

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF VIRGINIA



LOCAL RULES

August 2013

TABLE OF CONTENTS

TITLE I - GENERAL	1
RULE 1. SCOPE AND PURPOSE OF RULES	1
(a) Application.....	1
(b) Definitions.....	1
(c) Amendment.....	1
(d) Citation.....	1
(e) Effective Date.....	2
RULE 2. DIVISIONS OF THE WESTERN DISTRICT	2
(a) Divisions.....	2
(b) Venue in Civil Cases.....	3
(c) Venue in Criminal Cases.....	3
(d) Assignment of Cases.....	4
(e) Continuous Session.....	4
RULE 3. BANKRUPTCY REFERRALS AND JURY TRIALS	4
(a) Assignments.....	4
(b) Jury Trials.....	5
RULE 4. SOCIAL SECURITY CASES.....	5
(a) Applications to Proceed without Prepayment of Funds in Disability Insurance and Supplemental Security Income Appeals.....	5
(b) Social Security Disability Filings.....	5
(c) Briefing of Social Security Cases.....	6
RULE 5. PREJUDICIAL INFLUENCES	7
RULE 6. ATTORNEYS	8
(a) Eligibility to Practice.....	8
(b) Procedure.....	8
(c) Eastern District Attorneys.....	9
(d) Pro Hac Vice Admission.....	9
(e) Signing of Pleadings.....	10
(f) Government Attorneys.....	10
(g) Law Students.....	10
(h) Discipline.....	11
(i) Entry and Withdrawal by Attorney.....	11
(j) Surety.....	11
RULE 7. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS	11
(a) Implementation of Procedures by Clerk.....	12
(b) Case Management/Electronic Case Files.....	12
(c) Signatures.....	12
(d) Use of Passwords.....	12
(e) Entry of Pleadings and Other Papers on the Docket.....	12
(f) Entry of Orders and Other Proceedings on the Docket.....	13
(g) Service.....	13

(h) Consent to Service and Notice by Electronic Means.....	14
(i) Electronic Filing Required.....	14
RULE 8. REDACTION OF PERSONAL DATA IDENTIFIERS FROM PLEADINGS	14
RULE 9. SEALED DOCUMENTS.....	15
(a) General.....	15
(b) Procedures for Filing a Sealed Document.	15
(c) Exceptions.....	16
(d) Unsealing	18
RULE 10. COMMUNICATION WITH JURORS	20
RULE 11. IMPOSITION OF JURY COSTS.....	21
RULE 12. TRIAL EXHIBITS	21
TITLE II - CIVIL RULES	23
RULE 3. COMMENCING AN ACTION	23
RULE 11. PLEADINGS AND MOTIONS.....	23
(a) Address and Telephone Number.....	23
(b) Determination of Motions.....	24
(c) Briefs Required.	24
RULE 16. SCHEDULING ORDERS.....	25
RULE 26. EXPERT DISCLOSURE	25
(a) Agreement Upon Disclosure.....	25
(b) Objections to Expert Testimony.	26
RULE 40. SCHEDULING OF CASES FOR TRIAL	26
RULE 51. PROPOSED INSTRUCTIONS	26
RULE 54. FEES AND COSTS.....	26
(a) Attorneys’ Fees	26
RULE 56. SUMMARY JUDGMENT-TIME OF FILING	27
RULE 67. DEPOSIT AND INVESTMENT OF REGISTRY FUNDS	28
(a) Receipt of Funds	28
(b) Investment of Registry Funds	28
(c) Fees and Taxes.....	30
(d) Transition from Former Investment Procedure.....	31
RULE 73. MAGISTRATE JUDGES	32
RULE 83. ALTERNATIVE DISPUTE RESOLUTION PROGRAM	32
(a) Availability.	32
(b) Requests for Referrals.....	32
(c) Neutrals.....	33
(d) Training and Disqualification of Neutrals.	33
(e) Confidentiality.	33
(f) Scheduling.....	34
(g) Enforceability.....	34
(h) Coordinator.	34
TITLE III - CRIMINAL RULES.....	36

RULE 12. STYLE OF MOTIONS	36
RULE 32. LOCAL PROCEDURE FOR GUIDELINE SENTENCING.....	36
(a) Disclosure of Recommended Sentence.....	36
(b) Motion for Substantial Assistance.	36
(c) Disclosure of Presentence Report.	36
RULE 58. COLLATERAL PAYMENTS.....	37
RULE 59. APPEALS FROM CONVICTION OR SENTENCE BY MAGISTRATE JUDGE.....	37
(a) Record on Appeal.	37
(b) Submission of Appeal.....	37
SCHEDULE OF REVISIONS TO LOCAL RULES	39

**UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA

LOCAL RULES**

TITLE I - GENERAL

Rule 1. Scope and Purpose of Rules

[Return to Top](#)

- (a) **Application.** These rules apply in all civil and criminal cases and other proceedings in the United States District Court for the Western District of Virginia.
- (b) **Definitions.** So far as applicable, 1 U.S.C. §§ 1 through 5 govern the construction of these rules. “This Court” refers to the United States District Court for the Western District of Virginia. The words “the Court” or “judge” as used in these rules include any judicial officer sitting in this Court. “Clerk” as used in these rules means the Clerk of this Court or any authorized deputy thereof. Persons appearing pro se are bound by these rules, and any reference to “attorney” or “counsel” applies to pro se parties unless the context requires otherwise.
- (c) **Amendment.** These rules may be amended at any time by this Court, after giving public notice and an opportunity for comment.
- (d) **Citation.** These rules may be cited as W.D. Va. Gen. R., W.D. Va. Civ. R., or W.D. Va. Crim. R., as the case may be.

- (e) **Effective Date.** These rules and amendments thereto take effect as provided in the order of adoption and govern all proceedings thereafter commenced and, insofar as just and practicable, all then pending proceedings.

