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CHARLES H. HADEN II
Chief Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
POST OFFICE BOX 351
CHARLESTON, WV 25322-0351

April 28, 1995

L. Ralph Mecham, Director
Administrative Office of the
United States Courts
Thurgood Marshall Federal Building
One Columbus Circle, N.E.
Washington, DC 20544

Dear Mr. Mecham:

The Court's Local Rules Committee completed on September 1, 1994 an eighteen-month project of reviewing and amending our Local Rules. As a result of the Rules Committee's work, we determined a district criminal justice committee formation would not be necessary.

The Criminal Rules Subcommittee of the Local Rules Committee consisting of the Federal Public Defender, United States Attorney and four members of the criminal defense bar reviewed the District's criminal docket. Their examination included, but was not limited to, the following:

A) Assessment of the condition of the docket of criminal cases and habeas corpus proceedings;

B) Identification of the trends in case filings and the demands being placed on the resources of the court and prosecutorial agencies; and

C) Identification of the principal causes of cost and delay in criminal litigation and habeas corpus proceedings.

The Court then totally revised and adopted new Local Rules. I enclose a copy of the amended Local Criminal Rules.

Although a formal district criminal justice committee was not appointed, the Court feels the work of the Criminal Rules Subcommittee and the Local Rules Committee addressed all matters that would have come before a district civil justice committee.

In summary, we felt such a committee would have been redundant to work just completed.

Because of the diligent efforts of my fellow judges and because of the efficiencies engendered by our Civil Justice Reform Act Plan and implementing Local Rules, this District is now entirely current in all matters civil and criminal.

If you have further questions concerning my response, please do not hesitate to contact me and I will elaborate.

Kindest regards,

Charles H. Haden II
Chief Judge

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Enclosure

III. LOCAL RULES OF CRIMINAL PROCEDURE

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Article 1. Arraignment; Discovery; and Pleas.

LR Cr P 1.01. Arraignment and Standard Discovery Requests.

(a) At arraignment on an indictment, counsel for the defendant and the government may make standard requests for discovery as contained in the Arraignment Order and Standard Discovery Request form (Form 4, Appendix of Forms). The form shall be signed by counsel for the defendant and the government and entered by the magistrate judge.

(b) If counsel for the defendant requests discovery under FR Cr P 16(a)(1)(C), (D) or (E), in an Arraignment Order and Standard Discovery Request form, the defendant is obligated to provide any reciprocal discovery that may be available to the government under FR Cr P 16(b)(1)(A), (B) or (C).

(c) Unless the parties agree otherwise, or the court so orders, within 10 days of the Standard Discovery Request, the government must provide the requested material to counsel for the defendant and file a written response to each of defendant's requests with the clerk.

(d) All reciprocal discovery due the government must be provided by defendant within 10 days of the receipt of the materials and the filing and serving of responses in paragraph (c).

(e) Defendant must file all additional motions within 10 days of providing materials and filing and serving of responses in paragraph (c).

(f) If defendant does not make the standard request for discovery pursuant to paragraph (a), the magistrate judge shall, at arraignment, set a date within 20 days of arraignment for filing of defendant's pretrial motions.

(g) The government shall have 7 days to respond to motions filed by defendant under paragraphs (e) and (f).

(h) At arraignment, the magistrate judge shall establish a date and time for a pretrial hearing before the assigned district judge. The pretrial hearing shall be held at least 14 days prior to trial, unless otherwise ordered by the court sua sponte or on motion for good cause. If the parties agree a hearing is not necessary, they must inform the district judge immediately. If the pretrial hearing will require the taking of evidence, the parties must notify the district judge in advance.

(i) Any request made by the defendant pursuant to this rule will be deemed a motion under the provisions of the Speedy Trial Act, 18 U.S.C. 3161.

(j) All duties of disclosure and discovery in this rule are continuing, and the parties must produce any additional disclosure and discovery as soon as it is received.

LR Cr P 1.02. Notice of Arraignments; Pleas and Motions to Dismiss.

(a) It is the duty of the government to give defendant timely notice of defendant's arraignment on and plea to the indictment. A copy of the notice shall be furnished concurrently to defendant's counsel, if his or her name and address are shown on the docket or known to the government. When the indictment is based on substantially similar allegations that form the basis of an earlier complaint before a

magistrate judge, the government shall give notice of the arraignment and plea to counsel who appeared for defendant before the magistrate judge.

When the United States Attorney has knowledge that a defendant is without counsel, that fact shall be promptly brought to the attention of the appropriate judicial officer so that consideration may be given to early provision of counsel.

