# United States District Court

# Eastern District of North Carolina

# Local Criminal Rules

# of

# Practice and Procedure

# December, 2016

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**Rule 1.1 Scope and Citation of Local Criminal Rules**

These local rules of criminal practice shall govern the conduct of the United States District Court for the Eastern District of North Carolina except when the conduct of this court is governed by federal statutes and rules. A district judge or magistrate judge, for good cause and in his or her discretion, may alter these rules in any particular case. These rules shall be cited as "Local Criminal Rule ____." The Local Criminal Rules posted on the district's website, http://www.nced.uscourts.gov/localRules/LocalRules.htm#, shall be the official record of the court.

**Rule 2.1 Reserved for Future Purposes**

**Rule 3.1 Reserved for Future Purposes**

**Rule 4.1 Reserved for Future Purposes**

**Rule 5.1 Magistrate Judges: Standards of Performance**

In performing duties for the court, a magistrate judge shall conform to all applicable provisions of federal statutes and rules, to the Local Criminal Rules and procedures of this court, and to the requirements specified in any order of reference from a district judge.

**Rule 5.2 Magistrate Judges: Assignment of Matters**

**(a) Misdemeanor Cases.**

Upon the filing of an information, complaint or violation notice, or the return of an indictment, all misdemeanor cases not assigned to a district judge shall be assigned by the clerk to a magistrate judge, who shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and the Rules of Procedure for the Trial of Misdemeanors before United States Magistrate Judges.

**(b) Felony Cases.**

Upon the return of an indictment or the filing of an information, all felony cases shall be assigned by the clerk to a magistrate judge for the conduct of an arraignment and such pretrial conferences as are necessary, and for the

hearing and determination of all pretrial procedural and discovery motions, in accordance with Local Criminal Rule 5.3.

**Rule 5.3 Authority of Magistrate Judges**

**(a) Duties Under 28 U.S.C. § 636(a).**

A magistrate judge is authorized to perform the duties prescribed by 28 U.S.C. § 636(a), and may conduct extradition proceedings, in accordance with 18 U.S.C. § 3184.

**(b) Determination of Non-Dispositive Pretrial Matters –28 U.S.C. § 636(b)(1)(A).**

A magistrate judge may hear and determine any procedural or discovery motion or other pretrial matter in a criminal case, other than the motions which are specified in Local Criminal Rule 5.3(c)(1).

**(c) Recommendations Regarding Case-Dispositive Motions –28 U.S.C. § 636(b)(1)(B).**

**(1)** A magistrate judge may submit to a judge a report containing proposed findings of fact and recommendations for disposition by the judge of the following pretrial motions:

**a.** Motions to dismiss or quash an indictment or information made by a defendant; and

**b.** Motions to suppress evidence in a criminal case.

**(2)** A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this Local Criminal Rule 5.3.

**(d) Prisoner Cases Under 28 U.S.C. § 2254 and § 2255.**

A magistrate judge may perform any or all of the duties imposed upon a judge by the rules governing proceedings in the United States district courts under 28 U.S.C. § 2254 and § 2255. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition shall only

be made by a judge.

**(e) Prisoner Civil Rights Actions.**

A magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for the disposition of petitions filed by prisoners challenging the conditions of their confinement.

**(f) Other Duties.**

A magistrate judge is also authorized to:

**(1)** exercise general supervision of calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges;

**(2)** conduct discovery conferences, pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings;

**(3)** conduct arraignments in cases not triable by the magistrate judge and take not guilty pleas in such cases;

**(4)** receive grand jury returns in accordance with Fed. R. Crim. P. 6(f);

**(5)** accept waivers of indictment, pursuant to Fed. R. Crim. P. 7(b);

**(6)** conduct *voir dire* and select petit juries for the court;

**(7)** conduct necessary proceedings leading to the potential revocation of probation;

**(8)** issue subpoenas, writs of habeas corpus *ad testificandum* or habeas corpus *ad prosequendum*, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;

**(9)** order the exoneration or forfeiture of bonds;

**(10)** conduct examinations of judgment debtors in accordance with Fed. R. Crim. P. 69;

**(11)** conduct proceedings for initial commitment of narcotics addicts

under Title III of the Narcotic Addict Rehabilitation Act;

**(12)** perform the functions specified in 18 U.S.C. §§ 4107, 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein; and

**(13)** perform any additional duty consistent with the Constitution and laws of the United States.

**Rule 5.4 Electronic Designation of Judges**

Any electronically generated designation of a district judge or magistrate judge does not mean that the judge so designated is assigned to the case.

**Rule 6.1 Reserved for Future Purposes**

**Rule 7.1 Reserved for Future Purposes**

**Rule 8.1 Reserved for Future Purposes**

**Rule 9.1 Reserved for Future Purposes**

**Rule 10.1 Reserved for Future Purposes**

**Rule 10.2 Appearance Bonds**

In the event a deed of trust is used to secure an appearance bond for a defendant, the grantor of the deed of trust is responsible for preparing and supplying the clerk with documentation necessary to cancel the deed of trust within 21 days of the date that the conditions of the appearance bond and deed of trust are satisfied. The grantor shall also be responsible for recording any documentation necessary to cancel the deed of trust and for payment of any costs associated with such cancellation. Failure of the grantor to comply with these requirements shall relieve the clerk of any responsibility to cancel the deed of trust.

**Rule 11.1 Disclosure of Pretrial Services Reports**

Pursuant to 18 U.S.C. § 3153(c)(1), which governs the availability of the pretrial services report to counsel for the accused and for the government prior to any detention hearing, the United States Probation Office for the Eastern District of North Carolina is authorized to disclose pretrial services reports to counsel for the accused and for the government. This disclosure shall be accomplished by filing the pretrial services report for each case under seal in the CM/ECF filing system. Counsel for the accused and for the government may retain these reports, but must not re-disclose the reports to other persons. When a copy of the report is filed under seal, it will have a header on the first page advising the attorneys that (a) the report is not to be copied, (b) the report is not a public record, and (c) the content may not be disclosed to other persons. Other than the disclosures laid out herein, the reports shall remain confidential, as provided in 18 U.S.C. § 3153(c)(1).

**Rule 12.1 Time Period for Filing Pretrial Motions**

All pretrial motions, including but not limited to motions to suppress and motions under Rules 12, 14, 16, and 41 of the Federal Rules of Criminal Procedure shall be filed no later than 30 days after indictment or initial appearance, whichever comes later. Responses shall be filed within 14 days after the service of such motions. Untimely motions ~~may be summarily disregarded~~ may be considered by the court if the party shows good cause.

**Rule 12.2 Further Discovery and Inspection**

In the event that either party moves to compel compliance with Local Criminal Rule 16.1(a) or for additional discovery or inspection, such motion shall be filed within the time period set by Local Criminal Rule 12.1. The motion shall contain:

**(a)** the statement that the prescribed conference was held;

**(b)** the date of said conference;

**(c)** the names of all counsel participating in the conference; and

**(d)** the statement that agreement could not be reached concerning the discovery or inspection that is the subject of the motion and the reasons given for the same.

**Rule 12.3 Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation**

**(a)** All corporate defendants in a criminal case, whether or not they are covered by the terms of Fed. R. Crim. P. 12.4, shall file a corporate affiliate/financial interest disclosure statement.

**(b)** The statement shall set forth the information required by Fed. R. Crim. P. 12.4 and the following:

**(1)** A trade association shall identify in the disclosure statement all members of the association, their parent corporations, and any publicly held companies that own ten percent or more of a member's stock.

**(2)** All parties shall identify any publicly held corporation, whether or not a party to the present litigation, that has a direct financial interest in the outcome of the litigation by reason of a franchise, lease, other profit sharing agreement, insurance, or indemnity agreement.

**(3)** Whenever required by Fed. R. Crim. P. 12.4 or this rule to disclose information about a corporation that has issued shares to the public, a party shall also disclose information about similarly situated master limited partnerships, real estate investment trusts, or other legal entities whose shares are publicly held or traded.

