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**LCrR 59 Additional Duties of Magistrate Judges and
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CRIMINAL LOCAL RULES

I. SCOPE, PURPOSE AND CONSTRUCTION

LCrR 1: SCOPE

LCrR 1.1 SCOPE OF THE RULES

A. Title and Citation. These rules shall be known as the Local Criminal Rules of the United States District Court for the Northern District of Georgia. They may be cited as "LCrR __, NDGa."

B. Effective Date. These rules apply to all cases and proceedings pending on or commenced after April 15, 1997 unless the judge or magistrate judge to whom the case has been assigned has ruled that their application in a case pending on April 15, 1997 was not feasible or would work an injustice.

C. Scope of Rules. These rules shall apply in all proceedings in criminal actions. Civil local rules shall apply insofar as they do not conflict with any statute, federal rule, local criminal rule, or individual order.

D. Rule of Construction and Definitions.

(1) United States Code, Title 1, Sections 1 to 5, shall, as far as applicable, govern the construction of these rules.

(2) The following definitions shall apply.

(a) The word "court" refers to the United States District Court for the Northern District of Georgia and not to any particular judge or magistrate judge of the court.

(b) The word "judge" refers to any United States District Judge exercising jurisdiction with respect to a particular action or proceeding in this court.

(c) The word "magistrate judge" refers to any full-time or part-time United States Magistrate Judge exercising jurisdiction under 28 U.S.C. Section 636, consistent with the policies adopted by this court.

(d) The word "clerk" refers to the District Court Clerk and deputy

clerks.

II. PRELIMINARY PROCEEDINGS

(RESERVED)

III. INDICTMENT AND INFORMATION

LCrR 6: THE GRAND JURY

LCrR 6.1: SELECTION OF JURORS; FREQUENCY; SESSIONAL PROCEDURES; PROCEEDINGS UNDER SEAL.

A. Selection of Jurors.

(1) **Statutory Qualification.** Refer to LR 47.1.

(2) **Drawing.** Grand juries shall function on a district wide basis. The court, or the clerk if so ordered by the court, shall draw at random a pro rata or approximately pro rata number of names from the qualified jury wheel for each division within the district. The names so drawn shall be pooled and shall constitute the grand jurors to report to duty. Unless otherwise ordered, the grand jury shall be drawn at least forty (40) days before the first day of service of such grand jury.

(3) **Service of Summons.** The Jury Section of the clerk's office shall serve by first class mail a summons on each grand juror at least four (4) weeks prior to the first day of service of the grand jury.

B. Procedures While Grand Jury in Session. While the grand jury is in session, no one except government attorneys, the grand jury clerk, attorneys representing witnesses, witnesses, grand jurors, court reporters, interpreters, deputy United States Marshals, law enforcement officers, and other authorized court or Justice Department personnel shall be allowed into the grand jury area of the courthouse, which shall include the reception area, witness room, grand jury rooms, and any other space which the grand jury may be using.

The grand jury clerk, the United States Attorney's office witness clerk(s), government attorneys, and the United States Marshals shall be allowed to remain in the grand jury reception area during the course of grand jury proceedings. Witnesses and attorneys for witnesses shall remain in the witness room, except for checking in

with the witness clerk(s). Witnesses and their attorneys shall be permitted to leave the grand jury area to consult, if necessary.

When a grand jury is in session, a deputy United States Marshal shall be on duty in or near the grand jury area to enforce this rule.

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

LCrR 10: ARRAIGNMENT

LCrR 10.1 ARRAIGNMENTS.

A. Generally. All defendants shall be arraigned before a magistrate judge. The magistrate judge shall then assign the case to a judge in accordance with the procedures established by this court. The duty judge shall conduct any preliminary criminal proceedings that arise which cannot be determined by a magistrate judge.

B. Scheduling Arraignments. Immediately after the filing of an indictment or information or the arrest of a defendant, whichever occurs last, the United States Attorney shall request the magistrate judge to schedule the case for arraignment. The United States Attorney shall provide the magistrate judge a copy of the indictment or information and shall inform the magistrate judge as to whether the defendant is in custody and, if so, where. The United States Attorney shall also provide the magistrate judge with the name and address of the defendant, the defendant's surety and attorney, and the name of the assistant United States Attorney in charge of the case. The United States Attorney shall also provide any other information pertinent to the assignment of arraignments, such as whether the indictment or information is a superseding indictment or information or whether there is a related or companion case.

