic~~ email 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. . . .

CrR 41 SEARCH AND SEIZURE	
CrR 41	Proposed Changes
. . . (d)(3) Search Warrant Applications by Telephone or Other Reliable Electronic Means The presumption is that search warrant applications will be presented to the magistrate judge via a written affidavit sworn to by telephone or other reliable electronic means . At the discretion of the magistrate judge, the affiant may be required to appear personally to present the search warrant application. If the preparation of a written affidavit is not possible, the testimony may be recorded. Whenever possible, the magistrate judge shall have voice recording equipment available to record all telephonic applications for search warrants. An application for a search warrant may be presented by reliable electronic means or by telephone only with the prior approval of the United States Attorney, or an Assistant United States Attorney, for this district. (A) 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) The magistrate judge must decide whether the circumstances are such that it is reasonable to dispense	. . . (d)(3) Search Warrant Applications by Telephone or Other Reliable Electronic Means (A) The presumption is that search warrant applications will be presented to the magistrate judge via a written affidavit sworn to by telephone or other reliable electronic means-. At the discretion of the magistrate judge, the affiant may be required to appear personally to present the search warrant application. (B) An application for a search warrant may be presented only with the prior approval of the United States Attorney for this district, or an authorized assistant. The United States Attorney or Assistant United States Attorney shall review all paperwork submitted to the magistrate judge in support of the requested warrant. (C) In all instances in which the government is proceeding by telephone or other reliable electronic means, the presentation must be conducted in a manner in which the law enforcement agent and an Assistant United States Attorney are able to converse with the magistrate judge, unless the magistrate judge excuses this requirement. (D) If the preparation of a written affidavit is not possible, the testimony may be recorded as long as the

with the written affidavit and permit the warrant application to be presented via a telephonic search warrant application. One factor the magistrate judge should consider in making this determination is 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. (C) In the rare case when a warrant application is to be made solely by telephone, prior to calling the magistrate judge, the law enforcement agent and the Assistant United States Attorney shall have agreed to a form of affidavit which can be read to the magistrate judge verbatim insofar as circumstances permit. 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. If the warrant application is made by sworn oral testimony, whether by telephone or in person, on the first day following the issuance of such a search warrant, the magistrate judge shall have a duplicate recording made of the oral testimony and furnish that recording to the United States Attorney's Office who shall cause a transcription of the recording to be made and returned to the magistrate judge. 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.	magistrate judge decides that the circumstances are such that it is reasonable to dispense with the written affidavit. One factor the magistrate judge should consider in making this determination is the possibility that if a search warrant were not issued in the manner requested by the government that there would be a significant risk that evidence would be destroyed. In all instances in which the government proceeds without a written affidavit, the law enforcement agent and the Assistant United States Attorney shall have agreed to a form of affidavit that can be read to the magistrate judge verbatim insofar as circumstances permit. Whenever possible, the magistrate judge shall have voice recording equipment available to record ~~all telephonic applications for search warrants~~the agent's testimony. ~~An application for a search warrant may be presented by reliable electronic means or by telephone only with the prior approval of the United States Attorney, or an Assistant United States Attorney, for this district.~~ ~~(A) 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) The magistrate judge must decide whether the circumstances are such that it is reasonable to dispense with the written affidavit and permit the warrant application to be presented via a~~

(e) through (i) Reserved	~~telephonic search warrant application. One factor the magistrate judge should consider in making this determination is 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.~~ ~~(C) In the rare case when a warrant application is to be made solely by telephone, prior to calling the magistrate judge, the law enforcement agent and the Assistant United States Attorney shall have agreed to a form of affidavit which can be read to the magistrate judge verbatim insofar as circumstances permit.~~ ~~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.~~ ~~If the warrant application is made by sworn oral testimony, whether by telephone or in person,~~In addition, on the first day following the issuance of such a search warrant, the magistrate judge shall have a duplicate recording made of the oral testimony and furnish that recording to the United States Attorney's Office who shall cause a transcription of the recording to be made and returned to the magistrate judge. (E) 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. (e) through (i) Reserved

~~CrR 44.1~~ ~~LEGAL INTERNS~~	
CrR 44.1	Proposed Changes
See CrR 62.4.	~~See CrR 62.4.~~

