

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LOCAL CRIMINAL RULES OF COURT

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LCrR 1 CITATION AND APPLICABILITY TO *PRO SE* DEFENDANTS

These rules may be cited as "LCrR." Where the defendant is proceeding *pro se*, references in these rules to defense counsel shall be taken to include the *pro se* defendant.

LCrR 5 INITIAL APPEARANCE BEFORE MAGISTRATE JUDGE

A. Opportunity to Consult With Counsel. A defendant shall be given an opportunity to consult with counsel at his or her Initial Appearance and before an initial interview with Pretrial Service Officers. The Federal Public Defender, as directed by the Court, will provide advice of rights to defendants before their interview with Pretrial Services.

B. Notification of Counsel. It is the responsibility of the Magistrate Judge assigned to criminal duty to notify the Federal Public Defender, or the defendant's retained counsel if known, before the Initial Appearance.

C. Eligibility for Appointed Counsel. When a defendant requests appointment of counsel, and the Court determines that the defendant is eligible for appointed counsel, the Court will appoint counsel under the Criminal Justice Act at the time of the Initial Appearance.

D. Entry of Appearance. In all criminal cases involving privately retained counsel, a notice of appearance of counsel shall be filed at or before the first appearance of counsel. *See also* LCvR 83.2.C.1.

E. Withdrawal of Appearance. In any criminal proceeding, no attorney whose appearance has been entered shall withdraw his or her appearance except upon filing a written petition stating reasons for withdrawal, and only with leave of Court and upon reasonable notice to the client. *See also* LCvR 83.2.C.4.

LCrR 10 ARRAIGNMENTS

Arraignments may be conducted by the Magistrate Judge in cases triable by the Magistrate Judge and in other cases to the extent of taking a not guilty plea or noting a defendant's intention to plead guilty or *nolo contendere* and ordering a presentence report in appropriate cases. Upon the request of the defendant, the government shall provide available Fed. R. Crim. P. 16 material to the defendant at the time of the arraignment, and the Fed. R. Crim. P. 16 receipt shall be filed with the Court. Upon written request by the defendant, the Magistrate Judge may set a date for the filing of pretrial motions up to 45 days from the date of the arraignment, and order that the period of the extension shall be excluded from the time within which the trial of the case shall commence under the Speedy Trial Act, as necessary to provide the defendant with adequate time for investigation and preparation of motions. Any other motions for extension of time shall be filed with the District Judge.

LCrR 12 PRETRIAL MOTIONS

A. Timing. Motions under Fed. R. Crim. P.12 and 41 shall be made within ten days after arraignment, unless the court extends the time at arraignment, or upon written application made within the said ten-day period. The court, in its discretion, may, however, for good cause shown, permit a motion to be made and heard at a later date.

B. Requirements. All such motions shall contain a short and plain description of the requested relief and incorporate or be accompanied by a memorandum or brief setting forth the reasons and legal support for the granting of the requested relief.

C. Response. Any party opposing a motion may file and serve a response within ten days after service of the motion, unless the time period is otherwise extended by the Court. Every response shall incorporate or be accompanied by a memorandum or brief setting forth the reasons and legal support for the respondent's position.

D. Reply Memorandum. The movant may file and serve a reply memorandum within ten days after service of the response, unless the time period is otherwise extended by the Court.

E. Motion to Extend Time. Any motion to extend the time limits set forth above shall set forth the grounds upon which it is made and whether the continuance sought shall constitute, in whole or in part, excludable time as defined by 18 U.S.C. § 3161(h). Said motion to extend time shall be accompanied by a proposed form of Order that, if adopted, will state fully and with particularity the reasons for granting the motion as well as the proposed findings of the Court as to excludable time. Extensions of the time limits set forth above shall be excludable to the extent authorized by 18 U.S.C. § 3161(h). Extensions shall be granted liberally where warranted by the ends of justice. In addition to the nonexclusive list of factors set forth in § 3161(h)(8)(B), the Court may consider good faith scheduling conflicts, additional time needed for reasonable preparation, the interests of the defendant and the government in maintaining continuity of counsel, and other unavoidable problems, such as emergency, illness, and long-planned vacations. This list is not meant to be exclusive.

LCrR 16 DISCOVERY AND INSPECTION

A. Compliance With Fed. R. Crim. P. 16. The parties shall comply with Fed. R. Crim. P. 16, including the reciprocal discovery provisions of Fed. R. Crim. P. 16(b).