(b) The United States Attorney shall serve on defendant's counsel or on an unrepresented defendant a notice of a motion to dismiss a complaint pending before a judicial officer.

(c) No other or further notice of arraignment and plea or motion to dismiss need be given by the clerk except on order of the court.

Article 2. Trial.

LR Cr P 2.01. Jury Instructions.

In all criminal cases, counsel for the defendant and for the government shall submit jury instructions to the court prior to the commencement of a jury trial, or earlier if ordered by the court. When it is necessary for counsel for the defendant to submit one or more jury instructions on an *ex parte* basis, those instructions must be disclosed to the government no later than the charge conference or when specified by the court. Subject to court approval, counsel may amend or supplement jury instructions after commencement of trial.

LR Cr P 2.02. Opening Statements in Criminal Trials.

At the commencement of trial in a criminal action, the government and the defendant may make non-argumentative opening statements as to their theories of the

case and the manner in which they expect to offer their evidence. If the trial is to a jury, the opening statements shall be made immediately after the jury is empaneled, and, if the trial is to the court, the opening statements shall be made immediately after the case is called for trial; but, for good cause shown, the court, on request of the defendant, may defer the opening statement for a defendant until the time for commencing presentation of that defendant's direct evidence. Opening statements shall be subject to time limitations imposed by the court.

If the action involves more than one defendant, the court, after conferring with the parties to the action, shall determine the order and time of the opening statements.

ARTICLE 3. Sentencing.

LR Cr P 3.01. Petition for Disclosure of Presentence or Probation Records.

Except as provided in LR Cr P 3.02, no confidential records of the court maintained by the probation office, including presentence and probation supervision records, shall be producible except by written petition to the court particularizing the need for specific information.

When a demand for disclosure of presentence and probation records is made by way of subpoena or other judicial process to a probation officer, the probation officer may petition in writing seeking instructions from the court regarding a response to the subpoena.

No disclosure shall be made except upon order of the court.

LR Cr P 3.02. Guideline Sentencing Implementation and Presentence Investigation Reports.

Notwithstanding the general restrictions on disclosure of confidential records maintained by the probation office as set forth in LR Cr P 3.01, the following shall control disclosure of presentence investigation reports governed by the Sentencing Reform Act of 1984, 18 U.S.C. § 3551 et seq.:

(a) Not less than 20 days prior to sentencing, the probation officer shall disclose the presentence investigation report to the defendant and to counsel for the defendant and to the government. Within 10 days thereafter, the parties by counsel shall communicate to the probation officer any objections they may have as to material information, sentencing classifications, sentencing guideline ranges and policy statements contained in or omitted from the report. The communication shall be in writing with a copy served upon opposing counsel or an unrepresented defendant contemporaneously with service upon the probation officer.

(b) After receiving objections, the probation officer may conduct further investigation and make revisions to the presentence report that may be necessary. The officer may require counsel to meet with the officer to discuss unresolved factual and legal issues.

(c) Not less than 5 days prior to sentencing, the probation officer shall submit the presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth objections that have not been resolved, together with the officer's comments and recommendations. The probation officer shall certify that the contents of the report, including revisions and the addendum, have been disclosed to the defendant

and to counsel for the defendant and the government, and that the addendum fairly states any remaining objections.

(d) With the exception of an objection under paragraph (a) that has not been resolved, the presentence investigation report may be accepted by the court as accurate. For good cause, however, the court may allow additional objections to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the court may consider relevant information without regard to its admissibility under the rules of evidence, provided it otherwise has sufficient indicia of reliability.

(e) The time requirements of this rule may be modified by the court for good cause, except that the 20-day period in paragraph (a) may not be reduced to a period of less than 10 days prior to sentencing without the consent of the defendant.

(f) Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under FR Cr P 32. Subject to the limitations in FR Cr P 32(c)(3)(A) and (B), upon request of counsel, the probation officer shall provide to counsel all underlying public-record information pertaining to the defendant that was gathered by documents obtained and used in the preparation of the presentence report.

(g) The presentence report shall be deemed to have been disclosed (1) when a copy of the report is physically delivered to counsel, or (2) 3 days after a copy of the report is mailed to counsel. When the defendant is unrepresented or is represented by standby counsel, delivery or mailing shall be made to the defendant.

LR Cr P 3.03. Pretrial Services and Presentence Interviews.

Probation and pretrial service officers, to the extent practicable, shall attempt notification of counsel prior to conducting pretrial service interviews. Probation and pretrial service officers shall notify counsel, prior to conducting the presentence interview of the defendant, of the time and place of the interview.

If counsel cannot attend an interview, the information provided by the defendant shall be made available to counsel upon request.