LOCAL CRIMINAL RULES

LCrR 1
SCOPE; DEFINITIONS

(a) Scope

These Local Rules are intended to set out local procedures for the Eastern District of Washington consistent with the Federal Rules of Criminal Procedure. They are designated as LCrR and numbered to correspond, where possible, with rules having similar subject matter as the Federal Rules of Criminal Procedure. THESE RULES ARE SUBJECT TO ANY ORDER OF THE PRESIDING JUDGE IN AN INDIVIDUAL CASE.

(b) and (c) [Reserved]

LCrR 2
INTERPRETATION

These Local Rules, along with the Federal Rules of Criminal Procedure, are intended to provide for the just determination of every criminal proceeding and shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

LCrR 3
THE COMPLAINT
[Reserved]

LCrR 4
ARREST WARRANT OR SUMMONS ON A COMPLAINT
[Reserved]

LCrR 5
INITIAL APPEARANCE

(a) In General

(1) Appearance upon Arrest

Absent an exception under Fed. R. Crim. P. 5(a)(2) or a related statute, a person making an arrest within this district on a federal criminal charge, shall so advise the U.S. Attorney's Office and the U.S. Marshals Service and take the defendant without unnecessary delay before a Magistrate Judge.

(2) [Reserved]

(b) Arrest Without a Warrant - Forty-Eight Hour Rule.

Whenever an arrest without a warrant occurs, and the initial appearance will not be or is likely not to be held within forty-eight (48) hours of arrest (because of the weekend or holidays or unavailability of a Magistrate Judge):

> (1) A complaint and affidavit will be prepared and presented within forty-eight (48) hours after the arrest to the appropriate Magistrate Judge as directed by said judge. If probable cause is found, a) an order so finding shall be signed, and b) the defendant shall be

ordered held pending the initial appearance as promptly as that hearing can be scheduled during court hours or as otherwise ordered.

(2) The initial contact with the appropriate Magistrate Judge shall be made by an attorney for the government who shall have either previously prepared or reviewed and approved the form of the complaint and affidavit.

(c) through (f) [Reserved]

LCrR 5.1
PRELIMINARY HEARING

(a) through (f) [Reserved]

(g) Recording the Proceedings

(1) *Copies of Preliminary Hearing Recordings*. Unless ordered sealed by court order, a copy of the recording of the preliminary hearing may be obtained from the Clerk's Office and will, whenever possible, be provided within five (5) days of the request. A court-appointed attorney for a defendant and the attorney for the government may obtain a copy free; all others must pay the prevailing rate per audio recording as set by the U.S. Judicial Conference.

(2) *Original Preliminary Hearing Recordings*. The original preliminary hearing recordings shall remain in the custody of the Clerk's Office under the control of the court, subject to the Clerk's established procedures for storage of records and retention. The recordings may be made available at further hearings or for other purposes, upon motion to the court specifying the necessity.

(3) *Transcripts*. Anyone seeking preparation of transcripts at government expense shall apply to the court or a judge thereof, and shall state specifically why the access to the recording is insufficient for the party's needs.

(h) [Reserved]

LCrR 6
THE GRAND JURY

(a) through (d) [Reserved]

(e) Recording and Disclosing the Proceedings.

(3) Without the necessity of any order of the court, and pursuant to Fed. R. Crim. P. 6(e)(3)(E)(i), the United States is authorized to disclose to the defense for its use in connection with the judicial proceeding, any grand-jury subpoenaed documents and transcripts of witnesses testifying before the grand jury, after the Indictment has been returned in each criminal case. *See* General Order of the Court for the Eastern District of Washington, 12-49-1.

Circumstances falling outside the parameters of this limited authorization to disclose grand jury information shall be handled on a case-by-case basis by appropriate motion.

(f) through (i) [Reserved]

LCrR 7
THE INDICTMENT AND THE INFORMATION
[Reserved]

LCrR 8
JOINDER OF OFFENSES OR DEFENDANTS
[Reserved]

LCrR 9
ARREST WARRANT OR SUMMONS ON AN INDICTMENT OR INFORMATION
[Reserved]

LCrR 10
ARRAIGNMENT
[Reserved]

LCrR 11
PLEAS

(a) through (h) [Reserved]

(i) Felony Pleas Before Magistrate Judges

The attorney for the government and the attorney for a defendant may jointly request that the assigned District Judge refer the case to a Magistrate Judge for entry of a felony plea.

Magistrate Judges are authorized to accept waivers of indictment and guilty pleas in felony cases with the consent of the defendant, the defendant's attorney, and the attorney for the government, and to order a presentence investigation report concerning any defendant who pleads guilty to felony charges (Fed R. Crim. P. 7(b), 11(a), and 32(c)).