Rule 2. Divisions of the Western District

[Return to Top](#)

- (a) **Divisions.** The divisions of this Court are as follows.
- (1) **Abingdon Division.** The Abingdon Division embraces the counties of Smyth, Tazewell, Russell, Washington, Buchanan and the city of Bristol;
 - (2) **Big Stone Gap Division.** The Big Stone Gap Division embraces the counties of Dickenson, Wise, Scott, Lee and the city of Norton;
 - (3) **Charlottesville Division.** The Charlottesville Division embraces the counties of Albemarle, Fluvanna, Madison, Greene, Nelson, Rappahannock, Culpeper, Louisa, Orange, and the city of Charlottesville;
 - (4) **Danville Division.** The Danville Division embraces the counties of Patrick, Henry, Pittsylvania, Halifax, Charlotte and the cities of Danville, Martinsville and South Boston;
 - (5) **Harrisonburg Division.** The Harrisonburg Division embraces the counties of Frederick, Clarke, Warren, Shenandoah, Page, Rockingham, Augusta, Highland, Bath and the cities of Harrisonburg, Staunton, Waynesboro and Winchester;
 - (6) **Lynchburg Division.** The Lynchburg Division embraces the counties of Rockbridge, Amherst, Bedford, Campbell, Appomattox, Buckingham,

Cumberland and the cities of Bedford, Buena Vista, Lexington and Lynchburg;

(7) **Roanoke Division.** The Roanoke Division embraces the counties of Alleghany, Botetourt, Craig, Giles, Pulaski, Montgomery, Roanoke, Floyd, Franklin, Carroll, Grayson, Bland, Wythe and the cities of Clifton Forge, Covington, Radford, Roanoke, Salem and Galax.

(b) **Venue in Civil Cases.** Civil actions for which venue is proper in this district must be brought in the proper division as well. The venue rules for United States district courts contained in the United States Code also apply in determining the proper division in which an action must be filed, so that such venue rules are construed as if the terms “judicial district” and “district” were replaced with the word “division.”

(c) **Venue in Criminal Cases.** Upon the return of an indictment by any grand jury, it shall be filed in the division in which the crime charged is alleged to have occurred and assigned to the judge next in rotation for that division. Where the indictment charges a crime or crimes that are alleged to have occurred in more than one division, the indictment shall be filed in the division in which it is alleged that a crime occurred that is the residence of a defendant, or if there are more than two defendants, and a majority of the defendants reside in one division, in that division. If the appropriate division cannot be determined using the rules set forth herein, the Clerk shall consult with the chief judge of the district, or in the chief judge’s absence, with the next available active district judge in seniority, for direction as to

the proper division for filing. Superseding indictments in any case shall be filed in the division in which the existing indictment is filed. Nothing in this rule shall affect the discretion of the presiding judge in any case in determining the proper place of trial.

- (d) **Assignment of Cases.** Cases are assigned among the district judges pursuant to Standing Order, as amended from time to time. If a judge to whom a case is assigned is disqualified from the case by statute or by the Code of Conduct for United States Judges, the case must be reassigned by the Clerk to the judge who is next in rotation pursuant to the Standing Order, and if there is no other available judge, then the chief judge must reassign the case, and if the chief judge is so disqualified or is unavailable, then the next available active district judge in seniority must reassign the case.
- (e) **Continuous Session.** All of the divisions of this Court shall be deemed in continuous session for transaction of judicial business on all business days throughout the year.

Rule 3. Bankruptcy Referrals and Jury Trials

[Return to Top](#)

- (a) **Assignments.** In accordance with the provisions of 28 U.S.C. § 157, all cases under Title 11 of the United States Code and all proceedings arising under Title 11, or arising in or relating to a case under Title 11, are referred to the bankruptcy judges for this district, to be assigned in accordance with their assignment rules.

- (b) **Jury Trials.** In accordance with the provisions of 28 U.S.C. § 157(e), bankruptcy judges of this district are hereby specifically designated to conduct jury trials when all parties have expressly consented thereto.

Rule 4. Social Security Cases

[Return to Top](#)

- (a) **Applications to Proceed without Prepayment of Funds in Disability Insurance and Supplemental Security Income Appeals.** Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), all applications to proceed without prepayment of funds in Social Security disability insurance or supplemental security income appeals may be referred to a United States magistrate judge for consideration. Pursuant to Federal Rule of Civil Procedure 72(b), the petitioner may object to any order entered by the magistrate judge denying in forma pauperis status and may seek review by the district judge to whom the case would be assigned by filing a written objection to the order with the court within 14 days of notice thereof.
- (b) **Social Security Disability Filings.** Pursuant to the provisions of 42 U.S.C. § 405(g) on judicial review of decisions by the Commissioner of Social Security, the following rules apply:
- (1) The parties may use the form [Social Security Complaint](#) and [Social Security Answer](#) which are hyperlinked here and also available on the Court's website under the "Forms" tab.
 - (2) The Commissioner must respond to Social Security disability complaints

within 120 days after service of the complaint on the United States Attorney;

- (3) In all cases in which the Court has entered a judgment affirming, modifying, or reversing the decision of the Commissioner and remands the cause for a rehearing, the order of remand shall be deemed a final order for all purposes, including a petition for approval of attorneys' fees, and the claimant must file a new complaint pursuant to the terms of 42 U.S.C.

§ 405(g) to obtain further judicial review, and in such cases, the Court shall waive prepayment of any statutory filing fee;

- (4) The Court shall retain jurisdiction in all cases in which the Court remands the case to the Commissioner for consideration of new evidence which is material and for which good cause is shown for failure to incorporate the evidence in prior proceedings. Claimants dissatisfied with the Commissioner's decision upon remand may petition the Court to reinstate the case on the active docket for review of the decision; if all parties are satisfied with the decision upon remand, the prevailing party shall petition the Court for entry of a final order adopting and ratifying the decision; and

(c) **Briefing of Social Security Cases.** In all cases seeking judicial review of decisions by the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g), the following procedures are applicable, unless changed by the presiding judge:

- (1) The plaintiff must file, within 30 days of service of a copy of the administrative record, a brief addressing why the Commissioner's decision

is not supported by substantial evidence or why the decision otherwise should be reversed or the case remanded;

- (2) If the plaintiff desires oral argument, it must be requested in writing at the time the plaintiff's brief is filed. Whether to allow oral argument is at the discretion of the Court. If oral argument is allowed, a party may participate either telephonically or in person;
- (3) If the Commissioner desires to file a brief in response, such brief must be filed within 30 days after service of the plaintiff's brief. No further briefs by the parties will be submitted unless requested by the Court; and
- (4) In the event that the Commissioner files a motion to remand the case to the Commissioner for further proceedings, the motion must set forth whether or not the plaintiff consents to such remand. If no such consent is indicated, the plaintiff must file the grounds of any objection to remand within 14 days of service of the motion to remand, or it will be assumed that plaintiff consents to remand.