**(c)** The disclosure statement shall be on a form provided by the clerk. A negative statement is required if a party has no disclosures to make.

**(d)** The disclosure statement shall be filed when the party makes an initial appearance in the action. The parties are required to amend their disclosure statements when necessary to maintain their current accuracy.

**Rule 13.1 Reserved for Future Purposes**

**Rule 14.1 Reserved for Future Purposes**

**Rule 15.1 Reserved for Future Purposes**

## Rule 16.1 Motions Relating to Discovery and Inspection

### (a) In General.

A discovery motion in a criminal action (Fed. R. Crim. P. 16) shall state that a request for discovery and inspection was made and denied. Counsel must also certify that they have conferred and made a good faith effort to resolve discovery disputes prior to the filing of any discovery motions.

### (b) Criminal Pretrial Conference.

Within 21 days after indictment or initial appearance, whichever comes later, the United States Attorney shall arrange and conduct a pretrial conference with counsel for the defendant. At the pretrial conference and upon the request of counsel for the defendant, the Government shall permit counsel for the defendant:

**(1)** to inspect and copy all discoverable evidence under Rule 16 of the Federal Rules of Criminal Procedure;

**(2)** to inspect, copy or photograph any relevant written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Government;

**(3)** to inspect and copy or photograph any relevant results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the case, or copies thereof, within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the Government;

**(4)** to inspect and copy or photograph any relevant recorded testimony of the defendant before a grand jury;

**(5)** to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places which are the property of the defendant and which are within the possession, custody or control of the Government;

**(6)** to inspect and copy or photograph the Federal Bureau of Investigation Identification Sheet indicating defendant's prior criminal record; and

**(7)** to inspect, copy or photograph any exculpatory evidence.

**(c) Discovery from Defendant.**

After discovery has been provided by the Government, and upon request of the Government, counsel for the defendant shall permit the Government to inspect any copy of all discoverable evidence under Rule 16(b) of the Federal Rules of Criminal Procedure.

**(d) Exchange of Discovery by Mail.**

The United States Attorney and counsel for the defendant, in lieu of the conference, may agree to exchange discovery material by mail without the conference referenced in Local Criminal Rule 16.1(b).

**(e) Duty of Disclosure.**

Any duty of disclosure and discovery set forth in Local Criminal Rule 16.1 is a continuing one and the United States Attorney and counsel for the defendant shall produce voluntarily any additional relevant information gained by either of them.

**Rule 17.1 Time of Issuance of Subpoenas in Criminal Cases**

Subpoenas for witnesses in criminal cases shall be delivered to the United States Marshal or other person qualified to make service at least 7 days prior to the Monday of the week in which the case is set for trial. The failure of the Marshal or other qualified person to serve a subpoena not delivered within this time period shall not constitute sufficient cause for a continuance.

**Rule 17.2 Reserved for Future Purposes**

**Rule 18.1 Reserved for Future Purposes**

**Rule 19.1 Reserved for Future Purposes**

**Rule 20.1 Reserved for Future Purposes**

**Rule 21.1 Reserved for Future Purposes**

**Rule 22.1 Reserved for Future Purposes**

**Rule 23.1 Reserved for Future Purposes**

**Rule 24.1 Attorney Preparations for Criminal Trial**

**(a)** Unless the parties have previously entered into and executed a written plea agreement, each party shall file with the clerk and the assigned judge, 7 days preceding the first day of the session at which the criminal action is set for trial:

**(l)** *voir dire* questions as required by Local Criminal Rule 24.2; and

**(2)** requests for jury instructions.

**(b)** Before jury selection begins, each party shall file with the court a list of all witnesses the party, in good faith, reasonably anticipates will be called in its evidence-in-chief.

**(c)** If a party has a need for any type of courtroom technology for a hearing or trial, including but not limited to any audio equipment, video equipment, document presentation system, and jury evidentiary recording system, counsel must notify the case manager and request training from the court's information technology staff for the person or persons who will be operating the courtroom technology. Unless excepted by the clerk, no later than 7 days before the scheduled proceeding, counsel must file a certification provided by the court's technology staff that training has been completed.

**Rule 24.2 Jurors**

**(a) Jury Lists.**

When the jury for a session of the court is drawn, the clerk shall, upon the request of a party's counsel or a defendant acting *pro se*, furnish a copy of the list to counsel for the parties or to any defendant acting *pro se* on a relevant trial roster, unless otherwise directed by the court. The clerk shall

notify the presiding judge and the government of any such request by a *pro se* defendant prior to providing the requested list. The list shall set out the name and county of residence of each prospective juror. The jurors and their families shall not be contacted, either directly or indirectly, in an effort to secure information concerning the background of any member of the jury panel. When the jurors are seated in the jury box, a chart or list shall be furnished by the clerk to the parties or their counsel, showing the name and seating assignment of each juror unless otherwise directed by the court.

**(b) Examination of Jurors.**

The court shall conduct the examination of prospective jurors. Seven days preceding the first day of the session at which an action is set for trial, the parties shall file a list of *voir dire* questions they desire the court to ask the jury other than routine questions such as (1) the occupations and addresses of jurors and their spouses, (2) the identity and relation of jurors, the parties, counsel and witnesses, and (3) the knowledge of the jurors concerning the case.

**(c) Contact with Trial Jurors.**

Following the discharge of a jury from further consideration of a case, no attorney or party litigant shall individually or through an investigator or any person acting for such attorney or party litigant ask questions of or make comments to a member of that jury or the members of the family of such a juror that are calculated merely to harass or embarrass such a juror or member of such juror's family or to influence the actions of such a juror or a member of such juror's family in future jury service.

**Rule 25.1 Reserved for Future Purposes**

**Rule 26.1 Reserved for Future Purposes**

**Rule 27.1 Reserved for Future Purposes**

**Rule 28.1 Reserved for Future Purposes**

**Rule 29.1 Reserved for Future Purposes**

**Rule 30.1 Requests for Jury Instructions**

Requests for jury instructions using *Federal Jury Practice and Instructions* (6th Ed.) by O'Malley, Grenig, and Lee, *Fifth Circuit Pattern Jury Instructions*, and *North Carolina Pattern Jury Instructions* shall include both the text of the proposed instruction as well as a citation reference to the proposed instruction. All other requests shall contain citations to supporting authorities.

**Rule 31.1 Taking Verdicts and Polling the Jury**

The court may take the verdict of the jury in open court. Unless a defendant has fled or has been removed from the courtroom for misconduct, he or she must be in the courtroom when the verdict is announced. Unless the contrary affirmatively appears of record, it will be presumed that the parties were present or by their voluntary absence waived their presence. The jury will not be polled unless a party requests a poll at the time the verdict is taken or unless a poll is ordered by the court.

**Rule 32.1 Petition for Disclosure of Presentence or Probation Records**

No confidential records of this court maintained by the probation office, including presentence and probation supervision records, shall be sought by any applicant except by written petition to this court establishing with particularity the need for specific information in the records. Whenever a probation officer is served with a subpoena or other judicial process seeking the production or disclosure of presentence and probation records and reports, the probation officer shall petition the Chief Judge of this court in writing for instructions with respect to responding to such process. In no event shall production or disclosure be made except pursuant to an order by a district judge or a magistrate judge unless specifically authorized by procedures outlined in Local Criminal Rule 32.2(l).

**Rule 32.2 Procedures Implementing Sentencing Guidelines**

**(a) Scheduling of Sentencing.**

Sentencing proceedings shall be scheduled by the court at the time of adjudication of guilt, to be heard not earlier than 60 days following the adjudication of guilt.

**(b) Time for Completion of Presentence Report.**

No later than 35 days prior to sentencing, the probation officer shall complete and disclose the presentence investigation report to the defendant, counsel for the defendant, and counsel for the Government.

**(c) Time for Filing Objections to Presentence Report.**

Within 14 days after disclosure to the defendant of the presentence investigation report, the parties shall communicate, in writing, to the probation officer objections to any material information, sentencing classifications, guideline ranges, and policy statements contained in or omitted from the report. A copy shall be served on the opposing party. The court may conduct a show cause hearing and/or disallow objections in any case where such objections are not timely filed.