All arraignments shall be scheduled in accordance with the requirements of the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-74, and in accordance with the "Plan for Achieving Prompt Disposition of Criminal Cases" which is attached as Appendix C and which is hereby incorporated by reference into these rules.

C. Recording Arraignments. The arraignment proceedings before the magistrate judge shall be taken down by a court reporter or recorded by other suitable means and shall be preserved in the same manner as arraignments before a judge.

LCrR 11: PLEAS

LCrR 11.1 ACCEPTANCE OF PLEAS.

A. Pleas of Guilty. The magistrate judge shall have no power to accept a plea of guilty, but the magistrate judge may inquire into the voluntariness of such a plea and its underlying factual basis as required by Fed.R.Crim.P. 11. In making such inquiry, the magistrate judge shall use a form for the tender of guilty pleas approved by the judges. The magistrate judge shall then assign the case to a judge. If the plea meets the requirements of Rule 11 and if the magistrate judge is so authorized by the judge, the magistrate judge may request the defendant to consent in writing to a presentence investigation before plea of guilty and to examination of the presentence report by the court prior to the time the defendant pleads guilty.

If the inquiry into the defendant's plea of guilty is not conducted by the magistrate judge, the judge shall conduct the inquiry at arraignment. In every case where a defendant pleads guilty, the final determination that the defendant's plea is voluntary shall be made by the judge.

The Probation Department shall, at the direction of the magistrate judge or judge, as appropriate, conduct the presentence investigation.

B. Pleas of *Nolo Contendere*. The magistrate judge shall have no power to accept a plea of *nolo contendere*. Any tender of a plea of *nolo contendere* shall be filed with the clerk at arraignment, unless tender at a later time has been expressly approved by the court. The United States shall have five (5) days to respond. Copies of the tender and the response shall be served on opposing counsel. The government's response and the defendant's statement in support of the *nolo* plea shall be submitted directly to the judge to whom the plea is assigned and shall not be filed with the clerk as they are not part of the permanent criminal case.

The court shall notify the parties of its acceptance or refusal of the *nolo* plea no later than fifteen (15) days before trial. Subsequent to the ruling by the court, the tender of plea form shall be returned to the clerk's office to become part of the permanent file. The statement of the defendant and the response of the government shall become part of the defendant's probation record and shall be included in the file with the presentence report.

C. Pleas of Not Guilty. The magistrate judge shall be authorized to accept a plea of not guilty or to direct the entry of such a plea. Upon accepting the

plea, the magistrate judge shall assign the case to a judge.

**LCrR 12: PLEADINGS AND MOTIONS BEFORE TRIAL;
DEFENSES AND OBJECTIONS**

**LCrR 12.1 PHYSICAL REQUIREMENTS FOR DOCUMENTS
AND MOTION PRACTICE**

A. Physical Requirements. Motions and other documents in criminal proceedings, including attachments thereto, should be submitted in writing and are subject to the format and filing requirements set forth in LRs 5.1, 5.2, 10.1, 11.1 and 15.1.

B. Filing of Motions and Responses; Hearings. Motions filed in criminal proceedings shall be filed with the clerk within ten (10) days after arraignment. A magistrate judge may for good cause extend the filing time for one fifteen (15)-day period. Motions requesting additional extensions of time must be presented to the judge to whom the case is assigned. To avoid waiver, pretrial matters must be raised within the time limits set forth in this rule. See Fed.R.Crim.P. 12(f). A party's failure to file a response to a motion within ten (10) days after being directed by the court to do so shall indicate that the responding party has no opposition to the motion. All provisions of LR 7.1, filing of Motions and Responses: Hearings, except 7.1A(2) and 7.1B, are fully applicable to motions filed in criminal proceedings. In multiple defendant cases, defense counsel shall serve other defense counsel and *pro se* defendants with copies of the motions filed.

C. Motion to Adopt Co-Defendant's Motions. A defendant moving to adopt a co-defendant's motion or motions, including pretrial motions, must attach a copy of each motion to be adopted to defendant's motion to adopt. The defendant's motion must also state:

- (1) The style and action number of the co-defendant's case;
- (2) The title(s) of the specific motion(s) being adopted and the date on which the motion(s) was (were) filed; and
- (3) A statement regarding the defendant's standing to adopt the co-defendant's motion(s).

