FILED

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA 13-SO-4

NOV 0 5 2013

JULIE A. RICHARDS, CLERK US DISTRICT DOURT, EDNC BY

IN RE: ADOPTION OF)STANDING ORDERLOCAL CRIMINAL RULE 58.2)OF THE COURT

Between January 1, 2013, and October 29, 2013, this district disposed of 4,609 petty offenses arising at the U.S. Department of Veterans Affairs Medical Center in Fayetteville, North Carolina and the military reservation at Fort Bragg, North Carolina, including Pope Army Airfield and Simmons Army Airfield. In addition, the court exercises jurisdiction over petty offense and other misdemeanor cases arising at the Marine Corps Air Station Cherry Point and Marine Corps Air Bases East Properties and U.S. Coast Guard Base Elizabeth City and involving the U.S. Army Corps of Engineers, U.S. Bureau of Land Management, U.S. Fish and Wildlife Service, National Park Service (Cape Hatteras and Cape Lookout National Seashores), and U.S. Forest Service. As a result, the Eastern District of North Carolina bears a voluminous caseload of petty offense and other misdemeanor matters.

In petty offense and other misdemeanor actions, Rule 58(d)(1) of the Federal Rules of Criminal Procedure provides that "[i]f the court has a local rule governing forfeiture of collateral, the court may accept a fixed-sum payment in lieu of the defendant's appearance and end the case, but the fixed sum may not exceed the maximum fine allowed by law." Fed. R. Crim. P. 58(d)(1). The district's Local Criminal Rules do not address forfeiture of collateral in lieu of an appearance in petty offense and other misdemeanor cases. Historically, the court approves a collateral forfeiture schedule, as contemplated by Rule 58(d)(1). An interim local rule is required immediately to bring the court's practice in conformance with the federal rules. The rule-making power of the court is outlined under 28 U.S.C. § 2071. If the court finds that "there is an immediate need for a rule, the court may proceed . . . without public notice and opportunity for comment." 28 U.S.C. § 2071(e). Accordingly, pursuant to the court's authority under 28 U.S.C. § 2071(e) and Local Civil Rule 100.4, the following local rule is hereby ADOPTED to address an immediate and emergent need:

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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.

The Clerk of Court is DIRECTED to post this Standing Order and Local Criminal Rule 58.2

on the court's website and to invite public comment for consideration by the Local Criminal Rules

Committee. Local Criminal Rule 58.2 remains in effect until such time as the district court, upon

the recommendation of the Local Rules Committees and after public notice and commentary,

approves a permanent Local Criminal Rule 58.2.

SO ORDERED. This <u>s</u> day of November 2013.

JAMES C. DEVER III Chief United States District Judge