Rule 5. Prejudicial Influences

[Return to Top](#)

The conduct of a trial will be insulated by all court personnel, lawyers and litigants from all prejudicial influences. Except for naturalization and ceremonial proceedings, photography during a session of court, as well as sound and video broadcasting or recording, is prohibited in the courtroom, its environs, and the offices of this Court.

Rule 6. Attorneys

[Return to Top](#)

- (a) **Eligibility to Practice.** Any person who is an active or emeritus member of the Virginia State Bar in good standing is eligible to practice before this Court upon admission.
- (b) **Procedure.** Admission to practice is upon motion in open court any day during which this Court is in session. An attorney desiring to be admitted, not less than 2 weeks before the day on which the motion is to be submitted, must file in the clerk's office at the place where such motion is to be made, an application for admission to practice, which application must be made in writing, stating the qualifications hereinbefore prescribed and, in addition thereto, the name and office address of the applicant; and such application must be accompanied by the certificates of at least 2 members of the bar of this Court, that they are acquainted with the applicant and that the applicant is of good character and ethical conduct. Upon the filing of the application for admission to practice by an attorney, the Clerk must ascertain from the Virginia State Bar that the applicant is an active or emeritus member in good standing. The Court may, in its discretion, hear motions for admission to practice at times other than a day in which court is in session. Persons who are associate, retired, or disabled members of the Virginia State Bar and who do not engage in the practice of law may, in the discretion of the Court, be admitted as members of the bar of this Court upon following the procedures set forth herein, but may not practice before this Court.

- (c) **Eastern District Attorneys.** Any attorney admitted to practice in the United States District Court for the Eastern District of Virginia is permitted to practice in this Court upon the filing of a certificate of good standing from the Clerk of the Eastern District of Virginia showing that the attorney has been duly admitted to practice in that district.
- (d) **Pro Hac Vice Admission.** Attorneys who are not qualified and licensed to practice under the laws of Virginia, but who are qualified and licensed to practice before the Supreme Court of the United States, or before the highest court of any state in the United States, or before the courts of the District of Columbia, or any other Article III federal court, may not become members of the bar of this Court, but may appear only in association with a member of the bar of this Court, upon motion of such member, and only for the conduct of a case in which he or she is associated and then pending before the Court. In any case removed or transferred to this Court in which a party is represented by an attorney who is not a member of the bar of this Court, such attorney must, within 30 days of such removal or transfer (or such other time as directed by the presiding judge), be admitted to practice before this Court or be permitted to appear in association with a member of the bar of this Court. Pro hac vice admitted attorneys must promptly qualify for electronic case filing. Pro hac vice admitted attorneys may be permitted to appear at hearings or trials in the absence of an associated member of the bar of this Court in the discretion of the presiding judge.

- (e) **Signing of Pleadings.** No pleading, notice, or other paper required to be signed by counsel shall be accepted for filing by the Clerk unless signed by a member of the bar of this Court, who shall have entered an appearance of record in the case, with the address where notice can be served upon the attorney, and which attorney is deemed to have such authority that the Court can deal with the attorney alone in all matters affecting the disposition of the case. Such appearance must not be withdrawn without the leave of the Court. Service of notice, process, or any other paper upon the attorney is equivalent to such service on the parties for whom the attorney has appeared. Provided, however, that the foregoing provisions shall not apply to a party who conducts his or her own case. A party who conducts his or her own case shall file with the pleadings a memorandum of an address where notice can be served upon the party.
- (f) **Government Attorneys.** Notwithstanding any provision of this rule, any attorney representing the United States government, or any agency thereof, or representing any federal employee sued in the course of employment, or any attorney employed by the Federal Public Defender's Office, may appear and file pleadings in an official capacity without admission to practice in this Court, so long as such attorney is qualified and licensed to the practice before the Supreme Court of the United States, or before the highest court of any state in the United States, or before the courts of the District of Columbia.
- (g) **Law Students.** Prior to an attorney presenting an eligible law student to the court for the purpose of participating in any civil or criminal case, the attorney must in

accordance with Court's [Plan for Third-Year Practice](#), file a motion, the certifications referenced in the Plan, and a proposed order requesting the court to authorize the student to participate in the matter. These documents should be filed in the division of court with the judicial officer before whom the student will primarily appear. An eligible law student who has qualified under this Court's Plan for Third-Year Practice may participate in any civil or criminal case in accordance with the Plan.

- (h) **Discipline.** All attorneys admitted to practice before this Court or admitted for the purpose of a particular proceeding are admitted subject to the disciplinary rules, conditions, and procedures set forth in this Court's Rules of Disciplinary Enforcement.
- (i) **Entry and Withdrawal by Attorney.** Any attorney entering a cause, at any time after its inception, must promptly give written notice thereof to the Clerk, requesting to be entered as an attorney of record. No attorney of record shall withdraw from any cause pending in this Court, except with the consent of the Court for good cause shown.
- (j) **Surety.** No attorney appearing as counsel in any case shall become bail or surety in any cause or proceeding, civil or criminal, in this Court or to be returned thereto.

Rule 7. Service and Filing of Pleadings and Other Papers

[Return to Top](#)

Pursuant to the authority granted by Federal Rules of Civil Procedure 5(d) (3) and 83, and Federal Rule of Criminal Procedure 57, the following practices and procedures apply to filing, signing, and verifying documents by electronic means:

- (a) **Implementation of Procedures by Clerk.** The Clerk is authorized to implement and publish *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means* (“electronic filing procedures”), as amended from time to time, including the procedure for registration of attorneys and for distribution of user login identifications and passwords to permit electronic filing and notice of pleadings and other papers.
- (b) **Case Management/Electronic Case Files.** The official court record in all cases shall be the electronic file maintained in the Court’s Case Management/Electronic Case Files (“CM/ECF”) servers together with any paper attachments and exhibits filed in accordance with the electronic procedures.
- (c) **Signatures.** The electronic filing of a petition, pleading, motion, or other paper by an attorney who is a registered participant in this Court’s CM/ECF system shall constitute the signature of that attorney under Federal Rule of Civil Procedure 11 and for all other purposes.
- (d) **Use of Passwords.** No attorney shall knowingly permit or cause to permit the attorney’s password to be utilized by anyone other than an authorized employee of the attorney or the attorney’s law firm. No person shall knowingly utilize or cause another person to utilize the password of a registered attorney unless such person is an authorized employee of that attorney’s law firm.
- (e) **Entry of Pleadings and Other Papers on the Docket.** The electronic filing of a pleading or other paper in accordance with the electronic filing procedures shall constitute entry of that pleading or other paper on the docket kept by the Clerk

under Federal Rule of Civil Procedure 79 and Federal Rule of Criminal Procedure 55.