**(d) Procedure for Resolving Objections to Presentence Report.**

After receiving objections from counsel, the probation officer shall conduct such further investigation as may be necessary. Counsel shall confer with the probation officer to discuss and attempt to resolve contested issues. Thereafter, the probation officer shall make such revisions to the presentence investigation report as the probation officer deems appropriate. Unresolved contested issues, including a summary of the grounds for the objections, and the probation officer's comments on them, shall be contained in an addendum to the presentence investigation report. If an objection by any party affects the guideline computation, the probation officer must attach a copy of that party's objection to the final presentence report, if that party so requests. The defendant and the government may each file a memorandum with the court explaining their respective positions on the unresolved objections. Any such memorandum must be served on opposing counsel and the probation office.

**(e) Time for Filing Revised Presentence Report.**

The revised presentence investigation report and addendum shall be delivered to the judge, the defendant, and counsel not later than 7 days prior to the sentencing hearing. The probation officer's sentencing recommendation shall be disclosed only to the judge. In the case of a juvenile, a disposition hearing must be held no later than 21 court days after the juvenile delinquency hearing subject to enumerated exceptions (18 U.S.C. § 5037(a)); therefore, the Local Criminal Rules with respect to time periods for disclosure of the presentence report do not apply.

**(f) Expedited Procedures where Defendant Detained.**

If it appears that a defendant may be detained pending trial and sentencing for a period of time exceeding the sentence likely to be imposed under the guidelines, the court, upon motion by the defendant at the time of adjudication of guilt, may direct the probation office to expedite the sentencing timetable.

**(g) Court Acceptance of Presentence Report.**

The revised presentence investigation report may be accepted by the court as accurate except as to matters set forth in the addendum which shall be resolved as provided in Section 6Al.3 of the *United States Sentencing Commission Guidelines Manual.*

**(h) Service of Presentence Report.**

The presentence investigation report shall be deemed to have been disclosed when a copy is physically delivered or electronically delivered or three days after a copy is mailed. Such dates shall be certified on the report by the probation officer.

**(i) Procedure at Sentencing.**

Before final judgment is entered in a case, the court shall disclose to the defendant, defense counsel, and the attorney for the Government, the court's tentative findings of fact and interpretation of applicable guidelines and shall afford the parties an opportunity to object to said tentative findings of fact and interpretation of the guidelines.

**(j) Receipt of Presentence Report Under Seal.**

The final presentence investigation report, addendum, and probation officer's recommendation shall be received by the clerk under seal for inclusion in the record and shall be otherwise disclosed only upon order. Defendants and counsel may retain their copies of the presentence investigation report and addendum. In the event of post-sentencing proceedings, including appeal, *habeas corpus* application, or motion for modification or revocation of probation or supervised release, counsel of record may, upon request, be provided a copy of the presentence report by the probation office.

**(k) Role of Defense Counsel in Presentence Investigation.**

Upon adjudication of guilt, the probation officer will initiate the presentence investigative process. Counsel for the defendant shall advise the probation officer attending court whether or not the defendant will submit to an interview with the officer and whether or not counsel desires to be present at the interview. Counsel, if attending, and the defendant shall make themselves available for the interview within 14 calendar days of adjudication.

**(l) Disclosure of Presentence Report to Expert Witnesses and Agents.**

The parties may provide a copy of the presentence report to expert witnesses and agents. The parties are responsible for recovering the report at or prior to sentencing. In the case of a juvenile no information, including the presentence report, may be released except pursuant to a court order.

**Rule 33.1 Reserved for Future Purposes**

**Rule 34.1 Reserved for Future Purposes**

**Rule 35.1 Reserved for Future Purposes**

**Rule 36.1 Reserved for Future Purposes**

**Rule 37.1 Reserved for Future Purposes**

**Rule 38.1 Reserved for Future Purposes**

**Rule 39.1 Reserved for Future Purposes**

**Rule 40.1 Reserved for Future Purposes**

**Rule 41.1 Reserved for Future Purposes**

**Rule 42.1 Reserved for Future Purposes**

**Rule 43.1 Waiver of Appearance in Misdemeanor Cases**

In accordance with Fed. R. Crim. P. 43(c)(2), a defendant in misdemeanor cases may execute a written waiver of appearance which contains the following statements:

**(a)** the designation of counsel to appear in behalf of the defendant and the granting to such counsel of full authority to enter on behalf of the defendant a plea of guilty, not guilty, or *nolo contendere* to the offense charged, or to a lesser offense or offenses in lieu thereof;

**(b)** a consent to trial by the magistrate judge; and, a waiver of: (1) the right to be tried and sentenced by a district judge, (2) the right to a jury trial, (3) the right to testify in person, and (4) the right to face his or her accusers;

**(c)** an agreement to be bound by the decisions of the court as in any other case of adjudication and the entry of judgment subject to the right of appeal as in any other case; and,

**(d)** the circumstances which justify the approval of the written waiver of appearance by the court. The waiver of appearance must be (1) in writing, (2) signed by the defendant and his or her counsel, (3) consented to by the United States Attorney or an Assistant United States Attorney, and (4) approved by the court.

**Rule 44.1 Appearance of Counsel in Criminal Cases**

**(a) Obligation to Notify the Court.**

A defendant who does not apply for representation at government expense, or who is deemed ineligible after application, must inform the court of the identity of retained counsel within 14 days of his or her first appearance before a judicial officer in this district. Retention of counsel outside this period will not constitute grounds for a continuance of pretrial proceedings or trial unless the defendant demonstrates due diligence in attempting to retain counsel.

**(b) Notice of Appearance.**

Counsel representing a defendant in a criminal action shall file a Notice of Appearance with the clerk and serve the United States Attorney and other counsel with a copy. The Notice of Appearance shall contain the attorney's name and the name of the attorney's law firm, phone number and state bar number. The attorney also shall file contemporaneously a corporate affiliate/financial interest disclosure statement in accordance with Fed. R. Crim. P. 12.4 and Local Criminal Rule 12.3.

**Rule 44.2 Disclosure Statements in *Pro Se* Litigation**

As part of making an appearance in every case, all *pro se* litigants (other than prisoners) shall file contemporaneously a disclosure statement in accordance with Fed. R. Crim. P. 12.4 and Local Criminal Rule 12.3.

**Rule 45.1 Reserved for Future Purposes**

**Rule 46.1 Prohibited Sureties**

Members of the bar, administrative officers and employees of this court, and the marshal and deputies and assistants thereto shall not act as surety in any matter pending in this court.

**Rule 47.1 Motion Practice**

**(a) General Requirements.**

All motions shall be concise and shall state precisely the relief requested. Motions shall conform to the general motions requirements, standards and practices set forth in the applicable Federal Rules of Criminal Procedure and in Local Criminal Rule 47.3. Time for the filing of pretrial motions in criminal cases is governed by Local Criminal Rule 12.1.

**(b) Supporting Memoranda.**

Except for motions which the clerk may grant as specified in Local Criminal Rule 56.1, all motions made other than in a hearing or trial shall be filed with an accompanying supporting memorandum in the manner

prescribed by Local Criminal Rule 47.2(a). Where appropriate, motions shall be accompanied by affidavits or other supporting documents.

**(c) Responses to Motions.**

Any party may file a written response to any motion. A response shall be in the form of a memorandum in the manner prescribed by Local Criminal Rule 47.2(a), and may be accompanied by, without limitation, affidavits and other supporting documents. Responses and accompanying documents shall be filed within 14 days after service of the motion in question unless otherwise ordered by the court or prescribed by the applicable Federal Rules of Procedure.

**(d) Subsequently Decided Controlling Authority.**

A suggestion of subsequently decided controlling authority, without argument, may be filed at any time prior to the court's ruling and shall contain only the citation to the case relied upon if published or a copy of the opinion if the case is unpublished.

