

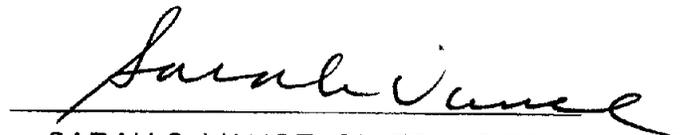
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

ORDER AMENDING LOCAL RULES

Appropriate Public Notice and an opportunity to comment having been given pursuant to Rule 83, Federal Rules of Criminal Procedure, and pursuant to a majority vote of the active judges of this court,

IT IS ORDERED that the Local Criminal Rules of the United States District Court for the Eastern District of Louisiana are amended to read as attached, effective February 1, 2011.

New Orleans, Louisiana, this 3<sup>rd</sup> day of January, 2011.

  
SARAH S. VANCE, CHIEF JUDGE

# LOCAL CRIMINAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

EFFECTIVE February 1, 2011

## PREAMBLE

The Local Criminal Rules may be cited as “LCrR\_\_\_\_\_”.

## LOCAL CRIMINAL RULE 5 - INITIAL APPEARANCE BEFORE THE MAGISTRATE JUDGE

LCrR5.1 Allotment of Cases and Additional Duties

LCrR5.2 Assignment of Matters to the Magistrate Judge

### LCrR5.1 Allotment of Cases and Additional Duties

Unless the court orders otherwise, criminal cases will be allotted to the magistrate judges in the same manner as cases are allotted to the judges.

- A. All proceedings including trial and imposition of sentence in petty offense and other misdemeanor cases, subject to the limitations of *18 USC 3401*;
- B. Arraignments and all other non-dispositive proceedings in other criminal cases that may under these rules be conducted by the magistrate judges, including without limitation, simplified motion hearings, motions related to deposition, discovery, inspection, subpoenas, bills of particular and mental or other examinations, but excluding motions to suppress, motions for trial continuances and motions for withdrawal or substitution of counsel;
- C. All proceedings a magistrate judge is authorized to conduct by Rules 3, 4, 5, 5.1, 40(b), and 41, Federal Rules of Criminal Procedure;

- D. Proceedings to order release or detention of arrested persons pursuant to *18 USC 3141 et seq.*;
- E. Receiving return of indictments by the grand jury and issuance of bench warrants for defendants named in the indictment, when necessary.
- F. Conduct extradition proceedings pursuant to 18 USC 3184;
- G. Upon referral by a district judge, conduct pre-trial and scheduling conferences, and enter scheduling orders.
- H. Hear motions, enter orders, conduct hearings, and make findings of fact and recommendations to the court on mental competency matters as provided in 18 USC 4244.

Nothing in these rules shall preclude a judge from withdrawing the reference of any matter. [Amended February 1, 2011]

#### **LCrR5.2 Assignment of Matters to the Magistrate Judge**

A magistrate judge will be designated as the criminal magistrate judge. All magistrate judges shall perform criminal duty responsibilities on a rotating basis after regular business hours, on weekends, and as the court specifies. The criminal magistrate judge shall:

1. Conduct preliminary proceedings in criminal cases, pursuant to Rules 3, 4, 5, 5.1, 40 and 41 of the Federal Rules of Criminal Procedure;
2. Receive returns of the Grand Jury;
3. Set conditions of bail and order release or detention of arrested persons in accordance with *18 USC 3141*, except that the magistrate judge who initially sets the conditions of release shall also conduct all subsequent proceedings related to detention or release of the defendant;
4. Conduct the arraignment in criminal cases;
5. Conduct proceedings in petty offense cases brought pursuant to the Migratory Bird Treaty Act and under the Central Violations Bureau.

### **LOCAL CRIMINAL RULE 6 - Grand Jury**

#### **LCrR6.1 - Unauthorized Presence When Grand Jury Is in Session**

## **LCrR6.2 - Interviewing Witnesses Before Grand Jury**

### **LCrR6.1 - Unauthorized Presence When Grand Jury Is in Session**

No person shall introduce or possess any type of camera, recording equipment or other type of electric or electronic device in the grand jury room or in the hall adjacent to the grand jury space while, or immediately before or after, the grand jury is in session.

No person, except grand jurors, witnesses, government attorneys, agents or employees, court personnel concerned with any grand jury proceeding, private attorneys whose clients have been called to appear as witnesses at a grand jury session then in progress or about to commence, and others specifically authorized, shall remain in the hall adjacent to the grand jury space beyond the entrance door.