(f) **Entry of Orders and Other Proceedings on the Docket.** The Clerk or chambers staff at the direction of the judge to whom a case is assigned shall enter all orders, decrees, judgments, and proceedings of the Court in accordance with the electronic filing procedures, which shall constitute entry of the order, decree, judgment, or proceeding on the docket kept by the Clerk under Federal Rule of Civil Procedure 58 and Federal Rule of Criminal Procedure 55.

(g) **Service.**

(1) **Notice of Electronic Filing.** Whenever a pleading or other paper is filed electronically in accordance with the electronic filing procedures, the Court's CM/ECF system shall serve the filing party with a "Notice of Electronic Filing" by electronic means at the time of docketing.

(2) **Persons Entitled to Service.** The filing party shall serve the pleading or other paper upon all persons entitled to notice or service in accordance with the applicable rules, or, if service by first class mail is permitted under the rules, the filing party may make service on registered participants in the Court's CM/ECF system in accordance with sub-paragraph three below.

(3) **Service to Registered Participants of CM/ECF.** If the recipient of notice or service is a registered participant in the Court's CM/ECF system, service by electronic means of the "Notice of Electronic Filing" with a hyperlink to the document shall constitute proper service.

- (4) **Service Complete on Transmission.** Service by electronic means is complete on transmission.
- (5) **Ineffective Electronic Service.** Service by electronic means is not effective if the party making service learns that the attempted service did not reach the person to be served.
- (h) **Consent to Service and Notice by Electronic Means.** Participation in this Court's CM/ECF system by receipt of a user login identification and password from the Court shall constitute a request for and consent to service and notice electronically pursuant to Federal Rule of Civil Procedure 5(b)(2)(E) and Federal Rule of Criminal Procedure 49. Participants in the CM/ECF system, by receiving a user login identification and password from this Court, agree to receive service by electronic means.
- (i) **Electronic Filing Required.** All attorneys must file all documents electronically, unless otherwise authorized by the presiding judge in a particular case or the applicable electronic filing procedures.

Rule 8. Redaction of Personal Data Identifiers from Pleadings [Return to Top](#)

The responsibility for redacting personal identifiers as required by the federal rules of procedure rests solely with counsel or with the pro se party. The Clerk will not review each pleading for compliance.

Rule 9. Sealed Documents

[Return to Top](#)

The following procedures govern documents under seal in criminal and civil cases in this Court.

(a) **General.** A “sealed document” is a document in the form of a pleading, exhibit or other paper to which access is restricted to the Court and authorized court personnel. A document may be sealed only by order of the Court, except where otherwise permitted by law or as set forth in paragraph (c) of this Rule. Portions of a document cannot be filed or placed under seal—only the entire document may be sealed. No sealed document may be disclosed except upon order of the Court.

(b) **Procedures for Filing a Sealed Document.**

(1) **Format.** Any sealed document must be tendered to the Clerk and conspicuously labeled “SEALED.”

(2) **Motion to Seal.** To obtain a sealing order a party must file an unsealed written motion containing:

- a. a generic, non-confidential identification of the document to be sealed;
- b. the bases upon which the party seeks the order, including the reasons why alternatives to sealing are inadequate; and
- c. the duration for which sealing is requested.

The moving party also must file with the motion a proposed unsealed order granting the motion and setting forth the bases for the Court’s action. If it already has not been tendered, the moving party also must tender to the

court, *in camera*, the document proposed to be sealed. The document will be kept under seal by the Clerk pending a decision by the Court on the motion. If the motion to seal is denied, the document will be returned by the Clerk to the party tendering it, unless the Court orders otherwise.

- (3) **Public Notice of Motion to Seal or Sealing Order.** A motion to seal and any order to seal must be docketed according to the administrative procedures of the Court.
- (4) **Objection to Sealing.** Any person or entity, whether a party or not, may object to a motion to seal a document or may file a motion to unseal a document previously sealed.
- (5) **Agreement by Parties.** These provisions do not limit the ability of the parties by agreement to restrict access to documents that are not filed with the Court. Any agreement calling for the sealing of any document to be filed with the Court will be deemed to have incorporated the provisions of this rule.
- (6) **Extension of Sealing.** No order to seal will be extended except upon a subsequent order of the Court obtained in accordance with this rule.
- (7) **Sealed Case.** No case may be sealed in its entirety except by order of the Court for cause shown, obtained in accordance with this rule.

(c) **Exceptions.**

- (1) No motion or order is required to file the following under seal:
 - a. An unredacted version of a pleading, paper, exhibit, a reference list

- or other document containing personal data identifiers, in compliance with these rules, the federal rules of procedure, or the E-Government Act;
- b. An ex parte motion or application where sealing is permitted or required by law;
 - c. Presentence investigation reports, pretrial services reports, psychiatric or psychological evaluations in criminal cases, including documents incorporating the content of the foregoing documents;
 - d. Affidavits submitted in support of a motion for in forma pauperis status;
 - e. Motions, orders, notices, and other matters occurring before the grand jury, subject to the provisions of Fed. R. Cr. P. 6;
 - f. Applications and orders for the disclosure of tax information (26 U.S.C. § 6103);
 - g. Motions and orders involving the Classified Information Procedures Act (18 U.S.C. app 3 §§1 – 16) or Foreign Intelligence Surveillance Act (50 U.S.C. § 1801);
 - h. Pleadings and documents involving the Juvenile Delinquency Act;
 - i. Requests and orders for authorization of investigative, expert, or other services pursuant to the Criminal Justice Act;
 - j. Other documents required by law to be filed under seal.
- (2) No publicly filed motion and order under this rule is required for sealing the

following:

- a. Motion by the United States for a downward departure or reduction of sentence in a criminal case, with leave of court upon a showing of particular need in an individual case to prevent serious harm;
- b. Search, seizure and arrest warrants and affidavits;

(3) A publicly filed motion and order citing only the statutory authority for sealing is required for the following:

- a. Applications and orders for pen/trap devices (18 U.S.C. §2703)
- b. Applications and orders for wire, oral, or electronic communication interception (18 U.S.C. § 2516).