The Magistrate Judge accepting the plea shall file and serve a Report and Recommendation. Within fourteen (14) days after such service, any party may file and serve written objections thereto, and any party desiring to oppose such objections shall have seven (7) days thereafter within which to file and serve a written response. The District Judge may accept, reject or modify, in whole or in part, the Report and Recommendation of the Magistrate Judge. Sentencing shall take place before the District Judge to whom the case has been assigned.

LCrR 12
PLEADINGS AND PRETRIAL MOTIONS

(a) and (b) [Reserved]

(c) Motion Deadline

(1) *Time for Motions*. Unless good cause is shown, all defenses, objections, or requests pursuant to Fed. R. Crim. P. 12, which are capable of determination without the trial of the general issue, must be raised by pretrial motion and noticed for hearing on or before the deadline set by the assigned judge for hearing all pretrial motions. Motions shall be noticed in accordance with this Rule.

(2) *Hearing on Motions*. Unless otherwise ordered by the court, motions shall be noted for consideration at the pretrial conference. All motions shall include the date, time, and place for the hearing in the motion's caption.

(3) *Expedited Motions*. To seek an expedited hearing on a time sensitive matter, the moving party must file a motion to expedite which: (1) demonstrates good cause; (2) states the position of the opposing party; and (3) sets a date of hearing that is not less than seven (7) days after the motion's filing. Should the motion to expedite require more immediate judicial attention, the motion shall establish the necessity for an immediate hearing and the filing party shall notify chambers staff of the motion immediately upon filing.

(4) *Oral Argument and Evidentiary Hearings*. A party desiring oral argument shall so indicate by typing "ORAL ARGUMENT REQUESTED" in the caption of the motion or responsive brief and, unless otherwise ordered by the court, note the hearing for the pretrial conference.

If an evidentiary hearing is requested, a party shall so indicate by typing "EVIDENTIARY HEARING REQUESTED" in the caption of the motion or responsive brief, provide authority for such procedure and an estimate of the time needed for such hearing. If the court determines an evidentiary hearing is appropriate, the clerk will notify the parties of the date, hour, and place thereof.

(5) *Motions for Reconsideration*. Motions for reconsideration are disfavored and are limited to five (5) pages in length. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.

No response to a motion for reconsideration shall be filed unless requested by the court. No motion for reconsideration will be granted without such a request. The court's request will set a time when the response and reply are due, and may limit the response and reply to particular issues or points raised by the motion.

(d) through (h) [Reserved]

LCrR 12.1
NOTICE OF AN ALIBI DEFENSE
[Reserved]

LCrR 12.2
NOTICE OF AN INSANITY DEFENSE; MENTAL EXAMINATION
[Reserved]

See also LCrR 16(b).

LCrR 12.3
NOTICE OF A PUBLIC-AUTHORITY DEFENSE
[Reserved]

See also LCrR 16(b).

LCrR 12.4
DISCLOSURE STATEMENT
[Reserved]

LCrR 13
JOINT TRIAL OF SEPARATE CASES
[Reserved]

LCrR 14
RELIEF FROM PREJUDICIAL JOINDER
[Reserved]

LCrR 15
DEPOSITIONS
[Reserved]

LCrR 16
DISCOVERY AND INSPECTION

The purposes of this Rule are to expedite the transfer of discoverable material between opposing parties in criminal cases and to ensure that pretrial discovery motions are filed only when these discovery procedures have failed to timely result in the exchange of all legitimately discoverable material.

(a) Government's Disclosure

Absent notice to the government to the contrary, it is presumed the defendant requests discovery pursuant to Fed. R. Crim. P. 16(a). At arraignment or within fourteen (14) days thereafter, the government shall:

(1) Make available for inspection or copying all the Rule 16(a) material (defendant's oral and written statements; defendant's prior record; documents and objects; reports of examinations and tests; and expert witnesses opinions, the bases and reasons for those opinions, and the witness's qualifications) in its possession, custody or control or which may become known to the attorney for the government through due diligence;

(2) Make available for inspection or copying any electronic eavesdrop, wiretap, or any other interception of defendant's wire or oral communications as defined by 18 U.S.C. § 2510, *et seq*., the authorization for and information gathered from a tracking device, GPS locator, pen register, trap and trace, or any other video or audio recording used during the course of the investigation of the case;

(3) Make available for inspection or copying any search warrants and supporting affidavits which resulted in the seizure of evidence which is intended for use by the government as evidence in its case-in-chief at trial, or which was obtained from, or belongs to, the defendant;

(4) Inform the defendant's attorney whether any physical evidence intended to be offered in the government's case-in-chief was seized by the government pursuant to any exception to the warrant requirement;

(5) Make available for inspection or copying any photographs used in any photograph lineup, show up, or photo spread, and identify any other identification technique and the results thereof; and

(6) Advise the defendant's attorney of evidence favorable to the defendant and material to the defendant's guilt or punishment to which defendant is entitled pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States v. Agurs*,427 U.S. 97 (1976).