CrR 49.1 PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT	
CrR 49.1	Proposed Changes
(a) Redacted Filings. In addition to redactions required by Fed. R. Crim. P. 49.1, parties shall redact in its entirety Passport Numbers and Driver License Numbers. (b) through (c) Reserved (d) 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 and recommendations; (3) petitions for 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;	(a) Redacted Filings. In addition to redactions required by Fed. R. Crim. P. 49.1, parties shall redact in ~~its~~ their entirety Passport Numbers and Driver License Numbers. (b) through (c) Reserved (d) 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 and recommendations; (3) petitions for 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 a defendant's cooperation, e.g. U.S.S.G. § 5K1.1, 18 U.S.C. § 3553(e) memos, or Rule 35(b), and supporting documents must be filed electronically via CM/ECF pursuant to General Order 12-23 of this court so they do not appear on the publicly available docket. These materials must be served on the opposing party via traditional means; (10) release status reports; (11) final presentence reports and recommendations; (12) the judge's statement of reasons for the sentence imposed; and (13) documents received from a defendant who is represented by counsel may be forwarded to counsel or filed under seal, pending review by and specific order of the court. Pro se motions to disqualify counsel should ordinarily be filed under seal and ex parte.	(8) transcripts of voir dire; (9) materials relating to a defendant's cooperation, e.g. U.S.S.G. § 5K1.1, 18 U.S.C. § 3553(e) memos, or ~~Rule~~ Fed. R. Crim. P. 35(b), and supporting documents ~~must~~ may be filed electronically via CM/ECF pursuant to General Order 12-23 of this court so they do not appear on the publicly available docket. These materials must be served on the opposing party via traditional means; (10) release status reports; (11) final presentence reports and recommendations; (12) the judge's statement of reasons for the sentence imposed; and (13) documents received from a defendant who is represented by counsel may be forwarded to counsel or filed under seal, pending review by and specific order of the court. Pro se motions to disqualify counsel should ordinarily be filed under seal and ex parte.
(e) Sealing Requirements If a party wishes to file under seal materials other than those enumerated above, 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 motion should set forth a specific statement of the applicable legal standard and the reasons for keeping a document under seal, with evidentiary support from declarations when necessary.	(e) Sealing Requirements If a party wishes to file under seal materials other than those enumerated above, 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 motion should set forth a specific statement of the applicable legal standard and the reasons for keeping a document under seal, with evidentiary support from declarations when necessary.

Parties may file a motion or stipulated motion requesting that the court unseal a document. Withdrawing Unsealed Document When the court denies a motion to seal, the clerk will unseal the document unless (1) the court orders otherwise, or (2) the party who is relying on the sealed document requests in the motion to seal or response that, if the motion to seal is denied, the court withdraw the document from the record rather than unseal it. If a document is withdrawn on this basis, the parties shall not refer to it in any pleadings, motions or other filings, and the court will not consider it. For this reason, parties are encouraged to seek a ruling on motions to seal well in advance of filing underlying motions relying on those documents. (f) through (h) Reserved	Parties may file a motion or stipulated motion requesting that the court unseal a document. Withdrawing Unsealed Document When the court denies a motion to seal, the clerk will unseal the document unless (1) the court orders otherwise, or (2) the party who is relying on the sealed document requests in the motion to seal or response that, if the motion to seal is denied, the court withdraw the document from the record rather than unseal it. If a document is withdrawn on this basis, the parties shall not refer to it in any pleadings, motions or other filings, and the court will not consider it. For this reason, parties are encouraged to seek a ruling on motions to seal well in advance of filing underlying motions relying on those documents. (f) through (h) Reserved

CrR 60 VICTIM'S RIGHTS	
CrR 60	Proposed Changes
Reserved	~~Reserved~~ After notifying the defendant, the United States Attorney's Office is permitted to share any letter written by the defendant and submitted to the Court with any victims of the offense as defined under the Crime Victims Act, 18 U.S.C. § 3771(e)(2), regardless of whether the letter is otherwise sealed or attached to the presentence report, unless the letter is filed under the procedure specified in General Order 12-23 or the court orders otherwise. If the defense objects to sharing the defendant's letter with the victims, the United States Attorney's Office may not share any such letter with victims until the court has ruled on the objection.