### **LCrR6.2 - Interviewing Witnesses Before Grand Jury**

Questioning, interviewing or interfering with any person who may testify or who has testified before any grand jury within the premises is prohibited. [Adopted February 1, 2011]

## **LOCAL CRIMINAL RULE 12 - PRETRIAL MOTIONS**

### **LCrR12      Pretrial Motions**

Pretrial motions relative to discovery shall be filed within the time set by the magistrate judge, and shall be noticed for hearing on the motion day following the expiration of 15 days. The government shall file its response no later than eight calendar days before the scheduled hearing date.

These discovery motions shall be accompanied by a certificate of counsel for the moving party stating that counsel have conferred in person or by telephone for the purpose of amicably resolving the issues and stating that they are unable to agree or stating that

opposing counsel has refused to so confer after reasonable notice. Counsel for the moving party shall arrange the conference. [Adopted March 26, 2001]

## **LOCAL CRIMINAL RULE 17 - MATERIAL WITNESSES**

### **LCrR17      Absence of Material Witness**

Every motion for a continuance based upon absence of a material witness must be accompanied by the affidavit of the moving party or attorney, setting forth the efforts made to procure attendance and the facts expected to be proved by the witness. If the opposite party admits that the witness, if called, would testify as set forth in the affidavit, the court may, in its discretion, deny the motion. The court may dispense with a statement of the facts to be proved. If the proposed testimony is not set forth, or in any other case, the court may hold a hearing on the matter and take such action with respect to the motion as justice requires.

[Adopted February 1, 2011]

## **LOCAL CRIMINAL RULE 23 - TRIAL BY JURY OR BY THE COURT**

### **LCrR23.1      Trial by Jury**

Trial by jury in criminal cases shall be limited to those cases in which a crime is charged for which the maximum possible penalty exceeds imprisonment for a period of six months or a fine of \$500, or both.

## **LOCAL CRIMINAL RULE 32 - SENTENCE AND JUDGMENT**

- LCrR32.1      Sentencing**
- LCrR32.1.1      Submission of Motions or Letters Requesting Departure from Sentencing Guidelines**
- LCrR32.1.2      Submission of Other Motions or Documents Connected with Sentencing**

### **LCrR32.1      Sentencing**

A. In accordance with the provisions of Federal Rule of Criminal Procedure 32, when a presentence investigation is ordered, defendant's counsel, upon request, is entitled to notice and a reasonable opportunity to attend any interview of the defendant by a probation officer in the course of a presentence investigation.

B. Not less than 35 days prior to the date set for sentencing, unless the defendant waives this minimum period, the probation officer shall disclose the presentence investigation report to the defendant, counsel for the defendant and the Government. Within 14 days thereafter, counsel shall communicate in writing to the probation officer and each other any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report.

C. After receiving counsel's objections, the probation officer shall conduct any further investigation and make any revision to the presentence report that may be necessary. The officer may require counsel for both parties to meet with the officer to discuss unresolved factual and legal issues.

D. Not later than seven days prior to the date of the sentencing hearing, the probation officer shall submit the presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the officer's comments thereon. At the same time, the probation officer must furnish the revisions of the presentence report and the addendum to the defendant, the defendant's counsel, and the attorney for the Government.

E. Except with regard to any objection made under subdivision B that has not been resolved, the report of the presentence investigation may be accepted by the court as accurate. The court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the court

may consider any reliable information presented by the probation officer, the defendant, or the Government.

F. The times set forth in this rule may be modified by the court for good cause shown, except that the 14 day period set forth in subdivision B may be diminished only with the consent of the defendant.

G. Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under Rule 32 of the Federal Rules of Criminal Procedure. As permitted by Rule 32, the probation officer's recommendation on the sentence shall not be disclosed.

H. The presentence report shall be deemed to have been disclosed:

1. when a copy of the report is physically delivered,
2. one day after the report's availability for inspection is orally communicated, or
3. three days after a copy of the report or notice of its availability is mailed.

[Amended June 28, 2002]

**LCrR32.1.1 Submission of Motions or Letters Requesting Departure from Sentencing Guidelines**

Any motion or letter requesting a departure from the Sentencing Guidelines must be delivered to the sentencing judge's chambers by no later than 4:30 p.m. on the third working day prior to the date of the sentencing hearing (*i.e.*, if the sentencing hearing is set for Wednesday, the request must be delivered by 4:30 p.m. on Friday; if the sentencing hearing is set for Thursday, it must be delivered by 4:30 p.m. on Monday). Any motions or letters requesting a departure from the Sentencing Guidelines not timely submitted shall be deemed waived unless good cause is shown.