The court encourages early disclosure by the government of Jencks statements (18 U.S.C. § 3500) when the reasons for withholding such statements are not implicated.

No later than twenty-eight (28) days prior to trial, the government shall:

(7) Provide the information required by *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991) (government required to inspect for material information in the personnel records of federal law enforcement officers who will testify at trial);

(8) Provide a summary of any evidence of other crimes, wrongs, or acts which the government intends to offer under Federal Rule of Evidence 404(b), in sufficient detail that the court may rule on the admissibility of the proffered evidence, if challenged; and

(9) Provide a list of convictions the government intends to offer under Federal Rule of Evidence 609 so the court may rule on their admissibility, if challenged.

(b) Defendant's Disclosure

Absent defendant's election not to receive discovery from the government, it is presumed the government requests discovery pursuant to Rule 16(b). No later than fourteen (14) days before trial, the defense shall make available for inspection or copying all the Rule 16(b) material (documents and objects, reports of examinations and tests, and expert witnesses opinions, the bases and reasons for those opinions, and the witness's qualifications) within defendant's possession, custody, or control that the defendant ***intends*** to use in defendant's case-in-chief.

The court encourages early disclosure by the defense of *United States v. Nobles*, 422 U.S. 225 (1975) statements (Fed. R. Crim. P. 26.2) when the reasons for withholding such statements are not implicated.

No later than twenty-one (21) days before trial, the defense shall:

(1) File and serve a written copy of any intention to assert an insanity defense or assert any other mental condition bearing on the issue of guilt or the issue of punishment in a capital case, pursuant to Fed. R. Crim. P. 12.2.

(2) File and serve a written copy of any intention to assert a public authority defense pursuant to Fed. R. Crim. P. 12.3.

(c) Continuing Duty to Disclose

If at any time a party identifies or obtains additional evidence not previously disclosed which is subject to discovery or inspection under this Rule, such party shall promptly disclose its existence. [This rule contemplates that there will be situations where a continuing investigation by either party uncovers relevant, discoverable evidence.]

(d) [Reserved]

(e) Exchange of Exhibit and Witness Lists

The exchange of exhibit and witness lists will be pursuant to the order of the presiding trial judge.

(f) Motions to Compel Further Discovery or Inspection

If discovery or inspection beyond that provided for above is sought, the attorney for the government and the defendant's attorney shall confer with a view toward satisfying these requests in a cooperative manner without involving the court. All motions for discovery or inspection shall contain a certification (1) that counsel have engaged in a discovery conference (in person, in writing or telephonically) and discussed the subject matter of each motion and have been unable to reach agreement; (2) the date of the conference; (3) the names of the attorneys and parties who attended the conference; and (4) the matters which remain in dispute and require the determination of the court.

The filing of any such motion for further discovery or inspection which does not include the required certification may result in summary denial of the motion.

LCrR 17
SUBPOENA

(a) [Reserved]

(b) Defendant Unable to Pay

An indigent defendant may apply ex parte for issuance and service of subpoenas upon showing the necessity of the witness's presence for an adequate defense.

(c) Producing Documents and Objects

(1) No subpoena in a criminal case may require the production of books, papers, documents, or other objects in advance of the trial, hearing, or proceeding at which these items are to be offered in evidence, unless the court has entered an order pursuant to Fed. R. Crim. P. 17(c). This Rule requires notice to the opposing party of a subpoena seeking advance production of books, papers, documents or other objects. Since Fed. R. Crim. P. 17 is not a discovery device, only exceptional circumstances would warrant filing an ex parte motion for a subpoena.

    All Rule 17(c) subpoenas seeking or allowing advance production must be returnable to the court and the items sought therein must be delivered to the court at the place, date and time indicated. When appropriate, the subpoena may advise that no appearance is necessary if the items are produced, in advance of the date specified, to the court in an envelope delivered to the Clerk's Office. The court will then determine what material will be appropriately distributed to the parties.

(2) [Reserved]

(3) Except for grand jury subpoenas, no Rule 17(c) subpoena may be served on a third party seeking the production of personal or confidential information about a victim without notice to the victim and the opposing party and an opportunity to hear any motion to quash or modify or other objections prior to the court issuing an order allowing service of such subpoena. Only exceptional circumstances would warrant the court to dispense with such notice.