CrR 62.2 ATTORNEY APPEARANCE AND WITHDRAWAL	
CrR 62.2	Proposed Changes
(a) **Entry of Appearance** An attorney eligible to appear may enter an appearance in a criminal case by properly signing in accordance with the ECF Filing Procedures and filing a Notice of Appearance on behalf of the party the attorney represents. (b) **Withdrawal of Attorneys** (1) No attorney shall withdraw an appearance in any criminal case, except by leave of court, unless the withdrawal complies with the requirements of subsections (b)(2) or (b)(3). Leave shall be obtained by filing a motion or a stipulation and proposed order for withdrawal or, if appropriate in a criminal case, by complying with the requirement of CrR 5(g). A motion for withdrawal shall be noted in accordance with CrR 12(b) and shall include a certification that the motion was served on the client and opposing counsel. A stipulation and proposed order for withdrawal must (1) be signed by all opposing counsel or pro se parties, and (2) be signed by the party's new counsel, if appropriate, or by the party. If a withdrawal will leave a party unrepresented, the motion to withdraw must include the party's address and telephone number. The attorney will ordinarily be permitted to withdraw at the discretion of the court in a criminal case.	(a) ~~**Entry of**~~ **Appearance of Counsel** (1) An attorney eligible to appear may enter an appearance in a criminal case by properly signing in accordance with the ECF Filing Procedures and filing a Notice of Appearance on behalf of the party the attorney represents. (2) 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), (4), or CrR62.2(b). (See CrR 62.1 (d) regarding appearances by non-W.D. Wash. attorneys.) (3) Appearance at Initial Arraignment. At initial arraignment, a counsel who has previously appeared may orally withdraw, and the arraignment may be continued for up to two weeks to allow defendant to obtain counsel. Any counsel appearing at the initial 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 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

(2) Where there has simply been a change of counsel within the same law firm, an order of substitution is not required; the new attorney should file a Notice of Appearance and the withdrawing attorney should file a Notice of Withdrawal. However, where there is a change in counsel that effects a termination of one law office and the appearance of a new law office, the substitution must be effected in accordance with subsection (b)(1), which requires leave of court. (3) Where a party is represented by multiple attorneys from the same or different firms and one or more attorneys wish to withdraw but will not leave the client without representation, leave of the court to withdraw is not required. The remaining or withdrawing attorney(s) shall file a Notice of Withdrawal, which shall include a statement that the client remains represented and identifies the withdrawing and remaining attorneys. The Notices shall be signed by the withdrawing attorney(s) and the remaining attorney(s) of record to confirm that fact. If circumstances prevent obtaining the signature of the withdrawing attorney(s), the Notice must state those circumstances in sufficient detail to satisfy the court that those circumstances in fact preventing obtaining signature. (4) A business entity, except a sole proprietorship, must be represented by counsel. If the attorney for a business entity, except a sole proprietorship, is seeking to withdraw, the attorney shall certify to the court that he or she has advised the business entity that it is required by law to be represented by an attorney admitted to practice before this court and that failure to obtain a replacement	instances. Further continuances of the initial 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. (4) 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. (b) **Withdrawal of Attorneys** (1) No attorney shall withdraw an appearance in any criminal case, except by leave of court, unless the withdrawal complies with the requirements of subsections (b)(2) or (b)(3). ~~Leave shall be obtained by filing a motion or a stipulation and proposed order for withdrawal or, if appropriate in a criminal case, by complying with the requirement of CrR 5(g).~~ A motion for withdrawal shall be noted in accordance with CrR 12(b) and shall include a certification that the motion was served on the client and opposing counsel. ~~A stipulation and proposed order for withdrawal must (1) be signed by all opposing counsel or pro se parties, and (2) be signed by the party's new counsel, if appropriate, or by the party. If a withdrawal will leave a party unrepresented,~~