The defendant shall not be required to file a memorandum of law citing supporting authorities (see generally LR 7.1A) in support of defendant's motion to

adopt. Separate motions are required if motions of more than one (1) co-defendant are being adopted. Defense counsel shall provide all other defense counsel with a copy of defendant's Motion(s) to Adopt Co-Defendant's Motions, but it shall not be necessary to attach a copy of each motion being adopted.

D. Duty to Confer. Counsel for the moving party, or the moving party if the party is not represented by counsel, is required to confer with opposing counsel prior to the pretrial conference in a good faith effort to resolve by agreement between them all motions that were filed.

E. Determination of Motions

(1) Atlanta Division Cases. All motions in criminal actions in the Atlanta Division shall be initially submitted to a magistrate judge who shall conduct any required or necessary hearings. When permitted by law, the magistrate judge shall issue a ruling thereon. When the magistrate judge is not authorized to rule on the matter, the magistrate judge shall submit a report and recommendation to the judge to whom the case is assigned.

(2) Other Division Cases. Any motion in a criminal action pending in the Gainesville, Newnan, or Rome Divisions may be assigned by the judge for the division to a magistrate judge for any required or necessary hearing, ruling, report, and recommendation. When such an assignment is made, the magistrate judge shall proceed in accordance with the provisions of subsection (1).

LCrR 16: DISCOVERY AND INSPECTION

LCrR 16.1 PRETRIAL DISCOVERY AND INSPECTION

The government shall make available to the defendant at the time of arraignment for inspection and copying all materials or copies of materials requested by the defendant which are discoverable under Fed.R.Crim.P. 16. The government shall also provide the defendant at arraignment with an inventory of all items seized from the defendant by law enforcement officials which the government expects to introduce at trial. Unless otherwise ordered by the court, the defendant shall be required to make discoverable materials requested by the government available for inspection and copying no later than twenty-one (21) days prior to trial. The failure of any party to produce requested discoverable evidence in a timely manner may result in the evidence being ruled inadmissible at trial.

While extensions of time shall not be routinely granted, the magistrate judge may for good cause shown grant a party additional time in which to produce requested evidence. Motions for extensions of time must contain a schedule upon which the requested discoverable evidence will be available. If a party requests discoverable evidence which is not at that time in the possession of the custodial party, such as medical reports, results of tests which have been performed, etc., the custodial party must inform the court of the earliest date on which such materials can be in the party's possession for inspection and copying by the requesting party.

Unless otherwise ordered by the court, a party shall have no obligation to reproduce copies of requested materials (except the government must provide the defendant a copy of the defendant's prior criminal record) for another party's possession until the requesting party has remitted payment for the duplicating expenses. Defendants represented under this court's Criminal Justice Plan are exempted from this requirement to pay duplicating expenses. Whenever duplication of the requested materials is unduly burdensome for a party, the party may by motion at the appropriate time request the court to relieve the party from the duty to provide copies.

LCrR 17: PRETRIAL CONFERENCE

LCrR 17.1 PRETRIAL CONFERENCES

A. Scheduling.

(1) For Atlanta division cases in which a not guilty plea is entered at arraignment, the magistrate judge shall schedule and hold a pretrial conference within fifteen (15) days of the arraignment or at such later date as may be required.

(2) In other division cases in which a not guilty plea is entered at arraignment, the judge assigned to the division may upon the judge's own motion or upon motion of any party assign the case to a magistrate judge for a pretrial conference.

B. Hearing. The pretrial conference shall be attended by counsel who will actually try the case. The following matters may be presented to the magistrate judge at the pretrial conference for consideration, hearing, and ruling or report and recommendation:

- (1) Motions relating to discovery and inspection and for bills of particular.
- (2) Motions to dismiss the indictment.

(3) Motions to suppress evidence.

(4) Any other matters which may serve the interests of justice and the prompt and orderly disposition of the case.

Counsel shall have the duty to make every effort to stipulate all facts and/or points of law as to which the truthfulness or existence of the fact or law is not contested.

C. Orders. Pretrial hearings shall be recorded. At the conclusion of the final pretrial conference, a pretrial order shall be prepared and filed with the court.

V. VENUE

LCrR 18: PLACE OF PROSECUTION AND TRIAL

LCrR 18.1 VENUE AND TRIAL OF CRIMINAL CASES

A. Filing. Criminal cases shall be filed with the clerk in the division in which venue lies (see Fed.R.Crim.P. 18). See also LR 3.1A.