**(e) Affidavits.**

Ordinarily, affidavits will be made by the parties and other witnesses and not by counsel for the parties. However, affidavits may be made by counsel for a party if the sworn facts are known to counsel or counsel can swear to them upon information and belief, and

**(1)** the facts relate solely to an uncontested matter; or

**(2)** the facts relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the facts; or

**(3)** the facts relate solely to the nature and value of the legal services rendered for the party by such counsel or counsel's law firm; or

**(4)** the refusal to accept the affidavit would work a substantial hardship on the party and the court finds that its acceptance of the affidavit would not be such as to require that counsel or counsel's law firm be disqualified from continuing to appear for the party.

**(f) Hearings on Motions.**

Hearings on motions may be ordered by the court in its discretion. Unless so ordered, motions shall be determined without hearing.

**(g) Frivolous or Delaying Motions.**

Where the court finds that a motion is frivolous or filed for delay, costs may be assessed against the party or counsel filing such motion.

**(h) Motions for an Extension of Time to Perform an Act.**

**(1)** All motions for an extension of time to perform an act required or allowed to be done within a specified time must show good cause, prior consultation with opposing counsel and the views of opposing counsel. The motion must be accompanied by a separate proposed order granting the motion.

**(2)** Except as ordered by the court, designated secured leave under Rule 26 of the General Rules of Practice for the Superior and District Courts of the State of North Carolina shall not be the sole basis for an extension of time or continuance.

**Rule 47.2 Supporting Memoranda**

**(a) Form and Content.**

A memorandum shall comply with Local Criminal Rule 47.3 and shall contain:

**(1)** a concise summary of the nature of the case;

**(2)** a concise statement of the facts that pertain to the matter before the court for ruling;

**(3)** the argument (brevity is expected) relating to the matter before the court for ruling with appropriate citations in accordance with Local Criminal Rules 47.2(b), (c) and (d);

**(4)** copies of any decisions in cases cited as required by Local Criminal Rules 47.2 (c) and (d).

**(b) Citation of Published Decisions.**

Published decisions cited should include parallel state court citations, the year of the decision, and the court deciding the case. The following are illustrations:

**(1)** State Court Citation: *Rawls v. Smith*, 238 N.C. 162, 77 S.E.2d 701 (1953).

**(2)** District Court Citation: *Smith v. Jones*, 141 F. Supp. 248 (E.D.N.C. 1956).

**(3)** Court of Appeals Citation: *Smith v. Jones*, 237 F.2d 597 (4th Cir. 1956).

**(4)** United States Supreme Court Citation: *Smith v. Jones*, 325 U.S. 196 (1956). United States Supreme Court cases should be cited in accordance with current Bluebook form.

**(c) Citation of ~~Decisions~~ Authorities Not Appearing in Certain Published ~~Reports~~ Sources.**

Any authority (e.g., court decision, administrative decision, regulation) that is not available on ~~Decisions published outside the West Federal Reporter System, the official North Carolina reports, the official United States Supreme Court reports,~~ LexisNexis~~, and~~ or Westlaw ~~(e.g. CCH Tax Reports, Labor Reports, U.S.P.Q., reported decisions of other states or other specialized reporting services)~~ may be cited if a copy of the ~~decision~~ authority is filed as an exhibit to the motion or memorandum in which it is cited ~~furnished to the court and to opposing parties or their counsel when the memorandum is filed~~.

**(d) Citation of Unpublished Decisions.**

~~Unpublished decisions may be cited only if the~~ A decision designated as "unpublished" ~~decision is furnished to the court and to opposing parties or their counsel when the memorandum is filed. The unpublished decision of~~ by a United States District Court may be considered by this court. A decision designated as ~~The~~ "unpublished" ~~decision of~~ by a United States Circuit Court of Appeals will be given due consideration and weight but will not bind this court. ~~Such unpublished decisions should be cited as follows: *United States v. John Doe*, 5:94-CR-50-1-F (E.D.N.C. Jan. 7, 1994) (unpublished) and *United States v. Norman*, No. 74-2398 (4th Cir. June 27, 1975) (per curiam) (unpublished).~~ In accordance with subsection (c) of this rule, if such an "unpublished" decision is not available on LexisNexis or Westlaw, a copy of it shall be filed as an exhibit to the motion or memorandum in which it is cited.

**(e) Provision of Authorities.**

If an authority is not reasonably available to an opposing party, the moving party citing that authority shall furnish the authority to the opposing party upon request.

**~~(e)~~(f) Length of Memoranda.**

Except as otherwise provided by these local rules, memoranda in support of or in opposition to a motion shall not exceed 30 pages in length without prior court approval.

## Rule 47.3 Form of Pleadings, Motions and Documents

All pleadings, motions, discovery procedures, memoranda and other papers filed with the clerk or the court shall:

**(a)** be double-spaced on single-sided, standard letter size (8 ½ x 11) paper, with all typed matter appearing in at least 11 point font size with a one inch margin on all sides;

**(b)** state the court and division in which the action is pending;

**(c)** except for the initial filing, bear the case number assigned by the clerk;

**(d)** contain the caption of the case;

**(e)** if applicable, state the title of the pleading, motion, discovery procedure or document and the federal statute or rule number under which the party is proceeding;

**(f)** contain the individual name, firm name, address, telephone number, fax number, e-mail address and state bar identification, where applicable, of all attorneys who appear for the filing party, including an attorney making a special appearance pursuant to Local Criminal Rule 57.1(e);

**(g)** bear the date when signed by counsel;

**(h)** be signed by counsel as required by Local Criminal Rule 57.1(d). Where permitted by order pursuant to Local Criminal Rule 49.1(a)(1) and Local Criminal Rule 57.1(d) counsel may submit for filing a facsimile copy of the signature of out of state counsel on pleadings provided that a signature page with all original signatures is submitted to the court within 7 days after the original filing;

**(i)** include on all documents, the signature of parties and counsel shall be followed, on the line immediately below, by the typed or printed name in the exact form as the signature. In preparation of documents for signature by a judge or magistrate judge, a blank space shall be provided below the signature line in which the name may be typed or printed; and

**(j)** have each page numbered sequentially. The following forms are examples to be followed:

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. __:____-___-__

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | |
| | ) | |
| v. | ) | MOTION TO TRANSFER |
| | ) | PROCEEDING |
| | ) | FED. R. CRIM. P. 21(a) |
| AARON T. JONES, | ) | |
| Defendant. | ) | |

(Closing)

This ____ day of January 201_.

John B. Counselor
Abbot, Ball and Counselor
Attorneys at Law
200 Main Street
Post Office Box 50
Raleigh, North Carolina 27602
John.B.Counselor@email.address.com
(919) 878-8787
Fax (919) 878-8000
State Bar No.
Attorney for Defendant

**Rule 47.4 Form of Exhibits to Motions**

Exhibits containing double-sided documents are not permitted and will not be considered by the court. Condensed deposition transcripts are discouraged.

**[Rule 47.5] [Implementing Requirements of the E-Government Act of 2002]**

(Rescinded eff. December 1, 2007)
See Fed. R. Civ. P. 5.2

**Rule 47.6 *Ex Parte* Motions**

Unless the related case is already under seal, an *ex parte* motion shall only be sealed upon specific order of the court. A motion requesting permission to file an *ex parte* motion under seal shall include the *ex parte* motion as an attachment. The clerk shall treat the motion to seal and attachment as sealed pending order of the court.

**Rule 48.1 Reserved for Future Purposes**

**Rule 49.1 Filing and Service of Papers**

**(a) Electronic Filing**

**(1) Parties' Pleadings and Other Documents.**

Unless otherwise permitted by the Electronic Case Filing Administrative Policies and Procedures Manual (Policy Manual), or otherwise authorized by the assigned judge, all documents submitted for filing shall be filed electronically in text searchable format using the Case Management/Electronic Case Filing system (CM/ECF) and in accordance with the Policy Manual. A document shall not be considered filed for the purposes of the Federal Rules of Civil, Criminal or Appellate Procedure until the filing party receives a system generated Notice of Electronic Filing (NEF). Any document electronically filed or converted by the clerk's office to electronic format shall be the official record of the court. As such, the clerk's office will not maintain a paper record of these documents. The clerk's office will not accept any e-mail or facsimile transmission for filing unless ordered by the court.