attorney by the date the withdrawal is effective may result in the dismissal of the business entity's claims for failure to prosecute and/or entry of default against the business entity as to any claims of other parties. (5) When a party is represented by an attorney of record in a case, the party cannot appear or act on his or her own behalf in that case, or take any step therein, until after the party requests by motion to proceed on his or her own behalf, certifies in the motion that he or she has provided copies of the motion to his or her current counsel and to the opposing party, and is granted an order of substitution by the court terminating the party's attorney as counsel and substituting the party in to proceed pro se; provided, that the court may in its discretion hear a party in open court, notwithstanding the fact that he or she is represented by an attorney. (6) When an attorney suddenly becomes unable to act in a case due to death, incapacity, removal or suspension, the party for whom he or she was acting as attorney must, before any further proceedings are had in the action on his or her behalf, unless such party is already represented by another attorney, (i) appoint another attorney who must enter an appearance in accordance with subsection (a) or (ii) seek an order of substitution to proceed pro se in accordance with subsection (b)(5). (7) Unless the attorney withdraws in accordance with these rules, the authority and duty of an attorney of record shall continue after final judgment. (c) **Notices of Unavailability**	~~the motion to withdraw must include the party's address and telephone number. The attorney will ordinarily be permitted to withdraw at the discretion of the court in a criminal case.~~ (2) Where there has simply been a change of counsel within the same law firm or governmental law office, and the substitution will not form a basis for a motion to continue the pending trial date, an order of substitution is not required; the new attorney should file a Notice of Appearance and the withdrawing attorney should file a Notice of Withdrawal. ~~However, where there is a change in counsel that effects a termination of one law office and the appearance of a new law office, the substitution must be effected in accordance with subsection (b)(1), which requires leave of court.~~ (3) If a trial date has not yet been set, substitute defense counsel may file a notice of substitution of counsel signed by new counsel and the defendant and previous counsel may file a notice of withdrawal. ~~Where a party is represented by multiple attorneys from the same or different firms and one or more attorneys wish to withdraw but will not leave the client without representation, leave of the court to withdraw is not required. The remaining or withdrawing attorney(s) shall file a Notice of Withdrawal, which shall include a statement that the client remains represented and identifies the withdrawing and remaining attorneys. The Notices shall be signed by the withdrawing attorney(s) and the remaining attorney(s) of record to confirm that fact. If circumstances prevent obtaining the signature of the withdrawing attorney(s), the Notice must state those~~

Notices of unavailability are not required. Such notices, if filed, do not alter dates set by the Court or criminal rules. The Court expects the parties to confer about significant periods of unavailability. This rule does not preclude an attorney from requesting relief from a deadline due to a scheduling difficulty. *See* CrR 12(b)(10).	~~circumstances in sufficient detail to satisfy the court that those circumstances in fact preventing obtaining signature.~~ ~~(4) A business entity, except a sole proprietorship, must be represented by counsel. If the attorney for a business entity, except a sole proprietorship, is seeking to withdraw, the attorney shall certify to the court that he or she has advised the business entity that it is required by law to be represented by an attorney admitted to practice before this court and that failure to obtain a replacement attorney by the date the withdrawal is effective may result in the dismissal of the business entity's claims for failure to prosecute and/or entry of default against the business entity as to any claims of other parties.~~ (4~~5~~) When a party is represented by an attorney of record in a case, the party cannot appear or act on his or her own behalf in that case until after the party requests by motion to proceed on his or her own behalf, and the court permits self-representation following a hearing on the matter~~, or take any step therein, until after the party requests by motion to proceed on his or her own behalf, certifies in the motion that he or she has provided copies of the motion to his or her current counsel and to the opposing party, and is granted an order of substitution by the court terminating the party's attorney as counsel and substituting the party in to proceed pro se~~; provided, that the court may in its discretion hear a party ~~in open court~~, notwithstanding the fact that he or she is represented by an attorney.

~~(6) When an attorney suddenly becomes unable to act in a case due to death, incapacity, removal or suspension, the party for whom he or she was acting as attorney must, before any further proceedings are had in the action on his or her behalf, unless such party is already represented by another attorney, (i) appoint another attorney who must enter an appearance in accordance with subsection (a) or (ii) seek an order of substitution to proceed pro se in accordance with subsection (b)(5).~~

(5~~7~~) Unless the attorney withdraws in accordance with these rules, the authority and duty of an attorney of record shall continue after final judgment.

(c) **Notices of Unavailability**

Notices of unavailability are not required. Such notices, if filed, do not alter dates set by the Court or criminal rules. The Court expects the parties to confer about significant periods of unavailability. This rule does not preclude an attorney from requesting relief from a deadline due to a scheduling difficulty. *See* CrR 12(b)(10).

(d) Discovery Obligations if Defense Counsel Withdraws or is Discharged

In the event defense counsel withdraws or is discharged at any time throughout the case, it is the obligation of discharged counsel to make all discovery from the government available to new counsel. Discharged counsel shall make this disclosure no later than 14 days after new counsel files their notice of appearance, unless an extension is granted. It is new counsel's responsibility

	to confirm with the government that all discovery productions were provided.