B. Trial. A defendant in a criminal action will ordinarily be tried in the division in which the offense is alleged to have been committed.

C. Proceedings in Other Divisions. When the arraignment, trial, sentencing, or other proceedings in a criminal case are held in a division of the district other than the division in which the indictment or information is or was pending, upon completion of the proceedings, all papers and records therein shall be returned to and shall appear on the records of the division in which the indictment or information is or was pending as if such proceedings had been held in that division.

VI. TRIAL

LCrR 24: TRIAL JURORS

LCrR 24.1 JUROR SELECTION

Prospective grand and petit jurors shall be selected and qualified and jury panels shall be drawn pursuant to the Jury Selection and Service Act of 1968, 28 U.S.C. §§ 1861-70, and the current Jury Plan of this court. The Jury Plan of this court is attached hereto as Appendix A and is made a part of these rules.

LCrR 26 TAKING OF TESTIMONY

LCrR 26.1 EXCUSAL OF WITNESSES

Witnesses shall be excused from criminal proceedings and trials in accordance with the procedures set forth in LR 43.2.

LCrR 30: INSTRUCTIONS

LCrR 30.1 REQUESTS TO CHARGE

Requests to charge in criminal trials are subject to all the provisions of LR 51.1, except the requirement in LR 51.1B that the parties attach their contentions to the requests to charge submitted.

VII. JUDGMENT

LCrR 32: SENTENCE AND JUDGMENT

LCrR 32.1 PRESENTENCE REPORT

A. Non-Disclosure of Presentence Investigation Report. Pursuant to Fed.R.Crim.P. 32(b)(6)(A), the probation officer's sentencing recommendation, if any, provided to the court with the presentence report, will not be disclosed to the defendant, defendant's counsel, or to the attorney for the government.

B. Confidentiality. Any copy of a presentence report which this court makes available, or has made available, to the United States Parole Commission or to

the Bureau of Prisons constitutes a confidential court document and shall be presumed to remain under the continuing control of the court during the time it is in the temporary custody of these agencies. A copy of the presentence report shall be loaned to the Parole Commission and Bureau of Prisons only for the purpose of enabling those agencies to carry out their official functions, including parole release and supervision. The presentence report shall be returned to the court after such use or upon request. Disclosure of the report is authorized only so far as necessary to comply with 18 U.S.C. § 4208(b)(2).

C. Confidentiality Legend. Every copy of a presentence report released by the probation officer of this court to the Parole Commission or Bureau of Prisons shall bear the following legend on its face:

**CONFIDENTIAL
PROPERTY OF U.S. COURTS
SUBMITTED FOR OFFICIAL USE OF
U.S. PAROLE COMMISSION AND
FEDERAL BUREAU OF PRISONS. TO BE
RETURNED AFTER SUCH USE, OR UPON REQUEST.
DISCLOSURE AUTHORIZED ONLY TO
COMPLY WITH 18 U.S.C. § 4208(b)(2).**

VIII. APPEAL

(RESERVED)

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

(RESERVED)

X. GENERAL PROVISIONS

LCrR 44: RIGHT TO AND ASSIGNMENT OF COUNSEL

LCrR 44.1 APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

Pursuant to Fed.R.Crim.P. 44, counsel shall be appointed to represent any indigent defendant. The procedures for the appointment of counsel and counsel's obligations regarding the representation of the indigent defendant are set forth in the "Plan of the United States District Court for the Northern District of Georgia Pursuant to the Criminal Justice Act of 1964" which is attached as Appendix D and which is hereby incorporated by reference into these rules.

LCrR 44.2 APPEARANCE OF APPOINTED COUNSEL

Appointments under this court's Criminal Justice Plan (Appendix D) as attorney of record for a defendant are made in writing on form CJA-20, "Appointment of and Authority to Pay Court Appointed Counsel". No further action is necessary by appointed counsel in order to notice an appearance on behalf of the defendant.

LCrR 46: RELEASE FROM CUSTODY

LCrR 46.1 BAIL, PROCEDURES RELATING TO BONDS BEFORE TRIAL OR SENTENCING

A. Appearance Bonds. Whenever a judge or magistrate judge of this court requires a person arrested for a bailable offense or upon superseding indictment or a person who is a material witness to give bail for the individual's appearance before the court, the appearance bond given by such person shall be in the amount set by the judge or magistrate judge and shall be secured in conformance with Fed.R.Crim.P. 46(d) and the Bail Reform Act, 18 U.S.C. §§ 3141(a)-3142, 3144.