**(2) Court-Generated Documents.**

All orders, decrees, judgments, and proceedings of the court will be filed in accordance with the Policy Manual, which shall constitute entry of that document on the docket kept by the clerk under Rules 58 and 79 of the Federal Rules of Civil Procedure. All signed orders will be filed electronically by the court or court personnel. Any order or other court-issued document filed electronically without the original signature of a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the order or other court-issued document and it had been entered on the docket in a conventional manner. Orders may be 'text only' entries on the docket, without an attached document. Such orders are official and binding.

**(b) Registered User.**

Only an attorney who is registered in CM/ECF may file documents electronically. Registration constitutes consent to service of all documents by electronic means as provided by the federal rules and the Policy Manual.

**(c) Signature.**

The electronic filing of a document by an attorney who is a registered user shall constitute the signature of that attorney under Rule 11 of the Federal Rules of Civil Procedure. No attorney shall knowingly permit or cause to permit the attorney's CM/ECF password to be used by anyone other than an authorized employee of the attorney's law firm. No person shall knowingly use or cause another person to use the password of a registered attorney unless such person is an authorized employee of the attorney's law firm.

**(d) Entry on Docket.**

The electronic filing of a document in accordance with the Policy Manual shall constitute entry of that document on the docket kept by the clerk under Rule 79 of the Federal Rules of Civil Procedure. Except in the case of documents first filed in paper, a document filed electronically is deemed filed at the date and time stated on the NEF that is automatically generated by CM/ECF.

**(e) Service of Document.**

Transmission of the NEF that is automatically generated by CM/ECF, except as provided in (f) below, constitutes service of the filed document on registered party users. Parties who are not registered users must be served with a copy of any document filed electronically in accordance with the Federal Rules of Civil Procedure. When more than one attorney in a law firm appears in a case, and not all of the attorneys are registered filing users, service of any court-generated document (i.e., orders, notices, etc.) will only be made on the attorneys registered in CM/ECF. It is the responsibility of the law firm's electronic users to notify all other firm members appearing in the case who are not receiving electronic notification. Non-registered attorneys will not receive paper copies from the court.

**(f) Exceptions to Electronic Filing.**

Documents filed by a party who is not represented by an attorney permitted to practice in the Eastern District of North Carolina and registered in CM/ECF, and those documents listed in Section H of the Policy Manual, shall be filed in paper, and are excluded from electronic filing. Any document filed in paper that is not exempt pursuant to this section must be accompanied by a motion for leave to file the document and a proposed order. When filed in paper form, the document must have an original signature, and must be served upon opposing parties as provided in Rule 5(b) of the Federal Rules of Civil Procedure.

**(g) Privacy Protection for Filings Made with the Court**

The responsibility for redacting personal identifiers rests solely with counsel and the parties. The clerk will not review each filed document and any attachments for compliance with Fed. R. Crim. P. 49.1.

## Rule 50.1 Definition of Related Criminal Cases

"Related cases" are matters which, by sharing common events or defendants, would entail substantial duplication of labor in pretrial, trial, or sentencing proceedings if heard by different judges, including prior cases that have been closed or dismissed. Examples of related cases may include but are not limited to:

**(a)** matters arising out of the same conspiracy, common scheme, transaction, series of transactions or events; or

**(b)** matters involving one or more defendants in common.

**Rule 50.2 Notice of Related Cases**

Either the United States Attorney or defense counsel may file a Notice of Related Cases, as set forth in Local Criminal Rule 50.5, promptly upon determining that a later filed case and an earlier filed case are related cases. Whenever counsel files a Notice of Related Cases, the clerk shall prepare a proposed transfer order which shall be presented to the court along with the Notice and any response of a party filed pursuant to Subsection 50.5(b). The court shall then decide to which judge to assign the case.

**Rule 50.3 ~~Indictment When Plea Pending~~ Criminal Transfers**

**(a) Indictment When Plea Pending.**

Whenever an information or indictment originating in another District is transferred to this court pursuant to Fed. R. Crim. P. 20 and involves a defendant also proceeded against by indictment or information in this District, the clerk shall directly assign the Rule 20 transferred matter to the calendar of the judge to whom the matter arising in this District is assigned. If an indictment is returned in this District against a defendant who has a Rule 20 plea pending, the indictment shall be directly assigned to the judge to whom the Rule 20 plea has been assigned.

**(b) Transfers of Jurisdiction**

(1) Whenever supervision of a defendant is transferred to this court from another district that is related to a pending or closed case in this district, and that fact has been brought to the attention of this court, then the incoming Transfer of Jurisdiction shall be directly assigned to the judge to whom the related case is assigned.

(2) If an incoming Transfer of Jurisdiction is related to more than one criminal case with more than one judge assigned, and this fact is brought to the attention of the court, then the incoming Transfer of Jurisdiction shall be directly assigned to the judge to whom the earlier case is assigned, unless otherwise directed by the court.

(3) If the incoming Transfer of Jurisdiction is a return of case that originated in this district, and this fact is brought to the attention of the court, then the Transfer of Jurisdiction shall be filed in the defendant's case in this district instead of opening a new case, unless otherwise directed by the court.

**Rule 50.4 Indictment or Information Previously Dismissed**

Whenever an indictment or information has been dismissed before trial, any new indictment or information involving the same transaction or series of transactions and at least a majority of the same defendants shall be directly assigned to the judge to whom the first indictment or information was assigned.

**Rule 50.5 Notice - Role of Counsel**

**(a)** The United States Attorney or defense counsel may call the court's attention to the existence of related criminal cases at such time as counsel becomes aware that a later filed case and an earlier filed case are related cases. Counsel shall do so by promptly filing and serving in the later filed case a Notice of Related Criminal Cases identifying the earlier filed case and setting forth the reasons why counsel believes the cases are related. Whenever practicable, the United States Attorney shall file the Notice with the indictment or information and serve it on defense counsel promptly after defense counsel's appearance in the case.

**(b)** Any party may file a response to another party's Notice of Related Cases, or to the *sua sponte* reassignment of a case under Local Criminal Rules 50.2 or 50.4, within 7 days after the Notice is served, or *sua sponte* reassignment is made, or within such time as the court may set. Whenever practicable, the court will resolve the assignment of the case within 14 days thereafter.

**Rule 51.1 Reserved for Future Purposes**

**Rule 52.1 Reserved for Future Purposes**

**Rule 53.1 Photographing and Reproducing Court Proceedings**

The taking of photographs, broadcasting or recording of proceedings in any form in the courtroom, court offices or in the corridors immediately adjacent thereto, during judicial proceedings or during any recess of the court is prohibited except as

set forth herein. The taking of photographs, broadcasting or recording of ceremonial proceedings, such as naturalization proceedings, the administration of oaths of office to officers of the court, presentation of portraits and other ceremonial occasions may be allowed with the permission of the presiding judge and under the supervision and control of the court.

**Rule 54.1 Reserved for Future Purposes**

**Rule 55.1 Exhibits**

The clerk shall be the custodian of all exhibits admitted into evidence. Upon 14 days' notice by mail to counsel for all parties, the clerk may, within 30 days after the entry of final judgment, destroy or otherwise dispose of the exhibits.

**Rule 55.2 Sealed Documents**

**(a) Filing Sealed Documents.**

No cases or documents may be sealed without an order from the court. A party desiring to file a document under seal must first file a motion seeking leave in accordance with Section T of the CM/ECF Policy Manual. All sealed and proposed documents shall be maintained electronically in CM/ECF unless otherwise ordered by the court. First-time filers are strongly encouraged to call the CM/ECF Help Desk at 866-855-8894.