CrR 62.3 STANDARDS OF PROFESSIONAL CONDUCT; CONTINUING ELIGIBILITY TO PRACTICE; ATTORNEY DISCIPLINE	
CrR 62.3(c)	Proposed Changes
. . . (c) Attorney Discipline . . . (3) Grounds for Discipline. An attorney may be subject to disciplinary action for any of the following: . . . (C) conviction of any felony or a misdemeanor involving dishonesty or corruption, including, but not limited to, those matters listed in Rule 7.1(a)(2)(B)-(c) of the Washington Rules of Enforcement of Lawyer Conduct ("ELC"); . . . (7) Discipline Based Upon a Criminal Conviction. (A) Any attorney subject to the disciplinary jurisdiction of this court shall promptly notify the Clerk of Court of the attorney's conviction of any felony or a misdemeanor involving dishonesty or corruption, including, but not limited to, those matters listed in Rule 7.1(a)(2)(B)-(c) of the ELC (hereafter, "crime" or "criminal conviction"). . . .	. . . (c) Attorney Discipline . . . (3) Grounds for Discipline. An attorney may be subject to disciplinary action for any of the following: . . . (C) conviction of any felony or a misdemeanor involving dishonesty or corruption, including, but not limited to, those matters listed in Rule 6.2~~7.1(a)(2)(B)-(c)~~ of the Washington Rules of Enforcement of Lawyer Conduct ("ELC"); . . . (7) Discipline Based Upon a Criminal Conviction. (A) Any attorney subject to the disciplinary jurisdiction of this court shall promptly notify the Clerk of Court of the attorney's conviction of any felony or a misdemeanor involving dishonesty or corruption, including, but not limited to, those matters listed in Rule 6.2~~7.1(a)(2)(B)-(c)~~ of the ELC (hereafter, "crime" or "criminal conviction"). . . .

CrR 62.5 SIGNING FILINGS; SANCTIONS	
CrR 62.5	Proposed Changes
(a) Signature A document signed electronically (by either a digital signature or by an attorney using the "s/ Name" convention) has the same force and effect as if the person had affixed a signature to a paper copy of the document, unless an original document is otherwise required. If an original document is required to be filed with the court, any required signature thereto must also be original. Electronic signatures must be in conformance with this district's Electronic Filing Procedures for Criminal Cases. (b) Sanctions for Non-Participation, Non-Compliance, or Multiplying or Obstructing Proceedings An attorney or party who without just cause fails to comply with any of the Federal Rules of Criminal Procedure, these rules, or an order of the court, or who presents to the court unnecessary motions or unwarranted opposition to motions, or who fails to prepare for presentation to the court, or who otherwise so multiplies or obstructs the proceedings in a case may, in addition to or in lieu of the sanctions and penalties provided elsewhere in these rules, be required by the court to satisfy personally such excess costs and may be subject to such other sanctions as the court may deem appropriate.	(a) Signature A document signed electronically (by either a digital signature or by an attorney using the "s/ Name" convention) has the same force and effect as if the person had affixed a signature to a paper copy of the document, unless an original document is otherwise required. If an original document is required to be filed with the court, any required signature thereto must also be original. Electronic signatures must be in conformance with this district's Electronic Filing Procedures for Criminal Cases. (b) Sanctions for Non-Participation, Non-Compliance, or Multiplying or Obstructing Proceedings An attorney or party who without just cause fails to comply with any of the Federal Rules of Criminal Procedure, these rules, or an order of the court, ~~or who presents to the court unnecessary motions or unwarranted opposition to motions,~~ or who fails to prepare for presentation to the court, or who otherwise so multiplies or obstructs the proceedings in a case may, in addition to or in lieu of the sanctions and penalties provided elsewhere in these rules, be required by the court to satisfy personally such excess costs and may be subject to such other sanctions as the court may deem appropriate.

Typographical Corrections Only

CrR 1: update the effective date

CrR 5.1(g): add omitted word “for” (obtain a copy “for” free)

CrR 12(c)(2): change “CrR 23.1(f)” to “CrR 23.1(a)(6)”

CrR 23.1: insert “(a)” before first sentence

Appendix A: correct capitalization in title (“LOCAL”; not “lOCAL”); change “CrR 23.1” to “CrR 23.1(a)”