B. Timing. Upon a defendant's request, the government shall make available the Rule 16 material at the time of the arraignment. If discovery is not requested by the defendant at the time of the arraignment, the government shall disclose such material within five (5) days of a defendant's request. The government shall file a receipt with the Court which sets forth the general categories of information subject to disclosure under Rule 16, as well as any exculpatory evidence, and the items provided under each category.

C. Exculpatory Evidence. At the time of arraignment, and subject to a continuing duty of disclosure thereafter, the government shall notify the defendant of the existence of exculpatory evidence, and permit its inspection and copying by the defendant.

D. Voluntary Disclosure. Nothing in this rule shall be construed to prevent the government from voluntarily disclosing material to the defendant at an earlier time than that required by Fed. R. Crim. P. 16, Fed. R. Crim. P. 26.2 and 18 U.S.C. § 3500.

E. Obligation to Confer. Counsel shall confer and attempt to resolve issues regarding additional discovery before a motion to produce is filed with the Court.

LCrR 23 LAW ENFORCEMENT EVIDENCE

In all cases where money, firearms, narcotics, controlled substances or any matter of contraband is introduced into evidence, such evidence shall be maintained for safekeeping by law enforcement during all times when court is not in session, and at the conclusion of the case. The law enforcement agent will be responsible for its custody if the evidence is required for any purpose thereafter. See also LCvR 5.1.J.

LCrR 24.1 JURY LIST

Members of the bar of this court shall be permitted to have a copy of each jury list on condition that a receipt be signed with the Clerk of Court at the date of delivery thereof which shall contain as the substance the following certification:

"I hereby certify that I and/or my firm or associates have litigation pending and in connection therewith, I will require a list of jurors. I further acknowledge to have received a copy of said list of jurors from the Clerk of Court and hereby agree that I will not, nor will I permit any person or agency, to call or contact any juror identified on said list at his or her home or any other place, nor will I call or contact any immediate member of said juror's family, which includes his or her spouse, children, mother, father, brother, or sister, in an effort to determine the background of any member of said jury panel for acceptance or rejection of said juror.

/s/ _____

Date: _____ "

LCrR 24.2 EXAMINATION OF JURORS BEFORE TRIAL

Jury selection in a criminal case shall be governed by Fed. R. Crim. P. 23 and 24 and by such procedures established by the trial judge. In its discretion, the Court may require potential jurors to complete a questionnaire before the formal voir dire process commences.

A. Examination of Jurors Before Trial. During the examination of jurors before trial, the Judge or a representative of the Clerk of Court conducting such examination, shall state the following to the jurors collectively:

1. The name of each of the defendants and the names of the attorneys for the parties; and
2. The nature of the case and the offenses charged.

B. Required Questions. The examination of jurors shall contain the following questions, or questions substantially similar thereto:

1. Do you know any of the defendants?
2. Do you know any of the attorneys in the case? Have they or their firms ever represented you or any members of your immediate family?
3. Do you know anything about this case?
4. (If appropriate) Are you or any member of your immediate family, employees, former employees or stockholders in any of the corporations or businesses involved in this case? The names of corporations and businesses involved in this case are:
5. Are you or any member of your immediate family employed by the federal government (with the exception of military service)? What do they do?
6. Are you or any member of your immediate family employed by any law enforcement agency?

C. Questions to Individual Jurors. The following questions, where appropriate, shall, *inter alia*, be put to each juror individually:

1. What is your present occupation?
2. Who is your employer?
3. If you are retired, who was your last employer and what was your occupation?
4. Are you married? If so, what is your spouse's occupation and who is your spouse's employer?

5. Do you have any children? Do any of them work in the Western District of Pennsylvania? For whom do they work and what do they do?
6. Have you ever been a witness or defendant in a criminal case?
7. Have you ever been the victim of a crime?
8. Any other question which in the judgment of the Court shall be deemed proper.

LCrR 24.3 COMMUNICATION WITH A TRIAL JUROR

A. During Trial. During the trial, no party, attorney for a party, or person acting on behalf of a party or attorney, shall communicate directly or indirectly with any of the following: (1) a juror, (2) an excused juror, (3) an alternate juror or (4) a family member or person living within the same household as a juror, excused juror or alternate juror.

B. After Trial. After a verdict is rendered or a mistrial is declared, the Court shall inform the jury that no juror is required to speak to anyone, but that a juror may do so if the juror wishes.