**(b) Proposed Sealed Documents.**

**(1)** Unless otherwise permitted by Section T of the CM/ECF Policy Manual or order of the court, all proposed sealed documents must be accompanied by a motion to seal. The motion to seal shall be a public document and noted with a docket entry that gives the public notice of the request to seal. The docket entry for the proposed sealed document shall identify it as a "proposed" sealed document and describe the type of document it is (e.g., affidavit, record) and the substantive motion or other specific proceedings in the case to which it relates (e.g., in support of defendant's motion to compel at D.E. ____). The proposed sealed document is deemed to be provisionally sealed until the court rules on the motion to seal.

**(2)** If the motion to seal is granted, the clerk will remove the word "proposed" from the docket entry.

**(3)** If the motion to seal is denied, the document will remain sealed and the word "proposed" will remain in the docket entry for the document in order to preserve the record. The document will not be considered by the court, except as provided herein or as otherwise ordered by the court. A party desiring to remove a proposed sealed document or docket entry therefor from the docket sheet must file a motion to strike in accordance with Local Criminal Rule 47.1. A party whose motion to seal is denied but that desires the court to consider a proposed sealed document as a publicly filed document shall file the document as a public document within 3 days after entry of the order denying the motion to seal or within such other period as the court directs.

**(c) Return of Sealed Documents.**

**(1)** For those sealed documents not scanned into CM/ECF, upon 14 days' notice to all parties, the clerk may destroy or dispose of the sealed documents, unless the attorney or party who filed them retrieves them from the clerk. This notice may occur no earlier than 30 days after the judgment of conviction has become final and the one-year period of limitation within which to file a motion under 28 U.S.C. § 2255 has expired, and in the event a § 2255 motion is filed, then after the conclusion of the litigation. If the trial results in an acquittal or dismissal as to all counts and all defendants, then the 30-day period would begin to run from the date of the jury verdict or the court's order of acquittal or dismissal, unless the Government appeals, in which case the period would begin to run after that appellate litigation has been completed and any proceedings on remand have become final.

.

**(2)** If, during the fourteen-day period after the clerk has given notice of intent to dispose of the sealed documents, any party files an objection to such disposition, the presiding judge in the case shall resolve the dispute over the proposed disposition.

**(d) Procedures for Manual Filers.**

For those parties who are required to manually file all court documents (i.e., *pro se* litigants), proposed sealed documents shall be delivered to the clerk's office in paper form in a sealed envelope. The proposed sealed documents must be accompanied by a motion to seal in accordance with Section T of the CM/ECF Policy Manual. Both the documents and the envelope shall be prominently labeled "UNDER SEAL." The envelope

must also have written on it: the case caption; the case number; the title of the document or, if the title contains proposed sealed information, the title omitting the proposed sealed information; and the following notice in all capital letters and otherwise prominently displayed:

PROPOSED SEALED DOCUMENTS: SUBMITTED PURSUANT TO MOTION TO SEAL.

**Rule 56.1 Courts and Clerks**

**(a) Court in Continuous Session.**

This court shall be in continuous session in all divisions of the District on all business days throughout the year. All matters not reached at the regular sessions of court are deemed to be in an open status and subject to being called for disposition before the next regular session of court upon reasonable notice to the interested parties.

**(b) Assignment of Cases to a Division.**

The clerk shall assign all criminal indictments to a division when an indictment is filed or transferred. If the indictment alleges the crime occurred within the District, the clerk shall assign the action to the division in which the crime is alleged to have occurred. In cases where it is not alleged that the crime occurred in the District or in cases in which it is unclear in which division the alleged crime occurred, the clerk shall assign the indictment to the division in which the first named defendant who resides within this District resides. In all other instances, an indictment shall be assigned to a division in the discretion of the clerk.

**(c) Orders and Judgments.**

The clerk or deputy clerk is authorized to enter the orders and judgments listed below without further direction of the court. However, such action may be suspended, altered or rescinded by the court for cause shown.

**(1)** Consent orders for substitution of attorneys.

**(2)** Orders extending for a reasonable amount of time the period within which an act must be performed under the local rules of this court.

**(3)** Orders canceling liability on bonds.

**(4)** Orders changing the time of opening and adjourning court in the absence of the judge.

**(5)** Certification of law students and supervising attorneys pursuant to Local Civil Rule 83.2.

**(6)** Any other motion, rule or order which may be granted of course or without notice.

## Rule 57.1 Attorneys

### (a) Roll of Attorneys.

The bar of this court consists of those previously admitted and those hereafter admitted as prescribed by this Local Criminal Rule 57.1.

### (b) Eligibility.

A member in good standing of the bar of the Supreme Court of North Carolina is eligible for admission to the bar of this court.

### (c) Procedure for Admission.

That before being presented to the court for taking the required oath, an applicant for admission shall certify in a written application that such applicant:

**(1)** Is a member in good standing of the bar of the Supreme Court of North Carolina; and

**(2)** Has studied the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, and the local rules of this court.

In addition to these certifications, the written application shall contain the certification of two attorneys who are members in good standing of the bar of this court that the applicant is of good moral character and professional reputation and meets the requirements for admission. An applicant may be admitted to practice in this court by a district judge, bankruptcy judge, or magistrate judge of this court or of the United States District Court for the Middle District or Western District of North Carolina upon oral motion by a member of the bar of this court. If the motion for admission is granted, the

applicant shall take the following oath or affirmation:

*I do solemnly swear that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will demean myself as an attorney of this court, uprightly and according to law. So help me God.*

Following the administration of the oath, the application shall be signed by the district judge, bankruptcy judge, or magistrate judge and the applicant shall file with the clerk the application, accompanied by the filing fee required by the Administrative Office of the United States Courts and this Court for admission to practice in this district. The clerk shall then issue the applicant a certificate of admission to the bar of this court. Upon the filing of a properly certified and executed application accompanied by the admission fee, the clerk may accept for filing papers signed by the applicant. However, no applicant shall make an appearance on behalf of a client, either before a magistrate judge, bankruptcy judge or district judge, by telephone conference or in person, until the applicant has taken the oath.

**(3)** Current law clerks to district judges, magistrate judges, and bankruptcy judges within this District shall be admitted to the bar of this court without payment of an admission fee.

**(d) Representation by Local Counsel Who Must Sign All Pleadings.**

Litigants in criminal actions, except governmental agencies and parties appearing *pro se*, must be represented by at least one member of the bar of this court who shall sign all documents filed in this court, including his or her state bar number and fax number in the signature block on all pleadings. If an attorney appears solely to bring the litigant in compliance with this local rule, he or she shall in each instance designate himself or herself "Local Criminal Rule 57.1 Counsel." In signing the pleading, motion, discovery request or other document, counsel certifies that he or she is an authorized representative for communication with the court about the litigation, and the document conforms to the practice and procedure of this court. Signatures in the following form shall be sufficient to comply with this local rule. Local Criminal Rule 57.1 Counsel must include the state bar number and fax number in the signature block on all pleadings:

_____

Jane M. Jones

Jones, Jones and Jones
P.O. Box 500
New York, NY 10050
Jane.jones@email.address.com
(212) 555-1212
State Bar No.
Attorney for Defendant

_____

John B. Counselor
Abbott, Ball and Counselor
P.O. Box 50 Raleigh, NC 27602
John.B.Counselor@email.address.com
(919) 878-8787
Fax (919) 878-8000
State Bar No.
Local Criminal Rule 57.1 Counsel

**(e) Appearances by Attorneys Not Admitted in the District – Special Appearance.**

**(1)** Attorneys who are members in good standing of the bar of a United States Court and the bar of the highest court of any state or the District of Columbia may practice in this court for a particular case in association with a member of the bar of this court. By filing a Notice of Appearance, completing an Electronic Filing Attorney Registration Form, and complying with Section J.(1) of the Policy Manual, an attorney agrees that:

**(a)** the special appearance attorney will be responsible for ensuring the presence of an attorney who is familiar with the case and has authority to control the litigation at all conferences, hearings, trials and other proceedings;

**(b)** the attorney submits to the disciplinary jurisdiction of the court for any misconduct in connection with the litigation in which the attorney is specially appearing; and

**(c)** for purposes of Fed. R. Civ. P. 11, the Federal Rules of Civil and Criminal Procedure and the Local Criminal Rules of this court, the special appearance attorney's electronic signature shall carry the same force and effect as an original signature.