(d) **Unsealing.** Unless the Court orders otherwise, the Clerk will unseal the following sealed documents when indicated:

(1) **Search Warrant.** After the search is executed and the warrant is returned to the Clerk;

(2) **Arrest Warrant, and In a Violation Case, Any Violation Report.**
After the arrest is made;

(3) **Indictment.** Upon the arrest or appearance of a single defendant. In multi-defendant cases, and unless the court orders otherwise, upon the earliest of any of the following:

- a. 10 days following the arrest of any defendant;
- b. 30 days after return of the indictment; or
- c. when all defendants have been arrested or summoned.

In criminal cases, each defendant must be provided with a copy of the charges against that defendant (with other portions redacted, if necessary), even if the indictment or complaint is otherwise sealed. In multi-defendant cases in which the indictment is to remain sealed, the government is responsible for submitting to the magistrate judge for approval, reasonably in advance of the initial appearance, an appropriately redacted indictment for disclosure to the defendant and to the public.

- (4) **Criminal Complaint.** 30 days after issuance or when all defendants named are in custody or have been summoned, whichever is the earliest.
- (5) As for any other sealed documents, the documents will be unsealed 120 days from the date of entry of the sealing order, unless the sealing order provides otherwise.

Commentary

This rule describes the procedures in criminal and civil cases relating to sealed documents, including pleadings, motions, exhibits, and other material. Case law protects generally the right of public access to documents filed in court, both under the First Amendment and the common law. *See, e.g., Va. Dept of State Police v. Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004).

Questions relating to sealed documents are presented in varying circumstances. For example, a party to a case may desire to file an exhibit to a brief containing confidential business information that has been disclosed to the opposing party under an agreement of confidentiality, but which the parties do not wish the public to see. The procedure to be followed is to file a motion not under seal that describes in a non-confidential way the document that the party desires to file under seal (in this hypothetical example, the exhibit). The motion must also state, in a generic, non-confidential way, the reasons why sealing is requested (in this case, the fact that the exhibit contains confidential trade secrets whose disclosure would be harmful to the business of the party) and why alternatives to sealing are inadequate. Finally, the motion must also state the length of time that the party desires the document to be sealed. The motion must be accompanied by the document desired to be sealed (the exhibit, in this example) for review by the presiding judge, as well as a proposed unsealed order allowing the document to be sealed, which order

recites the necessary findings.

Often the parties to a case will enter into a confidentiality agreement that provides that certain information exchanged between them in the course of discovery will remain confidential. The procedures described in this rule do not affect the ability of the parties to enter into such an agreement. However, the parties cannot agree to the sealing of documents filed in court without following the mandatory procedures set forth in this rule.

In other words, the parties cannot seal documents filed in court merely by agreement or by labeling them “sealed.”

There are certain exceptions to the rule that any document to be sealed must be accompanied by an unsealed motion. Where the sealed document is an unredacted version of a document required to be redacted by these rules, the federal rules of procedure, or the E-Government Act, or a reference list of personal data identifiers, then no motion or order is required. Like all sealed documents, however, the unredacted version or the reference list must be clearly labeled “SEALED.”

The government, a defendant or other party may have a basis for a confidential communication to the court that is permitted or required by law. There is no need for an unsealed motion or order in those circumstances, but the motion must be clearly labeled “EX PARTE AND SEALED.”

This rule provides that unless the Court orders otherwise, all documents in a case will be unsealed at the conclusion of the case. The rule does not flatly prohibit the continued sealing of a document, but leaves that decision to the presiding judge. As an alternative, the judge may order a sealed document in paper form returned to the party submitting it at the conclusion of the case. If a document is ordered sealed for a particular period of time, the period may be extended by a later order, obtained by following the procedures set forth.

Rule 10. Communication with Jurors

[Return to Top](#)

No attorney or party litigant shall personally, or through any investigator or any other person acting for the attorney or party litigant, interview, examine or question any juror or alternate juror during the juror’s term of service as a potential juror with respect to the verdict or deliberations of the jury in any action, civil or criminal, except by leave of Court upon good cause shown and upon such conditions as the Court in the particular case may fix.

Rule 11. Imposition of Jury Costs[Return to Top](#)

The Court may in its discretion impose the costs of a jury where a case is settled or otherwise disposed of after it is too late to reasonably notify the jury not to appear.

Rule 12. Trial Exhibits[Return to Top](#)

Upon jury verdict or decision by the Court, the Clerk shall retain documentary exhibits. Documents of unusual bulk or weight and physical exhibits, other than documents, shall remain in the custody of the attorney producing them. The attorney shall permit inspection of the same by any party for the purpose of preparing the record on appeal. The attorney also shall be charged with the responsibility for the safekeeping of said exhibits and, if requested, transportation of the exhibits to the appellate court.

Where the Clerk takes custody of documentary exhibits, such exhibits may not be taken from the custody of the Clerk until final disposition of the matter, except upon order of the court. Copies approved by counsel and unrepresented parties may be filed in place of the original exhibits.

In all cases where money, firearms, narcotics, controlled substances or any manner of contraband is introduced into evidence, such evidence shall be returned by the Clerk to the attorney producing them for safekeeping immediately after the return of the jury verdict or, in a nonjury case, at the close of all the evidence. The attorney who introduces an exhibit into evidence in a case will be responsible for its custody.

In a civil case, all documentary exhibits filed in a proceeding must be physically removed by the parties who filed them. In the event no appeal is perfected, the exhibits must be removed within 60 days from the date of final disposition of the case by this Court. In the event an appeal is perfected and thereafter disposed of by the court of appeals, the exhibits must be removed within 30 days after receipt of the judgment, other process, or certificate disclosing disposition of the case by that court. In the event that a case is appealed to the U.S. Supreme Court, the exhibits must be removed within 30 days after receipt of judgment, other process or certificate disclosing disposition of the case by that court.