(d) through (h) [Reserved]

LCrR 17.1
PRETRIAL AND STATUS CONFERENCES
[Reserved]

LCrR 18
PLACE OF PROSECUTION AND TRIAL
[Reserved]

See also LCrR 21.

LCrR 19
[Reserved]

LCrR 20
TRANSFER FOR PLEA AND SENTENCE
[Reserved]

LCrR 21
TRANSFER FOR TRIAL

(a) through (c) [Reserved]

(d) Time to File a Motion to Transfer

A motion to transfer under Fed. R. Crim. P. 21 shall be made within the time allowed for filing pretrial motions under these rules.

LCrR 22
[Abrogated]

LCrR 23
JURY OR NONJURY TRIAL

(a) through (c) [Reserved]

(d) Trial Brief

Each party shall file and serve any trial brief addressing the issues involved in the trial and important or unusual evidentiary matters, no later than seven (7) days before trial or as ordered by the presiding judge.

LCrR 24
TRIAL JURORS

(a) Examination

Each party shall file and serve any suggested questions for the court to propound to the jurors during voir dire, no later than seven (7) days before trial.

(b) through (c) [Reserved]

LCrR 25
JUDGE'S DISABILITY
[Reserved]

LCrR 26
TAKING TESTIMONY
[Reserved]

LCrR 26.1
FOREIGN LAW DETERMINATION
[Reserved]

LCrR 26.2
PRODUCING A WITNESS'S STATEMENT
[Reserved]

See LCrR 16(a) and (b).

LCrR 26.3
MISTRIAL
[Reserved]

LCrR 27
PROVING AN OFFICIAL RECORD
[Reserved]

LCrR 28
INTERPRETERS
[Reserved]

LCrR 29
MOTION FOR A JUDGMENT OF ACQUITTAL
[Reserved]

LCrR 29.1
CLOSING ARGUMENT
[Reserved]

LCrR 30
JURY INSTRUCTIONS

(a) In General

Each party shall file and serve proposed jury instructions no later than seven (7) days before trial. Additional or modified instructions which could not reasonably be anticipated may be served and filed during the course of the trial.

Each proposed instruction shall be separately paginated, separately numbered, contain supporting citations and in addition to service and filing, a Microsoft "Word" file shall be transmitted to the assigned judge's Orders e-mail address.

(b) [Reserved]

(c) Time for Giving Instructions

The court will normally read instructions to the jury after the close of evidence and prior to argument.

(d) [Reserved]

(e) Copy of Instructions for Jury Use

The jury will be given a written set of the court's instructions for their deliberations.

LCrR 31
JURY VERDICT

(a) through (d) [Reserved]

(e) Contacting Jurors After Trial

Neither counsel nor the parties shall contact or interview jurors or cause jurors to be contacted or interviewed after trial without first having been granted leave to do so by the court.

LCrR 32
SENTENCING AND JUDGMENT
[Reserved]

LCrR 32.1
REVOKING OR MODIFYING PROBATION OR SUPERVISED RELEASE
[Reserved]

LCrR 32.2
CRIMINAL FORFEITURE
[Reserved]

LCrR 33
NEW TRIAL
[Reserved]

LCrR 34
ARRESTING JUDGMENT
[Reserved]

LCrR 35
CORRECTING OR REDUCING A SENTENCE
[Reserved]

LCrR 36
CLERICAL ERROR
[Reserved]

LCrR 37
RULING ON A MOTION FOR RELIEF THAT IS BARRED BY A PENDING APPEAL
[Reserved]

LCrR 38
STAYING A SENTENCE OR A DISABILITY
[Reserved]

LCrR 39
[Reserved]

LCrR 40
ARREST FOR FAILING TO APPEAR IN ANOTHER DISTRICT OR FOR VIOLATING CONDITIONS OF RELEASE SET IN ANOTHER DISTRICT
[Reserved]

LCrR 41
SEARCH AND SEIZURE
[Reserved]

LCrR 42
CRIMINAL CONTEMPT
[Reserved]

LCrR 43
DEFENDANT'S PRESENCE
[Reserved]

LCrR 44
RIGHT TO AND APPOINTMENT OF COUNSEL
[Reserved]

LCrR 45
COMPUTING AND EXTENDING TIME
[Reserved]

See Rule LCvR 7.1: The time periods set forth in LCvR 7.1 for filing responsive and reply memorandum include the 3-day period allowed under F. R. Crim. P. 45(c), regardless of the method of service.