**(2)** An attorney who is not a member of the bar of this court will not receive electronic notification until the attorney becomes a registered CM/ECF filer with this court and files a Notice of Appearance.

**(3)** A member of the bar of this court who accepts employment in association with a special appearance attorney is responsible to this court for the conduct of the litigation of the proceeding, must be a CM/ECF registrant and shall review for submission by the special appearance attorney all pleadings and papers electronically filed in compliance with Section J.(1) of the Policy Manual. The responsibility of the member of the bar who accepts employment in association with a special appearance attorney and who designates himself or herself as Local Criminal Rule 57.1 local counsel shall be governed by Local Criminal Rule 57.1(d).

**(4)** Any document filed by a special appearance attorney that does not comport with associated Local Criminal Rule 57.1 counsel's standards may be objected to. Any such objection must be filed within 7 days of the issuance of the NEF for the document.

**(5)** A special appearance is not a substitute for admission to the bar of this court, but rather is intended to facilitate occasional appearances only. Unless otherwise ordered for good cause shown, no attorney may be admitted pursuant to Local Criminal Rule 57.1 in more than three unrelated cases in any twelve-month period, nor may any attorney be admitted pursuant to Local Criminal Rule 57.1 in more than three active unrelated cases at any one time.

**(f) Pleadings, Service and Attendance by Local Counsel in Cases Where Out-of-State Attorneys Appear by Special Appearance.**

Pleadings and other documents filed in a case where an attorney appears who is not admitted to the bar of this court shall contain the individual name, firm name, address, and phone number of both the attorney making a special appearance under this local rule and the associated local counsel. As part of making an appearance in every case, an attorney also shall file contemporaneously a corporate affiliate/financial interest disclosure statement in accordance with Fed. R. Crim. P. 12.4 and Local Criminal Rule 12.3. The service of all pleadings and notices as required shall be sufficient if served only upon the associated local counsel. Local counsel shall attend all court proceedings unless excused by the court.

**(g) Withdrawal of Appearance.**

No attorney or law firm whose appearance has been entered shall withdraw his or her appearance or have it stricken from the record except with leave of the court. However, if an attorney within the same firm replaces counsel for a party, the new attorney may file a notice of substitution of counsel and the court will substitute the attorneys without order of the court.

**(h) Courtroom Decorum.**

Counsel shall conduct themselves with dignity and propriety. Counsel shall rise when addressing the court, and all statements to the court shall be made from a counsel table or from behind the lectern facing the court. Counsel shall not approach the bench unless requested to do so by the court or unless permission is granted upon the request of counsel.

**(i) Questioning of Witnesses.**

Only one attorney for each party may question a particular witness unless the court allows otherwise. Counsel shall remain seated while questioning witnesses.

**(j) Professional Standards.**

The ethical standard governing the practice of law in this court is the Revised Rules of Professional Conduct, now in force and as hereafter modified by the Supreme Court of North Carolina, except as may be otherwise provided by specific rule of this court. Counsel are directed to advise the clerk within 14 days of disciplinary action taken against them resulting in suspension or disbarment. The disciplinary procedures of this court shall be on file with the clerk and furnished to counsel upon request.

**(k) Admission of Attorneys Previously Admitted to the United States District Courts for the Middle or Western Districts of North Carolina.**

Attorneys already admitted to the bar of either the United States District Court for the Middle District of North Carolina or the United States District Court for the Western District of North Carolina may be admitted to the bar of this court upon tendering the application and fees required by Local Criminal Rule 57.1(c), together with a copy of the order admitting the attorney to practice in one of the other districts, without the necessity of taking the oath that is otherwise required and without obtaining the character certification by two members of the bar of this court.

**(l) Electronic Devices in Courtroom Facilities.**

**(1)** Attorneys are subject to the Standing Order on Prohibition of Wireless Communication Devices in Courtroom Facilities dated August 15, 2005, 05-PLR-7. To be exempted from the Order, attorneys will be required to present a bar card to the court security officer to retain a cellular phone, smartphone, laptop, tablet, or other electronic device. If an attorney fails to present a bar card, the attorney will be prohibited from bringing any such item into the courthouse.

**(2)** By bringing an electronic device into the courthouse, an attorney agrees to the following:

**(A)** The electronic device will not be used to record, broadcast, nor transmit any video images or audio sounds.

**(B)** While in the courtroom, the attorney will ensure that no sounds are emitted from the device.

**(C)** Upon entering the United States District Courthouse in the Eastern District of North Carolina, the electronic device will be screened by the Court Security Officers using visual observation, x-ray scanning, chemical detection devices or other screening methods.

**(D)** The attorney will maintain custody over the electronic device and will not allow it to be used by anyone else unless the attorney has been given Court permission.

**(E)** Failure to comply with these provisions may result in the attorney's loss of the right to use an electronic device in the United States District Courthouses in the Eastern District of North Carolina, confiscation of the device or other court sanctions, including, but not limited to, contempt of court.

**(3)** Persons using wireless communication devices for evidence presentation or for other similar purposes must notify the court prior to the commencement of any proceeding that such a device is in their possession.

**(4)** Judges may permit additional exceptions to or impose additional limitations on the use of wireless electronic devices within courtroom facilities at their discretion.

**Rule 57.2 Student Practice Rule**

**(a) Compliance with Rule.**

Students may participate as counsel in civil and criminal cases in this court subject to their compliance with all of the requirements of this Local Criminal Rule 57.2.

**(b) Eligibility.**

An eligible student must:

**(1)** be duly enrolled in a law school accredited or provisionally accredited by the American Bar Association;

**(2)** have completed at least three semesters of legal studies;

**(3)** have knowledge of the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, the Code of Professional Responsibility, and the local rules of this court;

**(4)** be supervised by a supervising attorney as defined in Local Criminal Rule 57.2(c);

**(5)** be certified by the Dean of the Law School where the student is enrolled, or the Dean's designee, as being of good character, sufficient legal ability, and adequately trained to fulfill the responsibilities of a legal intern to both the client and the court;

**(6)** be certified by the court to practice pursuant to this Local Criminal Rule 57.2; and

**(7)** decline personal compensation for his or her legal services from a client or any other source.

**(c) Supervising Attorney.**

A supervisor must:

**(1)** either (i) have faculty or adjunct faculty status at a law school at which a portion of the supervisor's duties includes supervision of students in a clinical program; or (ii) be a member of the bar of this court for at least two years, who in the determination of the court, is competent to carry out the role of supervising attorney;

**(2)** be admitted to practice in this court;

**(3)** be certified by the court as a student supervisor;

**(4)** be present with the student at all times in court, and at other proceedings in which testimony is taken;

**(5)** co-sign all pleadings or other documents filed with the court;

**(6)** assume full personal and professional responsibility for a student's guidance and any work undertaken and for the quality of the student's work, and to be available for consultation with represented clients;

**(7)** assist and counsel the student in activities mentioned in Local Criminal Rule 57.2(e), and review such activities with the student, all to the extent required for proper practical training of the student and the protection of the client; and

**(8)** supplement oral or written work of the student as necessary to insure proper representation of the client.

**(d) Certification of Student and Supervisor.**

**(1) Student.** The court's certification of a student to practice under this Local Criminal Rule 57.2 shall be filed with the clerk and shall remain in effect for 18 months or until the student graduates from law school, whichever is earlier. Certification to appear generally or in a particular case may be withdrawn by the court at any time, in the discretion of the court, and without any showing of cause.

**(2) Supervising Attorney.** Certification of the supervising attorney shall be filed with the clerk, and shall remain in effect indefinitely unless withdrawn by the court, in its discretion, and without any showing of cause.