In criminal cases, all documentary exhibits filed in a proceeding must be physically removed by the parties who filed them within 30 days after final disposition of a case. Final disposition occurs upon the latest of either:

- the expiration of the one year period prescribed in 28 U.S.C. § 2255(f)(1) which follows either the termination of the direct-review appellate process or expiration of the time in which to file a petition for a writ of certiorari in the U.S. Supreme Court; or
- the termination of post-conviction proceedings brought within the time permitted by 28 U.S.C. § 2255(f)(1).

In the event that exhibits are not removed from the custody of the Clerk within the required time, the Clerk, after sending a form notice to respective counsel for the parties to remove the exhibits, shall, after 30 days have expired from the time of sending such notice, cause the same to be destroyed.

TITLE II - CIVIL RULES

Rule 3. Commencing an Action

[Return to Top](#)

- (a) Pursuant to Federal Rule of Civil Procedure 3, a civil action is commenced by filing a complaint. In any civil case in this Court, the complaint is deemed filed the day the clerk receives it together with payment of the required filing fee. If the filing fee is paid on a later day, the complaint will be deemed filed the day the complaint was received by the Clerk if the presiding judge in the case determines that the late payment of the filing fee was due to good cause.
- (b) In the event that a civil complaint is submitted together with an application to proceed without the payment of the required filing fee, the complaint is deemed filed on the day it was received if (a) the application is granted or (b) the application is denied and the filing fee is thereafter paid within a reasonable time.
- (c) In the event a fee is erroneously paid by way of credit card through the Court's electronic filing system, no refund may be made except upon the order of the presiding judge in the case. In the event that a user of the system has made repeated mistakes or good cause otherwise exists, the judge may decline to order a refund.

Rule 11. Pleadings and Motions

[Return to Top](#)

- (a) **Address and Telephone Number.** All pleadings and motions must include the attorney's office address, telephone number, e-mail address, and the attorney's bar identification number. All pleadings and motions filed by a non-prisoner litigant

proceeding pro se must contain an address where notice can be served on such person and a telephone number where such person can be reached or a message left. All pleadings and motions filed by a prisoner proceeding pro se must contain an address where notice can be served on such person.

(b) Determination of Motions. The moving party is responsible either to set a motion for hearing or to advise the Court that all parties agree to submission of the motion without a hearing. The non-moving party also may arrange for a hearing. All hearings are to be at a date and time obtained from and scheduled by the Court. Unless otherwise ordered, a motion is deemed withdrawn if the movant does not set it for hearing (or arrange to submit it without a hearing) within 60 days after the date on which the motion is filed. In accordance with Federal Rule of Civil Procedure 78(b), the Court may determine a motion without an oral hearing.

(c) Briefs Required.

(1) All motions, unless otherwise directed by the Court and except as noted hereinbelow, must be accompanied by a written brief setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. Unless otherwise directed by the Court, the opposing party must file a responsive brief and such supporting documents as are appropriate within 14 days after service, and the moving party may file a rebuttal brief within 7 days after the service of the opposing party's reply brief. No further briefs (including letter briefs) are to be submitted without first obtaining leave of court.

- (2) Briefs need not accompany motions: (a) for a more definite statement; (b) for an extension of time to respond to or file pleadings, unless the time has already expired; (c) for a default judgment; (d) for continuances; and (e) to amend pleadings or add or substitute parties. These motions, while not requiring a brief, must state good cause justifying the relief requested. In addition, a separate brief is not required where a motion itself contains the legal and factual argument necessary to support the motion.
- (3) Procedural motions, including motions for enlargement of time, whether or not opposed, may be acted upon at any time by the Court, without awaiting a response, and any party adversely affected by such action may request reconsideration, vacation, or modification of such action.

Rule 16. Scheduling Orders

[Return to Top](#)

Scheduling orders shall be issued in all cases except pro se prisoner, Social Security, and habeas cases or other cases exempted by the presiding judge and may be issued by a magistrate judge. The scheduling order shall govern any deadline fixed or procedure ordered that is in conflict with that contained in these rules.

Rule 26. Expert Disclosure

[Return to Top](#)

- (a) **Agreement Upon Disclosure.** Counsel are encouraged to agree in a discovery plan or otherwise upon the sequence and timing of the expert disclosures required by Federal Rule of Civil Procedure 26(a)(2).

- (b) **Objections to Expert Testimony.** Unless otherwise fixed by the Court, or unless good cause is shown, any objections to the admissibility of expert testimony or opinions must be by motion filed and set for hearing or submitted without hearing within a reasonable time before the date of trial, thus permitting an adequate time for the Court to consider the motion.

Rule 40. Scheduling of Cases for Trial

[Return to Top](#)

Cases shall be scheduled for trial in the manner directed by the presiding judge.

Rule 51. Proposed Instructions

[Return to Top](#)

Except as otherwise directed by the Court, in all cases tried to a jury, any proposed instructions must be filed at least 7 days before the scheduled trial date. Each instruction must be set forth on a separate page, numbered and identified appropriately by the party submitting it, bearing at its foot a citation of the authority in support of the instruction. Instructions must be filed as a group together with a cover sheet in pleading form and a certificate of service.

Rule 54. Fees and Costs

[Return to Top](#)

(a) **Attorneys' Fees**

- (1) **Time for Filing.** Unless otherwise provided by statute, or in Social Security cases, or as otherwise ordered by the Court, any motion requesting the award of attorneys' fees must be filed no later than 21 days after the entry of judgment. Any opposition must be filed within 21 days of service

of the motion. Any reply must be filed within 7 days of service of the opposition

- (2) **Contents.** Any motion requesting the award of attorneys' fees must be supported by a memorandum setting forth the nature of the case, the claims as to which the party prevailed, the claims as to which the party did not prevail, a detailed description of the work performed broken down by hours or fractions thereof expended on each task, the attorney's customary fee for such like work, the customary fee for like work prevailing in the attorney's community, a listing of any expenditures for which reimbursement is sought, any additional factors which are required by the case law, and any additional factors that the attorney wishes to bring to the Court's attention.