LCrR 24.4 JUROR NOTE TAKING

Jurors may be permitted to take notes in the discretion of the Court. If jurors are permitted to take notes, the Court will provide jurors with the necessary materials, and shall retain custody of the notes when Court is not in session or the jury is not deliberating. After the jury is discharged by the Court, the notes shall be destroyed.

LCrR 28 INTERPRETERS

A court certified interpreter will be provided by the Court and present for all proceedings involving defendants who are not proficient in English.

LCrR 32 PROCEDURE FOR GUIDELINE SENTENCING

The following procedures hereby are established to govern sentencing proceedings in this Court, in addition to the requirements of Fed. R. Crim. P. 32; the Sentencing Reform Act of 1984, 18 U.S.C. § 3551 *et seq.*; and the advisory United States Sentencing Guidelines ("U.S.S.G."), as promulgated under that Act and by the Sentencing Commission Act, 28 U.S.C. § 991 *et seq.*

A. Timing of Sentencing. Unless the Court orders otherwise, sentencing proceedings shall be scheduled no earlier than 105 days following the entry of a plea of guilty or *nolo contendere*, or the entry of a verdict of guilty.

B. Presentence Investigation and Report. Counsel is directed to the requirements of Fed. R. Crim. P. 32(c) and Fed. R. Crim. P. 32(d) regarding Presentence Investigations and Reports.

C. Presentence Procedures. No later than 50 days prior to the date set for sentencing, the United States Probation Office ("USPO") shall disclose the tentative Presentence Investigation Report ("PSR") to only the defendant, the defendant's attorney, and the attorney for the government. See Fed. R. Crim. P. 32(e)(2) and § 6A1.2(a) of the U.S.S.G.

1. Initial Disclosure. The PSR, or any other document required by this rule to be disclosed, shall be deemed to have been disclosed: (a) when a copy is physically delivered to a defendant or counsel; or (b) three days after a copy of that document is mailed to the defendant or counsel.

2. Confidentiality. The PSR is a confidential court document. No copies or dissemination of the PSR shall be made without the express permission or Order of this Court, except that, pursuant to Third Circuit Local Appellate Rule 30.3(c), copies may be made for the United States Court of Appeals in any appeal from the sentence. The unauthorized copying or disclosure of the PSR may be treated as a contempt of court and be punished accordingly.

3. Administrative Resolution. If a party disputes facts or factors material to sentencing contained in the PSR, or seeks the inclusion of additional facts or factors material to sentencing, that party shall have the obligation to pursue the administrative resolution of that matter through informal presentence conferences with opposing counsel and the USPO.

a. The party seeking administrative resolution of such facts and factors shall do so within 15 days after the initial disclosure of the tentative PSR.

b. Fifteen (15) days after the initial disclosure of the tentative PSR, following any good faith efforts to resolve disputed, or include additional, material facts or factors described above, the USPO shall notify the attorneys for the government and the defendant of those matters that have, or have not, been administratively resolved.

4. Disclosure of PSR to Court. No later than 35 days before sentencing, pursuant to Fed. R. Crim. P. 32(g), the USPO shall disclose the PSR, as may be amended, to the Court, the defendant, the attorney for the defendant, and the attorney for the government.

5. Objections; Positions of the Parties. No later than 28 days before sentencing, the parties each shall file with the court a pleading entitled "Position of [Defendant or Government, as appropriate] With Respect to Sentencing Factors," pursuant to Fed. R. Crim. P. 32(f) and § 6A1.2(b) of the U.S.S.G. This pleading shall set forth any objections to the PSR and any anticipated grounds for: (a) departure from the advisory guideline sentencing range; or, (b) a sentence outside of the advisory guideline

sentencing range, pursuant to the provisions of 18 U.S.C. § 3553(a). The party's Position With Respect to Sentencing shall be accompanied by a written statement certifying that filing counsel has conferred with opposing counsel and with the USPO in a good faith effort to resolve any disputed matters.

6. Responses to Objections and Positions. A party may file a response to the opposing party's Position With Respect to Sentencing Factors within seven calendar days of the filing of the Position.

7. Action on Objections; Addendum. After receiving counsel's objections and any responses thereto, the USPO shall conduct such further investigation and make such revisions to the PSR as appropriate. The USPO may require counsel to meet or otherwise confer with the USPO to discuss unresolved factual or legal issues.

a. No later than 14 days before sentencing, the USPO shall serve an addendum which shall set forth any unresolved objections to the PSR, the grounds for those objections, the responses thereto, and the USPO's comments thereon.

b. The USPO shall certify that the PSR, together with any revision thereof and any addendum thereto, have been disclosed to the defendant and all counsel of record, and that the addendum fairly sets forth any remaining objections and responses.