**(e) Activities.**

A certified student may under the personal supervision of his or her supervisor:

**(1)** represent any client including federal, state or local governmental bodies, if the client on whose behalf the certified student is

appearing has consented in writing to that appearance and the supervising lawyer has given written approval of that appearance;

**(2)** represent a client in any criminal, civil or administrative matter; however, the court retains the authority to limit a student's participation in any individual case;

**(3)** in connection with matters in this court, engage in other activities on behalf of the client in all ways that a licensed attorney may, under the general supervision of the supervising lawyer; however, a student shall make no binding commitments on behalf of a client absent prior client and supervisor approval, and in any matters, including depositions, in which testimony is taken the student must be accompanied by the supervising lawyer. Documents or papers which are filed shall be read, approved, and co-signed by the supervising lawyer. The court retains the authority to establish exceptions to such activities; and

**(4)** prior to oral participation by a certified student in a hearing or trial, the supervising attorney shall provide the court with a written statement of the scope of participation anticipated on the part of the certified student.

**Rule 57.3 Change of Address**

All attorneys and *pro se* parties must notify the court in writing within 14 days of any change of address. Failure to notify the court in a timely manner of an address change may result in dismissal of the action or the imposition of such other relief that the court deems just and proper.

**Rule 57.4 Correspondence**

Correspondence addressed to the court shall indicate that copies have been transmitted to all other parties and failure to transmit the same to all other parties may result in sanctions by the court. Such correspondence shall not become a part of the record in the case.

**Rule 57.5 Disciplinary Rules**

The rules governing the discipline of attorneys set forth in Local Civil Rule 83.7a - 83.7k are also applicable to attorneys practicing in criminal cases.

## Rule 58.1 Magistrate Judges

### (a) Disposition of Misdemeanor Cases -- 18 U.S.C. § 3401.

A magistrate judge may:

**(1)** try persons accused of, and sentence persons convicted of, misdemeanors committed within this District in accordance with 18 U.S.C. § 3401;

**(2)** direct the probation service of the court to conduct a presentence investigation in any misdemeanor case; and

**(3)** conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States.

### (b) Appeal from Judgments in Misdemeanor Cases -- 18 U.S.C. § 3402.

A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal and paying a Thirty-Seven Dollar ($37.00) filing fee within 14 days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the district court to the court of appeals.

**(1)** Upon receipt of the notice of appeal, the clerk shall docket the appeal and assign the case to a district judge.

**(2)** The record on appeal shall consist of the original papers and exhibits filed in the proceedings before the magistrate judge and the transcript of proceedings, if any.

**(3)** Unless excused by order of the district judge, every appellant shall be responsible for preparation of a typewritten transcript of the proceedings before the magistrate judge from which an appeal has been taken. Preparation of the transcript should be coordinated with the clerk of court. If such transcript has been prepared from an audio tape recording, the transcript shall be submitted to the magistrate judge for certification of its accuracy. After certification by the magistrate judge, the transcript shall be forwarded to the clerk for filing, and the clerk shall promptly notify the parties of the filing. A copy of the record of such proceedings shall be made available at the expense of the court, to a person who

establishes by affidavit the inability to pay or give security therefore.

**(4)** Within 21 days of the date on which the transcript is filed in the clerk's office, or if there is to be no transcript, within 21 days of the filing of the notice of appeal, the appellant shall serve and file a memorandum which shall enumerate each reversible error claimed to have occurred in the proceedings before the magistrate judge and shall explain the factual and legal basis for each claimed error, with citations to the record and to pertinent legal authorities. Within 21 days of service of the appellant's memorandum, the appellee shall serve and file a memorandum that responds to each claim of error. The appellant may serve and file a reply brief within 7 days of service of the appellee's brief. All memoranda shall conform to the requirements and length restrictions of Local Criminal Rules 47.2 and 47.3. Reply briefs shall be limited to 10 pages.

**(5)** The district judge to whom the appeal is assigned may hear oral argument or may decide the appeal on the briefs. Requests for oral argument shall be made at the time briefs are filed and shall be granted at the discretion of the district judge.

## Rule 58.2 Forfeiture of Collateral in Lieu of Appearance

As provided in Fed. R. Crim. P. 58(d)(1), a person who is charged with a petty offense or other misdemeanor, whether it is a violation of a federal statute or regulation, or a violation of an assimilated state law, may be permitted, in lieu of appearance, to post collateral for the offense, waive appearance before the court, and consent to forfeiture of the collateral. The offenses for which collateral may be posted and forfeited in lieu of appearance and the amount of collateral to be posted are set out in written schedules approved by the court, on file with the clerk, and posted on the court's website. Collateral may not be forfeited in lieu of appearance with respect to any offense for which appearance is specified as mandatory in a schedule or any offense the citation for which specifies that appearance is required.

## Rule 59.1 Reserved for Future Purposes

## Rule 60.1 Reserved for Future Purposes

**Rule 61.1 Publicity in Criminal Matters**

**(a) In General.**

All court personnel, including but not limited to, the marshal and deputy marshals and office personnel, the clerk and deputy clerks and office personnel, probation officers and office personnel, bailiffs, court reporters, and the district judges' and magistrate judges' office personnel, are prohibited from disclosing to any person, where it can reasonably be expected to be disseminated by means of public communication, without authorization of the court, information relating to any pending matter that has not been filed as a part of the public records of the court. This proscription applies to the divulgence of any information concerning arguments and hearings held in chambers or otherwise outside the presence of the jury or the public.

**(b) Statements by One Participating in or Associated with an Investigation.**

An attorney participating in or associated with the investigation of a criminal matter shall not make or participate in making any extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

**(1)** information contained in a public record;

**(2)** that the investigation is in progress;

**(3)** the general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim;

**(4)** a request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto; and

**(5)** a warning to the public of any dangers.

**(c) Statements After Filing Complaint, Information, or Indictment, Issuance of Warrant or Arrest.**

An attorney or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or

participate in making an extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication that relates to:

**(1)** the character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused;

**(2)** the possibility of a plea of guilty to the offense charged or to a lesser offense;

**(3)** the existence or contents of any confession, admission, or statement given by the accused or the refusal or failure of the accused to make a statement;

**(4)** the performance or results of any examinations or tests or the refusal or failure of the accused to submit to examination or tests;

**(5)** the identity, testimony, or credibility of a prospective witness; or

**(6)** any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

**(d) Statements That Can Be Made.**

This local rule does not preclude an attorney during such period from announcing:

**(1)** the name, age, residence, occupation, and family status of the accused;

**(2)** if the accused has not been apprehended, any information necessary to aid in apprehension of the accused or to warn the public of any dangers the accused may present;

**(3)** a request for assistance in obtaining evidence;

**(4)** the identity of the victim of the crime;

**(5)** the fact, time, and place of arrest, resistance, pursuit, and use of weapons;

**(6)** the identity of investigating and arresting officers or agencies and the length of the investigation;

**(7)** at the time of seizure, a description of the physical evidence seized,

other than a confession, admission or statement;

**(8)** the nature, substance, or text of the charge;

**(9)** quotations from or references to public records of the court in the case;

**(10)** the scheduling or result of any step in the judicial proceedings; or

**(11)** that the accused denies the charges made against him.

**(e) Statements During Jury Selection or Trial.**

During the selection of a jury or the trial of a criminal matter, an attorney or a law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making any extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that the attorney may quote from or refer without comment to public records of the court in the case.

**(f) Statements After Trial, Disposition without Trial, or Sentencing.**

After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, an attorney or a law firm associated with the prosecution or defense shall not make or participate in making an extra-judicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the sentence.

**(g) Statements of Staff and Employees.**

An attorney shall exercise reasonable care to prevent employees and associates from making an extra-judicial statement that the attorney would be prohibited from making under this Local Criminal Rule 61.1.

## Rule 100.1 Court Libraries

The clerk shall maintain the court libraries in the district. Use of the facilities is limited to judicial officers, court staff and members of the bar of this court. Books shall not be removed from the library without the consent of the person responsible for the maintenance of the particular library, and shall not be removed from the courthouse under any circumstances. A violation of this local rule shall be

punishable as for contempt of court.

**Rule 100.2 Jurisdictional Agreements With Other Courts**

The clerk shall maintain all jurisdictional agreements entered into by the Chief District Judge of this court and the Chief District Judge of any other United States District Court and a copy of such agreements shall be furnished to counsel upon request.