B. Forfeiture of Fugitive Defendants' Bonds.

(1) Prior to Arraignment. When a defendant previously released on bond fails to appear for arraignment, the United States Attorney shall prepare a motion for forfeiture of bail, issuance of a bench warrant, or other appropriate order which shall be presented to the judge to whom the case was assigned or to the duty judge if no assignment had been made.

(2) Subsequent to Arraignment. When an arraigned defendant previously released on bond fails to appear for trial or sentencing, the United States Attorney shall proceed in accordance with the procedure set forth in subsection (1).

**LCrR 46.2 PROCEDURES RELATING TO BONDS PENDING
EXECUTION OF SENTENCE AND BONDS PENDING APPEAL**

A. Setting of Bond. When execution of a defendant's sentence is delayed or when an appeal of a defendant's conviction is pending, bond shall be set in accordance with the provisions of the Bail Reform Act, 18 U.S.C. §§ 3141(b), 3143. If a new bond is set, the defendant shall be presented to a magistrate judge for approval of surety.

B. Remittiturs.

(1) Judgment Affirmed or Appeal Dismissed. When a judgment of conviction in a criminal case has been affirmed on appeal or the appeal dismissed, the clerk shall immediately upon receipt file the remittitur from the appellate court. The clerk shall also send certified copies of the remittiturs, judgment, and commitment to the United States Marshal for this district and notify counsel of record and/or the parties that the remittitur has been filed.

(2) Judgment Modified, Vacated, or Reversed. When the judgment of this court has been modified, vacated, or reversed on appeal, the clerk shall immediately present a proposed order to the court making the remittitur the judgment of this court and shall notify counsel and/or the parties of the entry of said order and that they are required to prepare and present promptly to the court any such further orders as may be required.

(3) 28 U.S.C. § 2255 Petitions. Upon receipt of a remittitur from the appellate court either denying or granting a defendant's petition under 28 U.S.C. § 2255, the clerk shall immediately file the remittitur and follow the appropriate procedure set forth in (1) or (2) above.

C. Revocation of Appeal Bond. When a convicted defendant is released on an appeal bond and the judgment of conviction is either affirmed or the appeal dismissed by the appellate court, the clerk shall immediately file the remittitur or notice of dismissal of appeal and shall promptly notify defendant, counsel for the defendant, and the sureties of the defendant's bonds of such affirmance or dismissal by registered or certified mail to their last known address. The clerk shall also mail a copy of such notice to the United States Attorney, the United States Marshal, and the United States Probation Officer, if appropriate.

The notice shall direct the defendant to report to the United States Marshal in Atlanta, Georgia, at a time certain on the tenth (10th) day following the date of the notice in order that the defendant may be committed into custody to abide

the sentence imposed. When the tenth (10th) day falls on Saturday or Sunday, the date of the following Monday shall be used. When the tenth (10th) day falls on a holiday, the date of the following day shall be used.

When the commitment order specifies that the defendant is allowed to surrender voluntarily, the notice shall direct the defendant to report to the designated institution upon notification by the United States Marshal.

Upon failure of the defendant to report as directed, the United States Marshal shall report the failure to the United States Attorney, and the bond of the defendant shall become subject to forfeiture without further notice.

D. Revocation of Bond upon Denial of 28 U.S.C. § 2255 Petition.

Defendants released on bond whose 28 U.S.C. § 2255 petitions are denied by the appellate court are subject to the provisions of LCrR 46.2A.

LCrR 47: JUROR CONTACT

LCrR 47.3 RESTRICTED CONTACT WITH JURORS

During trial or after the conclusion of a trial, no party, agent or attorney shall communicate with any members of the petit jury, including alternate or excused jurors, before which the case was tried without first receiving permission of the court.

LCrR 48: DISMISSAL

LCrR 48.1 PROCEDURE UPON ABANDONMENT OF PROSECUTION

When the government abandons prosecution of a defendant being held for trial in this district, the appropriate official shall immediately notify the clerk and U.S. Marshal for this court, in writing, that prosecution has been abandoned.