**LCrR32.1.2 Submission of Other Motions or Documents Connected with Sentencing**

All submissions, other than those referred to in LCrR32.1.1E, must be filed no later than five working days before sentencing and all responses must be filed no later than three working days before sentencing. [Adopted March 26, 2001]

**LOCAL CRIMINAL RULE 43 - BUILDING SECURITY**

**LCrR43 - Search of Persons**

Security personnel may search the person of anyone entering the premises or any space in it. Anyone who refuses to permit such a search shall be denied entry.

Any defendant in a criminal case whose appearance is required who refuses to permit such a search will be denied entry and security personnel must immediately notify the judge before whom the appearance is required. The judge may take the appropriate action, including, but not limited to, detention and search, and ordering revocation of bond, if the defendant is on bond. [Adopted February 1, 2011]

**LOCAL CRIMINAL RULE 44 - APPEARANCES BY LAW STUDENTS**

**LCrR44 - Appearances by Law Students**

Subject to the rules for appearances by law students in LR 83, limited appearances by law students, if the person on whose behalf he or she is appearing has consented to that appearance in writing and the supervising lawyer has also approved the appearance in writing, are allowed in any criminal matter on behalf of an indigent defendant.

An eligible law student may also appear in any criminal matter on behalf of the United States with the written approval of both the prosecuting attorney or his or her authorized representative and the supervising lawyer. Insofar as practicable, the legal services of law

students in criminal practice shall be divided equally between prosecution and defense.

[Adopted February 1, 2011]

## **LOCAL CRIMINAL RULE 46 - RELEASE FROM CUSTODY**

### **LCrR46.1 Appearance Bonds in Criminal Cases**

A person charged with a criminal offense in which a secured bond has been required may, at the discretion of the court, be permitted to furnish in lieu of cash a government obligation or a corporation as described in LR65.1.1, or a secured interest in real estate which shall be referred to as a "property bond."

A. To qualify as adequate security, the real property must have an equity value, after deducting the outstanding balance of any existing lien or encumbrance, of an amount not less than the principal amount of the bail set.

B. The title owner of the property shall furnish a collateral mortgage on the property in favor of the United States of America and shall deliver to the court a collateral mortgage note in pledge as security for the bond.

1. Prior to release of the person charged, the mortgage shall be recorded in the official records of the place wherein the property is situated and a certificate shall be furnished by the official authorized to enter the mortgage upon the public records showing the date, time and place of inscription and any prior recorded lien or encumbrance.
2. The property owner shall be required to give proof of ownership and furnish a certificate from any prior lien-holder stating the balance then due on any such liens and whether payment is current.
3. The equity value may be determined by the testimony of an expert appraiser or by such other proof as the court may require.

## **LOCAL CRIMINAL RULE 53 - REGULATION OF CONDUCT IN THE COURTROOM**

**LCrR53.1 Dissemination of Information Concerning Pending or Imminent Criminal Litigation by Lawyer Prohibited**

LCrR53.2	Pending Investigations
LCrR53.3	Extrajudicial Statements Concerning Specific Matters
LCrR53.4	Disclosures Authorized
LCrR53.5	Extrajudicial Statements During Trial
LCrR53.6	Extrajudicial Statements After Trial and Prior to Sentence
LCrR53.7	Matters Not Precluded
LCrR53.8	Disclosure of Information by Courthouse Personnel
LCrR53.9	Special Orders
LCrR53.10	Subjects of Special Order

**LCrR53.1     Dissemination of Information Concerning Pending or Imminent Criminal Litigation by Lawyer Prohibited**

It is the duty of the lawyer not to release or authorize the release of information or opinion for dissemination by any means of public communication, in connection with pending or imminent criminal litigation with which he or she is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

**LCrR53.2     Pending Investigations**

When there is a grand jury or other pending investigation of any criminal matter, a lawyer participating in the investigation shall refrain from making any extrajudicial statement, for dissemination by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is under way, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, or to warn the public of any dangers, or otherwise to aid in the investigation.

**LCrR53.3     Extrajudicial Statements Concerning Specific Matters**

From the time of arrest, issuance of an arrest warrant or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement for dissemination by means of public communication relating to that matter and concerning:

- A. The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer may make a factual statement of the accused's name, age, residence, occupation, and family status; and, if the accused has not been apprehended, a lawyer associated with the prosecution may release information necessary to aid in the accused's apprehension or to warn the public of any dangers he or she may present;
- B. The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;
- C. The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
- D. The identity, testimony, or credibility of prospective witnesses, except that the lawyer may announce the identity of the victim if the announcement is not otherwise prohibited by law;
- E. The possibility of a plea of guilty to the offense charged or a lesser offense;
- F. Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

Upon the showing of good cause by any party, the application of this Rule may be changed or modified to any extent by the court.