Rule 56. Summary Judgment-Time of Filing

[Return to Top](#)

- (a) Except for good cause shown, no motion for summary judgment or other dispositive motion will be considered unless it is filed and set for hearing, or submitted without hearing, within the time fixed by the Court, or if no time is fixed by the Court, within a reasonable time before the date of trial, thus permitting adequate time for the Court to consider the motion.
- (b) Any motion for summary judgment or any other dispositive motion must contain a separately captioned section setting forth with specificity the material facts claimed to be undisputed together with specific record citations in support thereof.

Rule 67. Deposit and Investment of Registry Funds

[Return to Top](#)

(a) Receipt of Funds

- (1) No money shall be sent to the Court or its officers for deposit in the Court's registry without a court order signed by the presiding judge in the case or proceeding.
- (2) The party making the deposit or transferring funds to the Court's registry shall serve the order permitting the deposit or transfer on the Clerk of Court.
- (3) Unless provided for elsewhere in this Local Rule, all monies ordered to be paid to the Court or received by its officers in any case pending or adjudicated shall be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. § 2041 through depositories designated by the Treasury to accept such deposit on its behalf.

(b) Investment of Registry Funds

[Return to Top](#)

- (1) Where, by order of the Court, funds on deposit with the Court are to be placed in some form of interest-bearing account or invested in a court-approved, interest-bearing instrument in accordance with Rule 67 of the Federal Rules of Civil Procedure, the Court Registry Investment System ("CRIS"), administered by the Administrative Office of the United States Courts under 28 U.S.C. § 2045, shall be the only investment mechanism authorized.

- (2) Interpleader funds deposited under 28 U.S.C. § 1335 meet the Internal Revenue Service definition of a “Disputed Ownership Fund” (DOF), a taxable entity that requires tax administration. Unless otherwise ordered by the Court, interpleader funds shall be deposited in the DOF established within the CRIS and administered by the Administrative Office of the United States Courts, which shall be responsible for meeting all DOF tax administration requirements.
- (3) The Director of the Administrative Office of the United States Courts is designated as custodian for all CRIS funds. The Director or the Director’s designee shall perform the duties of custodian. Funds held in the CRIS remain subject to the control and jurisdiction of the Court.
- (4) Money from each case deposited in the CRIS shall be “pooled” together with those on deposit with Treasury to the credit of other courts in the CRIS and used to purchase Government Account Series securities through the Bureau of Public Debt, which will be held at Treasury, in an account in the name and to the credit of the Director of the Administrative Office of the United States Courts. The pooled funds will be invested in accordance with the principles of the CRIS Investment Policy as approved by the Registry Monitoring Group.
- (5) An account will be established in the CRIS Liquidity Fund titled in the name of the case giving rise to the deposit invested in the fund. Income generated from fund investments will be distributed to each case based on

the ratio each account's principal and earnings has to the aggregate principal and income total in the fund after the CRIS fee has been applied. Reports showing the interest earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in the CRIS and made available to litigants and/or their counsel.

- (6) For each interpleader case, an account shall be established in the CRIS Disputed Ownership Fund, titled in the name of the case giving rise to the deposit invested in the fund. Income generated from fund investments will be distributed to each case after the DOF fee has been applied and tax withholdings have been deducted from the fund. Reports showing the interest earned and the principal amounts contributed in each case will be available through the FedInvest/CMS application for each court participating in the CRIS and made available to litigants and/or their counsel.

(c) Fees and Taxes

[Return to Top](#)

- (1) The custodian is authorized and directed by this Local Rule to deduct the CRIS fee of an annualized 10 basis points on assets on deposit for all CRIS funds, excluding the case funds held in the DOF, for the management of investments in the CRIS. According to the Court's Miscellaneous Fee Schedule, the CRIS fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases.

- (2) The custodian is authorized and directed by this Local Rule to deduct the DOF fee of an annualized 20 basis points on assets on deposit in the DOF for management of investments and tax administration. According to the Court's Miscellaneous Fee Schedule, the DOF fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases. The custodian is further authorized and directed by this Local Rule to withhold and pay federal taxes due on behalf of the DOF.

(d) Transition from Former Investment Procedure

[Return to Top](#)

- (1) Deposits to the CRIS DOF will not be transferred from any existing CRIS Funds. Only new deposits pursuant to 28 U.S.C. § 1335 from the effective date of this Local Rule will be placed in the CRIS DOF.
- (2) This Local Rule supersedes and abrogates all prior orders and Local Rules of this Court regarding the deposit and investment of registry funds.
- (3) *The effective date of this Local Rule is the date the CRIS DOF begins accepting deposits.*

Rule 73. Magistrate Judges

[Return to Top](#)

Pursuant to the provisions of 28 U.S.C. § 636 and Federal Rule of Civil Procedure 73, the full time magistrate judges of this Court are designated to conduct any or all proceedings in a jury or nonjury civil matter and order entry of judgment in the case, upon the consent of the parties, and upon entry of an order of reference in the particular civil matter by a district judge of this court, which order specifically transfers, assigns or refers the matter to a magistrate judge for all proceedings and for the entry of dispositive orders or judgment.

Rule 83. Alternative Dispute Resolution Program

[Return to Top](#)

- (a) **Availability.** This Court shall offer alternative dispute resolution to all parties in every civil case. Mediation shall be the common and preferred means of alternative dispute resolution. Other means of alternative dispute resolution shall be made available by this Court upon request of all parties, except in those cases in which the alternative form may be prohibited by statute.
- (b) **Requests for Referrals.** Alternative dispute resolution shall not be automatically required in every case. Upon joint motion of all parties, the Court shall refer the case for alternative dispute resolution in the form requested by the parties, unless that form is prohibited by statute. If one party makes a unilateral request for referral, the Court may refer the case for alternative dispute resolution in any nonbinding form deemed appropriate by the presiding judge. In any other case, the presiding judge may require the parties to participate in alternative dispute

resolution in any nonbinding form permitted by statute and deemed appropriate by this Court.