8. Court's Tentative Findings and Rulings. Prior to the sentencing hearing, the Court shall notify the parties and the USPO of the Court's tentative findings and rulings, to the extent practicable, concerning disputed facts or factors. Reasonable opportunity shall be provided to the parties, prior to the imposition of sentence, for the submission of oral or written objections to the Court's tentative findings and rulings.

9. Supplemental Information and Memoranda. No later than seven calendar days before sentencing, a party may file supplemental information or a memorandum with respect to sentencing of the defendant, and shall serve the same upon the USPO. **If counsel for the defendant intends to submit letters to the Court for consideration at sentencing, said letters should be electronically filed at least seven calendar days before sentencing.** Opposing counsel may file a response to any supplemental information or memorandum no later than three days before sentencing.

10. Additional Information and Memoranda. For good cause shown, the Court may allow additional information and memoranda, and the responses thereto, to be raised at any time prior to the imposition of sentence.

11. Introducing Evidence. When any fact or factor material to the sentencing determination is reasonably in dispute, the parties shall be given an adequate opportunity to introduce evidence and to present

information to the Court regarding that fact or factor, in accordance with § 6A1.3(a) of the U.S.S.G.

12. Court Determinations. Except with respect to any objection made pursuant to Fed. R. Crim. P. 32(f) and LCrR 32.C.5, above, the Court may accept as accurate any undisputed portion of the PSR as a finding of fact. However, with respect to disputed portions of the PSR, the Court shall make determinations pursuant to Fed. R. Crim. P. 32(i)(3) and § 6A1.3 of the U.S.S.G.

D. Judicial Modifications. For good cause shown, the time limits set forth in LCrR 32 may be modified by the Court.

E. Pre-Plea Presentence Investigations and Reports. Under appropriate circumstances, and with the written consent of the defendant pursuant to Fed. R. Crim. P. 32(e)(1), the Court may order the USPO to conduct a Presentence Investigation and prepare a PSR for a defendant prior to the entry of a plea of guilty or *nolo contendere*. **The scope of any pre-plea PSR shall be determined by the Court.**

LCrR 41 INSPECTION AND COPYING OF SEIZED PROPERTY

Under appropriate circumstances, upon the filing of a motion and a showing of good cause by the party seeking relief, the Court may enter an order which permits such party (1) to have reasonable access to seized property, including documents, for inspection; or (2) to obtain copies of seized documents or property other than contraband. The moving party shall bear the cost of copying, unless otherwise ordered by the Court for good cause shown. In fashioning an order for relief under this Rule, the Court shall consider, among other things, the burden of compliance with the order upon the government, as well as the needs of the party seeking relief. Nothing herein is intended to limit any remedies which may be available under Fed. R. Crim. P. 41(g).

LCrR 46 TYPES OF BAIL IN CRIMINAL CASES

Provided that a bond in the form available at the office of the Clerk of Court is executed, any of the following may be accepted as security:

A. United States currency, or a certificate of deposit of a federally insured bank or savings and loan association, or federal, state or local government securities or bonds, or corporate securities or bonds of companies listed on the New York Stock Exchange, or a combination thereof, in the face amount of the bail, provided that the instruments are payable on demand, and provided further that, if the instruments are payable to one or more persons, the Clerk of Court or the appropriate judicial officer is satisfied that the endorsements of all owners have been secured as obligers.

B. Real property in the Commonwealth of Pennsylvania, including realty in which the defendant has an interest, in which the market value of the

property after subtracting the current value of all mortgages, liens and judgments, equals the amount of the bond. *See also* Fed. R. Crim. P. 46(e).

The Clerk of Court shall maintain in its office and on its official website the procedures and requirements for posting of property bonds.

C. A surety company or corporation authorized by the Secretary of Treasury of the United States to act as surety on official bonds under the Act of August 13, 1894 (28 Stat. 279, as amended, U.S.C. Title 6, 1-13).

D. Such other property as the court deems sufficient pursuant to the Bail Reform Act of 1984, 18 U.S.C. § 3142(c)(2)(K).

LCrR 49 ELECTRONIC CASE FILING; SEALING OF DOCUMENTS

A. Electronic Case Filing Policies and Procedures. Counsel must comply with the Electronic Case Filing Policies and Procedures promulgated by the Court which govern all criminal cases and matters. All documents must comply with the privacy protection provisions set forth in Fed. R. Crim. P. 49.1 and LCvR 5.2.D.