LCrR 50: CALENDARS; PLAN FOR PROMPT DISPOSITION

LCrR 50.1 CRIMINAL CALENDARS

The criminal calendars of this court shall be processed in accordance with the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-74, and in accordance with the "Plan for Achieving Prompt Disposition of Criminal Cases" (Appendix C), provided, however, that the Speedy Trial Act shall supersede any conflicting provisions contained within the "Plan".

LCrR 53: REGULATION OF CONDUCT IN THE COURTROOM

LCrR 53.1 TELEVISION AND RADIO BROADCASTING, TAPE RECORDING, OR PHOTOGRAPHING JUDICIAL PROCEEDINGS

Refer to LR 83.4

LCrR 55: RECORDS

LCrR 55.1 PROCEDURES REGARDING PLEADINGS AND EXHIBITS

Procedures regarding the removal of pleadings and the filing, inspection, and return of trial exhibits are set forth in LR 79.1E.

LCrR 57: RULES BY DISTRICT COURTS

LCrR 57.1 ATTORNEYS: ADMISSION TO PRACTICE BEFORE THE COURT

A. Admission to the Bar of this Court.

Refer to LR 83.1A

B. Permission to Practice in a Particular Case.

Refer to LR 83.1B

C. Standard of Professional Conduct.

Refer to LR 83.1C

D. Appearances.

(1) In Criminal Cases.

(a) Appointments under this Court's Criminal Justice Plan (Appendix D) as attorney of record for a defendant are made in writing on Form CJA-20, "Appointment of and Authority to Pay Court Appointed Counsel". No further action is necessary by appointed counsel in order to notice an appearance on behalf of defendant.

(b) Retained defense counsel are required to file a notice of appearance within three (3) days after being retained. Counsel becoming associated with counsel of record or being substituted for counsel of record must also comply with this requirement.

This court will follow the provisions of the Eleventh Circuit Plan under the Criminal Justice Act, Section (d)(2) regarding requests by retained defense counsel to withdraw from representation of a defendant on appeal. See also LCrR 57.1E.

(2) Before the Grand Jury. An attorney representing a witness before the grand jury must file a notice of appearance with the clerk. The notice shall be filed in such a manner as to maintain the secrecy requirements of grand jury proceedings.

For purposes of this rule, an attorney shall be deemed to be appearing for and representing a witness before the grand jury if the attorney is present within the courthouse and advising the witness prior to entering the chambers of the grand jury or is interviewing witnesses before or after their appearance before the grand jury.

(3) Pro Se Appearance Limitations. Whenever a party has appeared by attorney, the party may not thereafter appear or act in the party's own behalf in the action or proceeding or take any step therein unless the party has first given notice of the party's intention to the attorney of record and to the opposing party and has obtained an order of substitution from the court. Notwithstanding this rule, the court may in its discretion hear a party in open court even though the party has previously appeared or is represented by attorney.

(4) Duty to Supplement. Counsel and parties appearing *pro se* shall have, in all cases, an affirmative duty to notify the clerk's office by letter of any change in address and/or telephone number. A failure to keep the clerk's office so informed which causes a delay or otherwise adversely affects the management of a civil case shall constitute grounds for dismissal without prejudice or entry of a judgment by default.

E. Withdrawal; Leave of Absence; Responsibilities of Party Upon Removal of Attorney

(1) Withdrawal Policy. Counsel will not ordinarily be allowed to withdraw after pretrial or at a time when withdrawal will cause a delay in the trial of the case.

(2) Motions to Withdraw. This policy notwithstanding, an attorney wishing to withdraw the attorney's appearance in any action or proceeding or wishing to have the attorney's name stricken as attorney of record for a party in any case shall comply with the following procedure:

(a) Submit to the clerk in duplicate for filing a motion requesting permission to withdraw.

(b) The motion shall state that the attorney has given the client ten (10) days prior notice of the attorney's intention to request permission to withdraw and shall specify the manner of such notice. A copy of the notice shall be affixed to the motion.

(c) The attorney shall serve a copy of the attorney's motion to withdraw upon opposing counsel and upon the client after filing the motion with the clerk.

(d) Ten (10) days after filing, the clerk shall submit the motion to the judge for action thereon.

(3) Withdrawal from Criminal Appeals. If, prior to filing a notice of appeal, a retained attorney of record for the defendant moves to withdraw from representation of the defendant on direct appeal of the defendant's conviction and the defendant moves to proceed on appeal *in forma pauperis* and/or for the appointment of Criminal Justice Act appellate counsel, retained counsel will be required to disclose in camera:

(a) The total amount of fees and costs paid.