- (c) **Neutrals.** Upon joint motion of all parties, the Court shall refer the case to an alternative dispute resolution resource outside the Court. In all other cases, a United States district judge or magistrate judge shall serve as the neutral when the matter is designated by the presiding judge for alternative dispute resolution.
- (d) **Training and Disqualification of Neutrals.** As the primary alternative dispute resolution resource persons for the Court, the magistrate judges shall receive appropriate training as may be offered by the Federal Judicial Center, Administrative Office, or other approved agency. In requesting referral to an outside alternative dispute resolution resource, the parties shall provide to the Court satisfactory documentation as to the qualifications of the designated neutral. Complaints concerning the performance of any neutral, including a magistrate judge, shall be addressed to the chief United States district judge. This Court may disqualify from further service any person, including a magistrate judge, who is deemed unqualified to serve as a neutral in a particular case, or in all cases.
- (e) **Confidentiality.** If requested by the applicant, any unilateral request for alternative dispute resolution referral shall be maintained in the strictest confidence by all officers of this Court. Once entered, however, all orders of referral shall be matters of public record. Communications and/or information provided during any alternative dispute resolution process shall be kept confidential by all parties and by the neutral. Any information or document which is otherwise produced

through a legitimate discovery process is exempted from this confidentiality requirement. Any party may seek entry of a protective order to prevent or limit discovery of any information or document which has become known to the opposing party only because of participation in an alternative dispute resolution process. Any party who participates in alternative dispute resolution with a magistrate judge of this Court shall be deemed to have consented to any party's ex parte communication with the magistrate judge made in the course of attempted resolution of the dispute.

- (f) **Scheduling.** Alternative dispute resolution sessions may be scheduled at the discretion of the parties and the neutral. Alternative dispute resolution shall proceed independently of all other pretrial development in the case. Referral of a case for alternative dispute resolution shall not operate so as to modify or stay any scheduling provisions of any pretrial order. Parties engaged in alternative dispute resolution may apply to the Court for such modifications or stays upon demonstration of exceptional cause.
- (g) **Enforceability.** The Court will not assist in the enforcement of any agreement, settlement, or fee arrangement from any alternative dispute resolution process which is not annexed by the Court. In all other situations, the parties may invoke any of the Court's traditional enforcement mechanisms.
- (h) **Coordinator.** This Court shall designate an employee or a judicial officer who is knowledgeable in alternative dispute resolution practices and processes to

implement, administer, oversee, and evaluate the Court's alternative dispute resolution program.

TITLE III - CRIMINAL RULES

Rule 12. Style of Motions

[Return to Top](#)

All motions and the responses in criminal cases must bear a caption which identifies the moving party and describes the general nature and the purpose of the motion. A defendant may adopt a motion filed by another defendant only by filing a separate pleading for each motion that the defendant wishes to adopt. This separate pleading must bear the same caption as the original pleading that the defendant wishes to adopt. A single motion to adopt more than one pleading of another defendant is not permitted.

Rule 32. Local Procedure for Guideline Sentencing.

[Return to Top](#)

- (a) **Disclosure of Recommended Sentence.** Pursuant to Federal Rule of Criminal Procedure 32(e)(3), the probation officer shall not disclose, without court order, the probation officer's recommendation, if any, on the sentence.
- (b) **Motion for Substantial Assistance.** The attorney for the Government must file its 18 U.S.C. § 3553(e) motion for substantial assistance, if any, at the same time the attorney for the Government makes objections under Federal Rule of Criminal Procedure 32(f).
- (c) **Disclosure of Presentence Report.** Nothing in this rule will require the disclosure of information in the presentence report not disclosable under Federal Rule of Criminal Procedure 32. The presentence report will be deemed to have been disclosed when a copy of the report is physically delivered, 1 day after verbal

announcement that the report is available for inspection or 3 days after a copy of the report or notice of its availability is mailed.

Rule 58. Collateral Payments

[Return to Top](#)

In accordance with Federal Rule of Criminal Procedure 58(d)(1), payment of a fixed sum may be accepted in suitable types of petty offense cases in lieu of appearance and as authorizing the termination of the proceedings. Such fixed sums may be increased or decreased from time to time by this Court by standing order, provided such fixed sums shall not exceed the maximum fine which could be imposed upon conviction.

Rule 59. Appeals From Conviction or Sentence by Magistrate Judge

[Return to Top](#)

- (a) **Record on Appeal.** Within 14 days, or such other period of time as the district judge may direct, after filing a notice of appeal from a conviction or sentence by a magistrate judge as permitted by Federal Rule of Criminal Procedure 58(g)(2), the appellant must file a statement of the grounds for the appeal and a supporting memorandum of law. If the appellant has ordered a transcript of the trial or other proceedings before the magistrate judge, the appellant must so inform the district judge and the appellee. In such event, the appellant must file a supporting memorandum of law within 14 days, or such other period of time as the district judge may direct, of the filing of the transcript.
- (b) **Submission of Appeal.** The appellee has 21 days, or such other period of time as the district judge may direct, from the date of filing of appellant's memorandum of law or the filing of the transcript of proceedings before the magistrate judge,

whichever is later, in which to file a responsive memorandum. The appellant has 14 days, or such other period of time as the district judge directs, in which to file a reply. The matter is thereafter deemed submitted for decision, provided that oral argument may be granted in the Court's discretion.

SCHEDULE OF REVISIONS TO LOCAL RULES

Date	Rule Number and Title
May 19, 2011	Rule 67. Deposits Into Court
March 8, 2012	Rule 9 (h) (3). Sealed Documents
January 30, 2013	Rule 4(b)(1) – Social Security Disability Filings Rule 7 (j). Three-day Mailing Rule
August 1, 2013	Rule 4 (b)(5) - Social Security Disability Filings Rule 7 (j) – Three-day Mailing Rule Rule 9 – Sealed Documents. Rule 54 (a)(1) – Time for Filing Rule 56 – Summary Judgment—Time of Filing
March 3, 2014	Rule 1(b) – Scope and Purpose of Rules - Correction to typographical error
December 13, 2014	Rule 6(d) – Pro Hac Vice Admission Rule 54(a)(1) – Time for Filing
December 23, 2015	Rule 6 (g) – Law Students
April 6, 2016	Rule 12 – Trial Exhibits
June 28, 2016	Rule 9(a) – Sealed Documents
November 29, 2016	Rule 67 – Deposit and Investment of Registry Funds
December 16, 2016	Rule 7(g) – Service Rule 7(j) (Deleted) – Three-Day Mailing Rule

[Return to Top](#)