LCrR 46
RELEASE FROM CUSTODY; SUPERVISING DETENTION

(a) through (j) [Reserved]

(k) Detention Order Review Protocol

18 USC § 3145 (a) & (b) provide that parties may obtain prompt review by a District Judge of a Magistrate Judge's detention or release order.

(1) Once the Magistrate Judge has conducted a bail hearing pursuant to 18 USC § 3142 and has advised the parties, either orally or in writing, of his/her decision, any party seeking review of the detention or release order shall immediately notify the Magistrate Judge and opposing counsel. In those instances in which a stay of the Magistrate Judge's decision is desired, the motion for a stay shall be filed with the Magistrate Judge pending review by a District Judge.

(2) The Magistrate Judge shall then have the discretion to enter an order staying his/her detention or release decision pending review by a District Judge. Notwithstanding the entry of a stay order, the Magistrate Judge shall retain jurisdiction over the detention or release matter until the hearing before the District Judge occurs.

(3) The party seeking review shall promptly docket with the Clerk a motion for review noting a date and time for review of the detention or release order before the assigned District Judge. If the case is not yet assigned to a District Judge, or if the assigned District Judge is unavailable, the motion for review shall be noted for hearing by the Chief Judge or the Chief Judge's designee. The party seeking review shall promptly notify the Magistrate Judge and opposing counsel of the date and time for review.

LCrR 47
MOTIONS AND SUPPORTING AFFIDAVITS
[Reserved]

See LCvR 7.1, LCrR 12 and 16.

LCrR 48
DISMISSAL
[Reserved]

LCrR 49
SERVING AND FILING PAPERS

(a) through (d) [Reserved]

(e) Electronic Service and Filing

See General Order of the Court for the Eastern District of Washington, 100-04-1 and the Eastern District of Washington's E-Filing How-To, Forms, and Training on the Court's Website: www.waed.uscourts.gov.

LCrR 49.1
PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT
[Reserved]

LCrR 50
PROMPT DISPOSITION
[Reserved]

LCrR 51
PRESERVING CLAIMED ERROR
[Reserved]

LCrR 52
HARMLESS AND PLAIN ERROR
[Reserved]

LCrR 53
COURTROOM PHOTOGRAPHING AND BROADCASTING
[Reserved]

LCrR 54
[Transferred]

LCrR 55
RECORDS

LCrR 56
WHEN COURT IS OPEN
[Reserved]

LCrR 57
DISTRICT COURT RULES

(a) In General

These Local Rules are intended to conform to Fed. R. Crim. P. 57.

(b) [Reserved]

(c) Effective Date and Notice

These Local Rules are effective March 1, 2015, and apply to all pending and future cases.

LCrR 58
PETTY OFFENSES AND OTHER MISDEMEANORS

(a) Reserved

(b) Pretrial Procedure

All informations, indictments, citations, or other instruments on file with the clerk which charge only misdemeanors shall be designated for proceeding before a Magistrate Judge. If the defendant does not consent to trial and/or disposition before a Magistrate Judge, and if such consent is required, the clerk shall reassign the case for trial and/or disposition before a District Judge.

(c) Reserved

(d) Paying a Fixed Sum in Lieu of Appearance

(1) In General

Payment of sums fixed in this court's Schedule of Collateral Forfeiture-Bail Schedules may be accepted in lieu of appearance and as authorizing termination of the proceedings.

Where such proceedings involve a charge of moving traffic violations, the Clerk shall transmit a copy of the charge to the appropriate state's driver licensing authority and identify it as a record of conviction. A copy of the current "Schedule of Collateral Forfeiture-Bail Schedules" and mandatory appearances for misdemeanors and infractions in the Eastern District of Washington is available at the Clerk's Office and at www.waed.uscourts.gov.

(2) through (3) [Reserved]

(e) through (f) [Reserved]

(g) Appeal

(1) [Reserved]

(2) From a Magistrate Judge's Order or Judgment

(A) through (D) [Reserved]

(E) Briefs

Appellant's brief shall be filed and served within twenty-eight (28) days after the filing of the Notice of Appeal. Appellee's responsive brief shall be filed and served within fourteen (14) days thereafter. Appellant may file and serve a reply brief within seven (7) days thereafter.

(F) Oral Argument

The District Judge shall have discretion whether to schedule oral argument on the appeal. Either party may only request oral argument on the cover of their initial brief.

(3) Reserved

LCrR 59
MATTERS BEFORE A MAGISTRATE JUDGE
[Reserved]

LCrR 60
VICTIM'S RIGHTS
[Reserved]

LCrR 61
TITLE

These rules may be known as the Eastern District of Washington Local Criminal Rules of Procedure and cited as LCrR.