(b) By whom the fees and costs were paid.

(c) The total amount of costs actually incurred and services actually rendered.

This information along with any other information required by case law decided subsequently to the enactment of this local rule will be viewed in camera by

the court for the purpose of deciding the defendant's *in forma pauperis* motion.

(4) Leaves of Absence. All leaves of absence shall be subject to the approval of the court. Petitions for leave of absence for periods greater than twenty (20) days in length must be made by motion. Lead counsel must file a petition, in each individual case where an absence is requested, designating the period of absence and the reason for the absence. A proposed order for the court shall also be attached. Absence of less than twenty-one (21) days requires lead counsel to submit a letter to the judge's courtroom deputy requesting that a case not be calendared during the period of absence. Only lead counsel, as specified on the preliminary report and discovery schedule, need petition the court for leave of absence. A leave of absence does not extend previously set filing deadlines nor relieve counsel from other deadline requirements imposed by the court.

(5) Responsibilities of Party Upon Removal of Attorney. Whenever an attorney withdraws or dies or is removed or suspended or for any other reason ceases to act as attorney of record, the party whom the attorney was representing must within twenty (20) days or before any further proceedings are had in the action before the court notify the clerk of the appointment of another attorney or of the party's decision to appear *pro se*. The party must also provide the clerk with the current telephone number and address of the newly-appointed attorney or of the party if proceeding *pro se*. Failure to comply with this rule shall constitute a default by the party.

F. Attorney Discipline.

Refer to LR 83.1F

LCrR 57.2 PRESENCE OF COUNSEL AND COUNSEL PARTICIPATION AT TRIAL

The requirements, procedures, and presumptions set forth in LR 39.3 respectively, regarding the presence of counsel during trial and limitations on counsel participation at trial are fully applicable to criminal proceedings and trials in this court.

LCrR 57.3 WEAPONS NOT ALLOWED IN COURTHOUSE

Refer to LR 83.5

LCrR 57.4 RELEASE OF INFORMATION IN CRIMINAL AND GRAND JURY PROCEEDINGS

A. By Lawyers or Law Firms.

(1) In connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, it is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(2) With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication that goes beyond the public record or which is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(3) From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:

(a) 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 the apprehension of the accused or to warn the public of any dangers the accused may present;

(b) 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;

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

(d) 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;

(e) The possibility of a plea of guilty to the offense charged, to a lesser offense, to an offense other than the offense charged, or of *nolo contendere*;

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

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

(4) During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or the issues in the trial which a reasonable person would expect to be disseminated by means of public communication, if there is a reasonable likelihood that such dissemination will interfere with a fair trial. A lawyer or law firm is permitted to quote from or refer without comment to public records of the court in the case.

B. By Courthouse Personnel. All courthouse supporting personnel, including, among others, marshals, deputy marshals, court clerks, deputy court clerks, bailiffs, court reporters, law clerks, secretaries, and employees or subcontractors retained by the court-appointed official reporters, are prohibited from disclosing to any person, without authorization by the court, information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the court. This rule specifically forbids the divulgence of information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

C. Exceptions to This Rule. Nothing in this rule is intended (1) to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, (2) to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or

investigative bodies, or (3) to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

D. Provisions for Special Orders in Widely Publicized or Sensational Criminal Cases. In a widely publicized or sensational criminal case, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extra-judicial statements by parties and witnesses likely to interfere with the rights of the parties or the rights of the accused to a fair trial by an impartial jury; the seating and conduct in the courtroom of spectators and news media representatives; the management and sequestration of jurors and witnesses; and any other matters which the court may deem appropriate for inclusion in such an order.

LCrR 57.5 REGISTRY FUNDS AND OTHER FUNDS IN CLERK'S CUSTODY

Refer to LR 67.1

LCrR 58: PROCEDURES FOR MISDEMEANORS AND OTHER PETTY OFFENSES

LCrR 58.1 MISDEMEANOR AND PETTY OFFENSE JURISDICTION AND DUTIES OF MAGISTRATE JUDGES

(1) Pursuant to 18 U.S.C. § 3401(a) and subject to the provisions regarding consent of the defendant set forth in 18 U.S.C. § 3401(b) and (g), this court has designated jurisdiction to its magistrate judges [as defined, 28 U.S.C. § 639(6)] to conduct trials involving misdemeanors and to sentence persons convicted thereof. See also 28 U.S.C. § 636(a)(3), (4) and (5).