#### **LCrR53.4 Disclosures Authorized**

The foregoing shall not be construed to preclude the lawyer during this period, in the proper discharge of his/her official or professional obligations, from announcing the fact and circumstances of arrest (including the time and place of arrest, resistance, pursuit, and use of weapons), and the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public

records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him or her.

**LCrR53.5 Extrajudicial Statements During Trial**

During the trial of any criminal matter, including the period of selection of the jury, no lawyer associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview, relating to the trial or the parties or issues in the trial, for dissemination by any means of public communication, except that the lawyer may quote from or refer without comment to public records of the court in the case.

**LCrR53.6 Extrajudicial Statements After Trial and Prior to Sentence**

After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement for dissemination by any means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

**LCrR53.7 Matters Not Precluded**

Nothing in these rules is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him or her.

**LCrR53.8 Disclosure of Information by Courthouse Personnel**

All courthouse personnel, including marshals, deputy marshals, guards, court clerks, deputy clerks, law clerks, secretaries, bailiffs and court reporters, shall under no

circumstances disclose to any person, without express authorization by the court, information relating to a pending criminal case or grand jury matter that is not part of the public records of the court. This rule specifically forbids the divulgence of information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

#### **LCrR53.9 Special Orders**

In a widely publicized or sensational case, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news-media representatives, the management and the sequestration of jurors and witnesses and any other matters that the court may deem appropriate for inclusion in such an order.

#### **LCrR53.10 Subjects of Special Order**

Such a special order may be addressed to some or all of the following subjects:

- A. A proscription of extrajudicial statements by participants in the trial, including lawyers, parties, witnesses, jurors, and court officials, that might divulge prejudicial matter not of public record in the case;
- B. Specific directives regarding the clearing of entrances to the hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers, and others, both in entering and leaving the courtroom and courthouse, and during recesses in the trial;
- C. A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone, or with one another, during the trial and from communicating with others in any manner during their deliberations;
- D. Sequestration of the jury on motion of either party or of the court without disclosure of the identity of the movant;
- E. Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by statute, and that no

photograph be taken or sketch made of any juror within the environs of the court;

- F. Insulation of witnesses from news interviews during the trial period;
- G. Specific provisions regarding the seating of spectators and representatives of news-media, including:
  - 1. An order that no member of the public or news-media representative be at any time permitted within the bar railing;
  - 2. The allocation of seats to news-media representatives in cases where there is an excess of requests over the number of seats available, taking into account any pooling arrangement that may have been agreed to among the news-media representatives.

### **LOCAL CRIMINAL RULE 58 - PROCEDURE FOR MISDEMEANORS AND OTHER PETTY OFFENSES**

<b>LCrR58.1</b>	<b>Trial of Misdemeanors</b>
<b>LCrR58.2</b>	<b>Jurisdiction</b>
<b>LCrR58.3</b>	<b>Central Violations Bureau</b>

#### **LCrR58.1 Trial of Misdemeanors**

As provided in Rule 58 of the Federal Rules of Criminal Procedure, a trial of a misdemeanor may proceed on an indictment, information, or complaint or, if it be a petty offense, on a citation or violation notice.

#### **LCrR58.2 Jurisdiction**

A. As authorized by subsection (d) of Rule 58 of the Federal Rules of Criminal Procedure, the offenses named in the schedule of offenses designated by the court and posted in the office of the clerk may be disposed of by payment of the fixed sum provided in the schedule in lieu of personal appearance before a magistrate judge. The proceeding shall be terminated on receipt by the clerk of payment.

B. In all other proceedings, unless otherwise authorized in a specific case by the magistrate judge to whom the case has been assigned, or pursuant to Rule 43(c), Federal Rules of Criminal Procedure, the defendant must personally appear before the magistrate judge for disposition of the charge or for other proceedings directed by law.

C. Where the magistrate judge deems it desirable, the magistrate judge may direct the probation service of the court to conduct a pre-sentence investigation and report in accordance with *18 USC 3401*.

D. Each U.S. Magistrate Judge is specifically designated to conduct trial and sentencing in a misdemeanor case as defined in 18 USC 3401, upon referral by a district judge. [Adopted February 1, 2011]

### **LCrR58.3 Central Violations Bureau**

The clerk shall maintain a Central Violations Bureau. The bureau shall keep a record of violation notices transmitted by enforcement agencies, a record of all payments made pursuant to LCrR58.2E and shall give appearance notices to those violators whose offenses are not disposed of as provided in LCrR58.2E. The bureau shall transmit to the magistrate judges notices for personal appearance and shall maintain other records needed to effect the prompt disposition of petty offenses.