B. Filing by Electronic Means. Documents may be filed, signed and verified by electronic means to the extent and in the manner authorized by the Court's Standing Order regarding Electronic Case Filing Policies and Procedures and the ECF User Manual. A document filed by electronic means in compliance with this Local Rule constitutes a written document for the purposes of applying these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. *See also* LCvR 5.5.

C. Service by Electronic Means. Documents may be served through the Court's transmission facilities by electronic means to the extent and in the manner authorized by the Standing Order regarding Electronic Case Filing Policies and Procedures and the ECF User Manual. Transmission of the Notice of Electronic Filing constitutes service of the filed document upon each party in the case who is registered as a Filing User. Any other party or parties shall be served documents according to these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. *See also* LCvR 5.6.

D. Filing Under Seal. The following documents shall be accepted by the Clerk for filing under seal without the necessity of a separate sealing order: (1) Motions setting forth the substantial assistance of a defendant in the investigation or prosecution of another person pursuant to U.S.S.G. § 5K1.1 or Fed. R. Crim. P. 35; (2) Motions for writs to produce incarcerated witnesses for testimony; (3) Motions for subpoenas for witnesses; (4) Motions by counsel seeking authorization for the expenditure of funds under the Criminal Justice Act, or seeking reimbursement for expenses incurred or attorney's fees. Such documents should be presented to the Clerk in hard copy for scanning and docketing under seal.

E. Provision of Sealed Documents to Opposing Party. Counsel of record may exchange copies of sealed documents, without obtaining leave of court, if the document is provided in an ongoing criminal case.

LCrR 57 ASSIGNMENT OF CASES

A. Criminal Action Categories. All criminal cases in this district shall be divided into the following categories:

1. Narcotics and Other Controlled Substances
 - 1a. Narcotics and Other Controlled Substances, 3 or more Defendants
2. Fraud and Property Offenses
 - 2a. Fraud and Property Offenses, 3 or more Defendants
3. Crimes of Violence
4. Sex Offenses
5. Firearms and Explosives
6. Immigration
7. All Others.

See also LCvR 40.B.

B. Assignment of Criminal Cases to District Judges. All criminal cases shall be assigned by the Clerk of Court at the earlier of 1) the time of filing of the indictment or information; 2) when any appeal is taken from a Magistrate Judge's decision on bail; 3) upon the filing of a motion for return of seized property; 4) upon the filing of a motion to quash a subpoena; 5) upon the filing of a motion to dismiss the complaint; 6) upon the filing of any motions of a similar nature that a Magistrate Judge concludes must be handled by a District Judge; or, 7) at the time of filing any motion in a case at the magisterial stage for a competency determination.

C. Related Actions. At the time of filing any criminal action or entry of appearance or any initial pleading or motion by defense counsel, as the case may be, counsel shall indicate on an appropriate form whether the action is related to any other pending or previously terminated actions in this Court. For the purpose of completing the form, all criminal actions arising out of the same criminal transaction or series of transactions are deemed related.

LCrR 58 PROCEDURES FOR MISDEMEANORS AND OTHER PETTY OFFENSES

See LCvR 72.

LCrR 83 FREE PRESS -- FAIR TRIAL PROVISIONS

A. Release of Information in Criminal Litigation. A lawyer or law firm shall not release or authorize the release of information or opinion that a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which he or she or the firm is associated, if there is a substantial likelihood that such release would materially prejudice ongoing criminal proceedings.

B. Release Beyond Public Record. With respect to a pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication, that goes beyond the public record, if there is a substantial likelihood that such statement would materially prejudice such pending investigation.

C. Subjects Likely to Be Materially Prejudicial. From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, extrajudicial statements by a lawyer or law firm associated with the prosecution or defense that a reasonable person would expect to be disseminated by means of public communication relating to the following subjects are substantially likely to be considered materially prejudicial to ongoing criminal proceedings:

1. the prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his or her apprehension or to warn the public of any dangers he or she may present;
2. the existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;
3. the performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
4. the identity, testimony or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;
5. the possibility of a plea of guilty to the offense charged or a lesser offense; or

6. any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case, except that counsel may announce without further comment that the accused asserts innocence or denies the charges made against him or her.

Unless otherwise prohibited by law, the foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his or her or its official or professional obligations, from announcing the fact, time and place of arrest, the identity of the investigating and arresting officer or agency, and the length of the investigation; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused asserts innocence or denies the charges made against him or her.