Misdemeanors include Class A misdemeanors [18 U.S.C. § 3559(a)(6)] and petty offenses [18 U.S.C. § 19]. Petty offenses are Class B misdemeanors [18 U.S.C. § 3559(a)(7)], Class C misdemeanors [18 U.S.C. § 3559(a)(8)], and infractions [18 U.S.C. § 3559(a)(9)].

(2) Pursuant to 18 U.S.C. § 3401(c), the court authorizes the magistrate judges to direct the probation service of the court to conduct a presentence report prior to the imposition of sentence by a magistrate judge.

(3) See Appendix E to these Local Rules for the Forfeiture of Collateral Schedule in Misdemeanor and Petty Offenses applicable to offenses committed in this District.

LCrR 58.2 COLLATERAL IN LIEU OF APPEARANCE FOR DESIGNATED PETTY OFFENSES

For petty offenses listed in the "Forfeiture of Collateral Schedule", which is attached to these rules as Appendix E and which is hereby incorporated by reference, collateral may be posted in lieu of the appearance of the offender, unless it is otherwise specified in Appendix E.

LCrR 58.3 RULES APPLICABLE TO MISDEMEANORS AND PETTY OFFENSES

A. Uniform Practice. The rules governing the procedure and practice for the conduct of proceedings in misdemeanor cases, including petty offenses, before United States magistrate judges under 18 U.S.C. § 3401, and for appeals in such cases to judges of the district court, are set forth in the Federal Rules of Procedure for the Trial of Misdemeanors before United States Magistrate Judges.

B. Applicability of the Federal Rules of Criminal Procedure.

(1) **Generally.** Except as specifically provided by the Federal Rules of Procedure for the Trial of Misdemeanors, the Federal Rules of Criminal Procedure govern all proceedings, except those proceedings concerning petty offenses for which no sentence of imprisonment will be imposed.

(2) **Petty Offenses Without Imprisonment.** To the extent the Federal Rules of Criminal Procedure are not inconsistent with the Rules of Procedure for the Trial of Misdemeanors, the magistrate judges may follow provisions of the Federal Rules of Criminal Procedure as they deem appropriate in conducting proceedings concerning petty offenses for which no sentence of imprisonment will be imposed.

LCrR 59: ADDITIONAL DUTIES OF MAGISTRATE JUDGES AND OTHER POWERS GRANTED BY STATUTE

LCrR 59 ADDITIONAL DUTIES OF MAGISTRATE JUDGES AND OTHER POWERS GRANTED BY STATUTE

(1) **Prisoner Petitions.** Except in cases in which the death penalty has been imposed, the magistrate judges may, unless otherwise directed, review civil petitions filed by prisoners. Information regarding these civil petitions is set forth in LR 72.1C.

(2) **Pretrial Matters on Reference from Judge.**

(a) The magistrate judges are authorized, under 28 U.S.C. § 636(b)(1)(B), to conduct hearings, including evidentiary hearings, on dispositive pretrial motions filed by defendants, such as motions to dismiss or quash an indictment or information and to suppress evidence. At the conclusion of the hearings, the magistrate judge shall submit proposed findings of fact and recommendations for disposition of the motion to the judge to whom the case is assigned. Any objections to the magistrate judge's proposed findings and recommendations shall be processed in accordance with the provisions of 28 U.S.C. § 636(b)(1).

(b) The magistrate judges are also authorized, under 28 U.S.C. § 636(b)(1)(A), to hear and determine pretrial matters pending before the court which are not dispositive of the case. When appropriate, the magistrate judge shall enter into the record a written order setting forth the magistrate judge's disposition of the matter. Objections to the magistrate judge's order must be served and filed within ten (10) days after entry of the order. Upon consideration of the objections, the judge to whom the case is assigned shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law.

If the order to which a party objects is oral, the parties must file, within ten (10) days after the objections are served and filed, a joint statement showing how the issues presented by the objection arose and were decided by the magistrate judge. Only those facts essential to a decision of the issues presented in the objection should be set forth.

(3) **Other Powers Granted by Statute.** The magistrate judges are also authorized to exercise all powers and perform all duties conferred or imposed by 28 U.S.C. § 636.